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

In re:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
	§	
	§	**Re: Docket 247**
Debtor.	§	
	§	

ACIS CAPITAL MANAGEMENT, L.P.'S MOTION TO INTERVENE AND BRIEF IN SUPPORT

Pursuant to Federal Rule of Civil Procedure 24, Intervenor Acis Capital Management, L.P. ("Acis") files this Motion to Intervene and Brief in Support because Acis is the proper payee for the $9,541,446.00 Note made the basis of Highland CLO Management Ltd. ("HCLOM")'s Claims 3.65 and 3.66 in the above-styled Bankruptcy Case. Acis respectfully shows the Court as follows:

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I. BACKGROUND

A. Acis was founded as a portfolio manager with Highland employees.

Acis was founded in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").[1] Acis was the portfolio manager for the CLOs and generated revenue primarily through the management of the CLOs via certain portfolio management agreements (the "PMAs").[2]

Acis has no employees of its own. Instead, it contracted out its administrative functions and portfolio management responsibilities to Highland Capital Management, L.P. ("Highland") through shared services and sub-advisory agreements.[3]

B. Acis sold part of its CLO Servicer Fees to Highland in exchange for the Note.

On October 7, 2016, Acis LP and Highland entered into an Agreement for Purchase and Sale of CLO Participation Interests ("Purchase Agreement"), whereby Acis sold some of its interest in cash flow from the CLO PMAs to Highland.[4] Acis promised to "promptly remit, or cause to be promptly remitted, to [Highland] the cash received with respect to the Acis Participation Interests."[5] In exchange, Highland promised Acis cash up front and a series of installment payments pursuant to a $12,666,446 Promissory Note (the "Note"). In other words, Highland purchased Acis's right to receive Servicer Fees.

The Purchase Agreement required Highland to make an initial payment of $666,655.[6] Highland was also required to make the following payments to Acis:

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[1] *See* Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued after Trial on Contested Involuntary Bankruptcy Petitions in Bankruptcy Case No. 18-30264-SGJ-7 ("Involuntary Opinion"), attached as Exhibit A, p. 9 ¶¶ 23-24; Original Complaint of Acis Capital Management, L.P. and Acis Capital Management GP, LLC in Bankruptcy Case No. 18-30264-SGJ-11 ("Original Complaint"), attached as Exhibit B, pp. 12-13 ¶ 33.
[2] *See* Involuntary Opinion, Exhibit A, pp. 9-15 ¶¶ 22-28.
[3] *See id.* at 14-15 ¶¶ 27-28.
[4] *See id.* at 16-17 ¶ 31(a); *see also* Purchase Agreement, attached as Exhibit C.
[5] *See* Purchase Agreement, Exhibit C, p. 7 ¶ 4.1.
[6] Involuntary Opinion, Exhibit A, p. 16 ¶ 31(a).

(1) a $3,370,964 payment on May 31, 2017;
(2) a $5,286,243 payment on May 31, 2018; and
(3) a $4,677,690 payment on May 31, 2019.[7]

Highland only made the first of these three payments to Acis,[8] leaving a balance of approximately $9.5 million on the Note—plus interest.

C. James Dondero attempted to transfer the Note away from Acis.

On October 20, 2017, Mr. Josh Terry, Acis's former portfolio manager, obtained an Arbitration Award (herein so called) against Acis in the amount of $7,949,749.15, plus post-award interest at the legal rate, based on theories of breach of contract and breach of fiduciary duties.[9]

On November 3, 2017, Acis, Highland, and Highland CLO Management ("HCLOM") entered into an Agreement for Assignment and Transfer of Promissory Note (the "Transfer Agreement"), in an effort to transfer the Note from Acis to HCLOM.[10] The Transfer Agreement stated that "[Highland] has notified Acis that [Highland] is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs[.]"[11] Accordingly, Acis would no longer be able to "fulfill its duties as portfolio manager of the CLOs," and would thus "assign its rights as portfolio manager in the CLOs to a qualified successor . . . ."[12]

As purported consideration for Acis assigning the Note to HCLOM, the Transfer Agreement provided that HCLOM would "irrevocably commit[]" to acting as a "Successor Manager."[13] HCLOM would become the "Payee" under the Note and would remit to Highland the Servicer Fees that Acis had previously received for managing the CLO portfolios.[14]

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[7] Amortization Schedule, Exhibit A to Note.
[8] Objection, p. 12 ¶ 37.
[9] Involuntary Opinion, Exhibit A, p. 4 ¶ 8.
[10] Original Complaint, Exhibit B, p. 30 ¶ 89.
[11] Transfer Agreement, attached as Exhibit D, p. 1.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 2 ¶ 3.

James Dondero, Highland CEO and then-President of Acis's general partner, Acis Capital Management GP, LLC, signed the Transfer Agreement on behalf of both Acis and Highland.[15]

After the Transfer Agreement was signed, Acis stopped remitting servicer fees to Highland. The last such payment was made on November 1, 2017.[16]

D. Acis entered bankruptcy and pursued Dondero for fraudulent transfer of the Note.

On January 30, 2018—roughly three months after the Transfer Agreement—Acis LP and Acis GP entered bankruptcy.[17] In March 2018, this Court held a multi-day trial, culminating in the Court's April 13, 2018, Involuntary Opinion.[18] On May 14, 2018, Robin Phelan was appointed trustee.[19] This Court confirmed the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC on January 31, 2019 (the "Plan").[20] The Plan provided that Acis would be substituted for Phelan as trustee and in any related adversary proceedings, with "exclusive standing and authority to prosecute, settle or compromise" claims for breach of fiduciary duty and fraud on Acis's behalf.[21]

On April 11, 2020, Acis filed an Adversary Proceeding against Dondero and other defendants, bringing causes of action for breach of fiduciary duty and asserting that Dondero "directed Highland Capital and its affiliates to commit [a] series of fraudulent transfers . . . in order to denude Acis of its assets and transfer Acis's valuable business to [] Highlands."[22]

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[15] *Id.* at 6.
[16] Objection, p. 12 ¶ 38.
[17] *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued after Trial on Contested Involuntary Bankruptcy Petitions* ("Involuntary Opinion"), attached as Exhibit A, p. 7 ¶ 16.
[18] *Id.* at 1.
[19] *See* Case No. 18-30264, Docket No. 213.
[20] *See* Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified [Case No. 18-30264, Docket Nos. 829 and 830].
[21] Plan, p. 19 § 7.03; *see id.* at 36 ¶ 2 (defining "Estate Claims" as including claims for breach of fiduciary duty and fraud).
[22] *See* Original Complaint, Exhibit B, p. 45 ¶ 138.

E. Highland filed for bankruptcy, HCLOM asserted a claim, and Highland objects.

In October 2019, Highland Capital filed for bankruptcy.[23] This Court confirmed a plan of reorganization for Highland on February 22, 2021.[24] In September 2020, HCLOM, as a nonpriority creditor, filed claims 3.65 and 3.66 (collectively, the "HCLOM Scheduled Claim") in the Highland bankruptcy proceeding. Claim 3.65 asserts that Highland owes HCLOM $599,187.26 for interest payable on the Note. Claim 3.66 asserts that Highland owes HCLOM $9,541,446 payable on the Note itself.[25]

On February 2, 2023, Highland objected to the HCLOM Scheduled Claim, arguing that because Acis "has continued to manage the CLOs," and because "no Servicer Fees were paid to Highland[,]" Highland is "relieved" of its "obligations under the Note[,]" and the Transfer Agreement is void.[26] Alternatively, Highland argues that if it is determined to have any continuing obligations under the Note, "any such obligations would be subject to Reorganized Highland's rights of offset and recoupment for all amounts due from both Acis and HCLOM (*i.e.*, all covered Servicer Fees on the Acis CLOs from the date of the Note to the present)."[27]

II. RELIEF REQUESTED AND BRIEF IN SUPPORT

A. Intervention as of Right

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, a party is entitled to intervene "of right" if the party:

> (1) is given an unconditional right to intervene by a federal statute; or
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may

[23] *Id.*
[24] *Id.* at 5 ¶ 11.
[25] HCLOM Note Claim, p. 21 (page number refers to PDF pagination).
[26] Objection, pp. 3-4 ¶ 5.
[27] *Id.* at 4 ¶ 6.

> as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24.

Rule 24 is to be construed liberally, with all doubts resolved in favor of the proposed intervenor, because intervention allows a court to resolve related disputes in a single action. *In re Lease Oil Antitrust Litigation*, 570 F.3d 244, 248 (5th Cir. 2009). A proposed intervenor must satisfy four criteria in order to intervene of right under Rule 24(a):

> (1) The application must be timely; (2) the applicant must have an interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; and (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Brumfield v. Dodd, 749 F.3d 339, 341 (5th Cir. 2014).

The Rule 24(a) inquiry "is a flexible one, which focuses on the particular facts and circumstances surrounding each application . . . measured by a practical rather than technical yardstick." *Entergy Gulf States La., L.L.C. v. EPA*, 817 F.3d 198, 203 (5th Cir. 2016) (quoting *Edwards v. City of Hous*., 78 F.3d 983, 999 (5th Cir. 1996)). Accordingly, the Fifth Circuit has held that "[f]ederal courts should allow intervention where no one would be hurt and the greater justice could be attained." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)). Acis satisfies all four *Brumfield* elements.

1. <u>Acis's intervention is timely.</u>

   The Fifth Circuit has identified four factors,

   > sometimes referred to as the *Stallworth* factors, to determine whether a motion to intervene is timely: the length of time the movant waited to file, the prejudice to the existing parties from any delay, the prejudice to the movant if intervention is denied, and any unusual circumstances.

Rotstain v. Mendez, 986 F.3d 931, 937 (5th Cir. 2021).

The first timeliness factor is "the length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene." *Id.* (quoting *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264 (5th Cir. 1977) (alterations omitted)). Courts have found interventions timely when the delay in filing was over a month. *See, e.g.*, *Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (delays of 37 and 47 days); *John Doe No. 1 v. Glickman*, 256 F.3d 371, 376 (5th Cir. 2001) (delay of one month). Acis is well within this range. Highland filed its objection to HCLOM's claims on February 2, 2023.[28] Acis wasted no time responding with this motion.

Moreover, neither Highland nor HCLOM would be prejudiced as minimal additional discovery, if any, would be required by Acis's intervention, whereas Acis could be severely prejudiced if intervention is denied (as addressed in detail below).

2. Acis has an obvious interest in the subject matter of the litigation.

Acis has a $9.5 million-plus interest in showing that the Transfer Agreement was fraudulently transferred and is invalid for lack of consideration, among other reasons. HCLOM's Claims 3.65 and 3.66 can succeed ***only if*** the Transfer Agreement is valid. Acis contends that the Transfer Agreement is ***not*** valid.

Under Texas law, "[a] contract must be based on a valid consideration; that is, mutuality of obligation." *Plains Builders, Inc. v. Steel Source, Inc.*, 408 S.W.3d 596, 602 (Tex. App.—Amarillo 2013, no pet.). "Consideration is a present exchange bargained for in return for a promise and consists of benefits and detriments to the contracting parties." *TLC Hospitality, LLC v. Pillar Income Asset Management, Inc.*, 570 S.W.3d 749, 760 (Tex. App.—Tyler 2018, pet. denied). "The

[28] *See* Objection, p. 1.

detriments must induce the parties to make the promises, and the promises must induce the parties to incur the detriments." *Id.*

The Transfer Agreement offered Acis no meaningful consideration. It was one of many transactions initiated by Dondero to denude Acis of its assets and make it "judgment-proof" so that Terry could not collect the Arbitration Award. Dondero first created a problem by refusing to provide Acis with employees to manage the CLOs, then purported to solve that problem by having HCLOM step into Acis's shoes, take over management of the CLOs, and receive the right to payments under the Note.[29] Instead of promising Acis some benefit in exchange for Acis incurring a detriment, *see Roark*, 813 S.W.2d at 496, the Transfer Agreement provided that Acis would incur a detriment in exchange for ***another*** detriment: Acis would give up its right to payment under the Note "in exchange for" also giving up its valuable CLO management business. In other words, the Transfer Agreement would have required Acis to ***pay for the privilege*** of irrevocably losing its business. This is not consideration—it is extortion.

Moreover, the Transfer Agreement purported to confer great benefits on Highland without imposing any corresponding obligation on Highland. *See Mosley*, 304 S.W.3d at 628 ("Lack of consideration occurs when the contract, at its inception, does not impose obligations on both parties."). Highland would have benefited by transferring Highland's liability under the Note away from Acis, thus placing the Note beyond the reach of Terry and any other creditors. But nothing in the Transfer Agreement imposes any corresponding obligation on Highland. Without mutuality of obligation, the Transfer Agreement is unenforceable. *See Mosley*, 304 S.W.3d at 628.

[29] Original Complaint, Exhibit B, pp. 30-31 ¶¶ 89-92.

3. Acis's interest in the Note could be impaired or impeded if Acis does not intervene.

Acis is justifiably concerned that if it does not intervene in this case, its interest in the Note will be impaired or impeded. To be clear, ***Acis does not concede that any determination in the above-styled case would preclude it from claiming the Note***. To the contrary, neither res judicata (claim preclusion) nor collateral estoppel (issue preclusion) would prevent Acis from asserting its right to the Note, no matter how the Court decides HCLOM's claims or Highland's Objection. Nonetheless, Acis must acknowledge the possibility of preclusive effect. Further, even if not binding, adverse findings of fact could be potentially used to Acis's detriment in other proceedings. Therefore, Acis must intervene to ensure that its interest in the Note is not impaired.

4. The existing parties to the action do not adequately represent Acis's interest.

Acis seeks a declaration that the Transfer Agreement fails for lack of consideration ***to Acis***. Neither party advances this argument. HCLOM necessarily asserts that the Transfer Agreement is valid (otherwise it would have no basis for Claims 3.65 and 3.66) and, as such, is directly opposed to Acis's interest. Highland argues that the Transfer Agreement is not valid, but for the wrong reasons—Highland argues that the agreement lacked sufficient consideration ***to Highland***.[30] This also does not represent Acis's interests.

For the reasons set forth above, Acis respectfully submits that it is entitled to intervene as of right.

B. Permissive Intervention

If, for any reason, the Court declines to find Acis's entitlement to intervention as of right, Acis respectfully requests that the Court alternatively grant it permissive intervention pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. Rule 24(b) states that "[o]n timely motion, the

[30] Objection, p. 4 ¶ 6.

court may permit anyone to intervene who: . . . (2) has a claim or defense that share with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). As set forth above, Acis's claims relate to the same factual circumstances and issues as those raised in HCLOM's Claims and Highland's Objection. Accordingly, permissive intervention is proper in this case.

WHEREFORE, PREMISES CONSIDERED, Intervenor Acis Capital Management, L.P. respectfully requests the Court grant this Motion to Intervene as a Plaintiff-in-Intervention in this action and allow Acis to file a response to the Claim Objection.

Respectfully submitted,

/s/ Shawn Bates

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CERTIFICATE OF CONFERENCE

The undersigned certifies that prior to filing this Motion, I communicated with counsel for both Highland and HCLOM to request both parties' position on the relief requested herein. Mr. Morris, counsel for Highland, indicated that his takes no position as to the requested relief. The undersigned reached out to counsel for HCLOM, but as of the time of this filing, counsel for HCLOM has not responded.

/s/ Shawn M. Bates
Shawn M. Bates

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 27, 2023, a true and correct copy of the foregoing document was served by electronic transmission via the Court's CM/ECF system upon all parties registered to receive electronic notice in this bankruptcy case, include both Highland and HCLOM, through counsel.

/ */s/ Shawn M. Bates*
Shawn M. Bates

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

Signed April 13, 2018

United States Bankruptcy Judge

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

IN RE:	§	
	§	
ACIS CAPITAL MANAGEMENT, L.P.,	§	**CASE NO. 18-30264-SGJ-7**
	§	
Alleged Debtor.	§	

IN RE:	§	
	§	
ACIS CAPITAL MANAGEMENT GP, L.L.C.,	§	**CASE NO. 18-30265-SGJ-7**
	§	
Alleged Debtor.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDERS FOR RELIEF ISSUED AFTER TRIAL ON CONTESTED INVOLUNTARY BANKRUPTCY PETITIONS

Joshua N. Terry (the "Petitioning Creditor" or "Mr. Terry") filed involuntary bankruptcy petitions (the "Involuntary Petitions") against each of the two above-referenced related

companies (the "Alleged Debtors") on January 30, 2018.[1] The Involuntary Petitions were contested, and the court held a multi-day trial (the "Trial") spanning March 21, 22, 23, 27, and March 29, 2018.[2] This constitutes the court's findings of fact, conclusions of law and ruling, pursuant to Fed. Rs. Bankr. Proc. 7052 and 9014.[3] As explained below, the court has decided that Orders for Relief are legally required and appropriate as to each of the Alleged Debtors.

I. FINDINGS OF FACT

A. Introduction.

1. The Alleged Debtors—Acis Capital Management, L.P. ("Acis LP"), a Delaware limited partnership, and ACIS Capital Management GP, L.L.C. ("Acis GP/LLC"), a Delaware limited liability company—are two entities in the mega-organizational structure of a company that is known as Highland Capital Management, L.P. ("Highland").

2. Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 (changing its original name from "Protective Asset Management" to Highland in 1997) by James D. Dondero ("Mr. Dondero"), originally with a

[1] Exhs. 50 & 51.

[2] Shortly after the Involuntary Petitions were filed, the court held hearings on February 6-7, 2018, on the Petitioning Creditor's Emergency Motion to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Import, Inter Alia, 11 U.S.C. § 363 [DE # 3] (the "303(f) Motion") and the Alleged Debtors' Emergency Motion to Seek Emergency Hearing on the Alleged Debtors' Motion to Dismiss Involuntary Petitions and Request for Award of Fees, Costs, and Damages [DE # 9] (the "Emergency Motion to Set Hearing on Motion to Dismiss"). The court ultimately granted the 303(f) Motion and denied the Emergency Motion to Set Hearing on Motion to Dismiss. Both the Petitioning Creditor and the Alleged Debtors have proposed that the court should consider the evidence it heard at the hearings held on February 6-7, 2018, in determining whether it should enter orders for relief. The court has, accordingly, considered such evidence in this ruling.

[3] Bankruptcy subject matter jurisdiction exists in this contested matter, pursuant to 28 U.S.C. § 1334(b). This is a core proceeding over which the bankruptcy court may exercise subject matter jurisdiction, pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This bankruptcy court has Constitutional authority to issue a final order or judgment in this matter, as it arises under a bankruptcy statute—11 U.S.C. § 303. Venue is proper in this district, pursuant to 28 U.S.C. § 1409(a), as the Alleged Debtors have their business headquarters in this district.

75% ownership interest, and Mark K. Akada ("Mr. Akada"), originally with a 25% ownership interest.[4]

3. Both Mr. Dondero and Mr. Akada provided witness testimony at the Trial on the Involuntary Petitions, and their names are mentioned numerous times herein—since they were generally the subject of significant evidence and argument presented at the Trial. Mr. Dondero is the chief executive officer for Highland and Mr. Akada is the chief investment officer. Mr. Dondero is also the president of each of the two Alleged Debtors.

4. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately $14-$15 billion of investor capital in vehicles ranging from: collateral loan obligation funds ("CLOs"); private equity funds; and mutual funds.

5. Highland's CLO business was front-and-center at the Trial on the Involuntary Petitions. The Alleged Debtor, Acis LP, for approximately the past seven years, has been the vehicle through which Highland's CLO business has been managed.

6. The Petitioning Creditor, Mr. Terry, became an employee of Highland in the year 2005, starting as a portfolio analyst, promoting to a loan trader, then ultimately becoming the portfolio manager for (and 25% limited partner in) Highland's CLO business—specifically, Mr. Terry was the human being who was acting for the CLO manager, Acis LP.

7. Mr. Terry was highly successful in his role in the CLO business, managing billions of dollars of assets during his tenure, but Mr. Terry and Mr. Dondero had a bitter parting of ways on June 9, 2016. Specifically, Mr. Terry's employment was terminated on that date (for

[4] Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and Akada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable.

reasons that have been highly disputed) and his 25% limited partnership interest in Acis LP was deemed forfeited without any payment of consideration to him.

8. In September 2016, Highland sued Mr. Terry in the 162nd Judicial District Court of Dallas County, Texas ("State Court 1") for breach of fiduciary duty/self-dealing, disparagement, breach of contract, and various other causes of action and theories. Mr. Terry asserted his own claims against Highland, and also claims against the two Alleged Debtors, Mr. Dondero, and others and demanded arbitration. On September 28, 2016, State Court 1 stayed the litigation and ordered the parties to arbitrate. The parties participated in ten days of arbitration in September 2017 before JAMS. On October 20, 2017, Mr. Terry obtained an Arbitration Award (herein so called),[5] jointly and severally against both of the Alleged Debtors in the amount of $7,949,749.15, plus post-award interest at the legal rate, which was based on theories of breach of contract and breach of fiduciary duties.

9. There are still claims pending between and among the Petitioning Creditor, Highland, and others (not including the Alleged Debtors) in State Court 1.

10. A Final Judgment (herein so called) confirming the Arbitration Award was entered by the 44th Judicial District Court of Dallas County, Texas ("State Court 2") on December 18, 2017, in the same amount as that contained in the Arbitration Award—$7,949,749.15.[6]

11. Mr. Terry began pursuing post-judgment discovery soon after obtaining his Arbitration Award and even more so after entry of the Final Judgment. Mr. Terry undertook a UCC search on November 8, 2017, to investigate whether there were any liens on the Alleged

[5] Exh. 1.

[6] Exh. 105.

Debtors' assets (none appeared).[7] Mr. Terry also pursued a garnishment of an Acis LP bank account (at a time when there was only around $2,000 in the account). Mr. Terry's counsel deposed Highland's General Counsel Scott Ellington (who sat for the deposition as a representative of Acis, LP) on January 26, 2018, and asked numerous questions about: (a) how many creditors the Alleged Debtors had, [8] and (b) whether Acis LP was able to pay its debts as they became due,[9] but did not receive meaningful answers.

12. Mr. Terry requested a temporary restraining order ("TRO") from State Court 2, on January 24, 2018, after discovering certain transactions and transfers involving Acis LP's interests, that he believed were pursued without any legitimate business purpose and with the purpose of denuding Acis LP of its assets and to make it judgment proof. Most particularly, it appeared as though Highland was engaged in a scheme to transfer certain fee-generating CLO management contracts of Acis LP away from it and into a Cayman Island affiliate of Highland.[10] At a January 24, 2018 hearing on the request for a TRO, Acis LP agreed and State Court 2 ordered that, between that hearing and a later hearing on a request for a temporary injunction, no CLO management contracts would be transferred away from Acis LP and that no monies would be diverted from it.[11]

13. Then, on January 29, 2018, the Controller of and CPA for Highland (David Klos) submitted a Declaration to State Court 2 concerning the net worth of the Alleged Debtors, stating

[7] Exh. 84.

[8] Exh. 25, pp. 7-9.

[9] *Id.* at pp. 102-04.

[10] Exh. 27.

[11] Exh. 28.

that Acis GP/LLC had a net worth of $0 and that Acis LP might have a net worth, at best, of $990,141.[12] Mr. Terry thought this was preposterous—given the management fees that Acis LP was entitled to and the receivables that should be owing to it. Mr. Terry believes that the collateral management agreements on which Acis LP receives management fees have a present value of $30 million (about $6 million for each of the five CLOs which Acis LP has been managing).

14. On January 29, 2018, the Alleged Debtors filed a motion for leave to post a supersedeas bond in the amount of **$495,070.50** with State Court 2 (purportedly half of the net worth of the two Alleged Debtors—as stated in the David Klos Declaration), so that they could suspend enforcement of the Final Judgment while they appealed it.[13] Although there is a very stringent standard for appealing an Arbitration Award, the Alleged Debtors apparently believe they have an argument that State Court 2 lacked the subject matter jurisdiction to confirm the Arbitration Award (a motion to vacate the Final Judgment based on this argument has previously been denied by State Court 2).[14]

15. Meanwhile, Mr. Terry was learning of more transactions and transfers involving Acis LP's assets and interests. On January 29, 2018, Mr. Terry filed supplemental pleadings with State Court 2, alleging that further shenanigans (*i.e.*, transfers and transactions that would amount to fraudulent transfers) were underway at Acis LP and seeking a receiver.[15] Also, at

[12] Exh. 26.

[13] Exh. 73.

[14] *See* DE # 35, in Case No. 18-30264 and DE # 34 in Case No. 18-30265. Unless otherwise noted, references to "DE #" herein refer to the docket entry number at which a pleading appears in the docket maintained with the Bankruptcy Clerk in the Acis Capital Management L.P. bankruptcy case (Case No. 18-30264).

[15] Exhs. 28-31.

some point, in the weeks leading up to this, an Acis LP lawyer represented to Mr. Terry's counsel that the Alleged Debtors were "judgment proof."[16]

16. At approximately 11:57 p.m. on January 30, 2018 (on the evening before a scheduled temporary injunction hearing in State Court 2—at which time State Court 2 presumably might have considered the Alleged Debtors' request to post the $495,070.50 supersedeas bond to stay enforcement of the Final Judgment), Mr. Terry filed the Involuntary Petitions, as a sole petitioning creditor, against both Acis LP and Acis GP/LLC.

17. For purposes of this Trial (and this Trial only), the Alleged Debtors do not dispute that Mr. Terry has standing to be a petitioning creditor pursuant to Bankruptcy Code section 303(b)—in other words, they do not dispute that Mr. Terry is a holder of a claim against the Alleged Debtors that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount and that aggregates at least $15,775 in unsecured amount. However, the Alleged Debtors argue that: (a) the Alleged Debtors have ***12 or more creditors*** and, thus, three or more petitioning creditors were required to prosecute the Involuntary Petitions pursuant to Bankruptcy Code section 303(b)(1); (b) the Petitioning Creditor did not establish, pursuant to Bankruptcy Code section 303(h)(1), that the Alleged Debtors are not ***generally paying their debts as such debts become due*** unless such debts are the subject of a bona fide dispute as to liability or amount; (c) regardless of whether the Petitioning Creditor has met the statutory tests in sections 303(b)(1) and (h)(1), the Petitioning Creditor has acted in ***bad faith***—which serves as an equitable basis for dismissal of the Involuntary Petitions; and (d) if the court disagrees with the Alleged Debtors and determines that the section 303(b) and (h) statutory tests are met, and also determines that the Petitioning Creditor has not acted in bad faith, the court should

[16] Exh. 27 (exhibit 3 thereto).

nevertheless ***abstain*** in this matter, pursuant to Bankruptcy Code ***section 305***, since this is essentially a two-party dispute and the interests of creditors and the debtor would be better served by dismissal.

18. The Petitioning Creditor argues that he has met the statutory tests of sections 303(b) and (h) but, even if he has not, there is a ***"special circumstances"*** exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor—which "special circumstances," Mr. Terry alleges, have been established here. Moreover, the Petitioning Creditor argues that the facts here ***do not warrant section 305 abstention*** because the interests of creditors and the Alleged Debtors would not be better served by dismissal.

19. As further explained below, the court finds and concludes that the Petitioning Creditor has met his burden of proving by a preponderance of the evidence that the statutory tests of sections 303(b) and (h) are met here. Thus, the court does not need to reach the question of whether there is a ***"special circumstances"*** exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor, and—if so—whether the exception is applicable here.[17]

20. Moreover, the Alleged Debtors have not shown by a preponderance of the evidence that the Petitioning Creditor acted in bad faith, such that the Involuntary Petitions should be dismissed.

[17] *See e.g., In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

21. Finally, the Alleged Debtors also have ***not shown facts here that warrant section 305 abstention*** because they have not shown that the interests of creditors and the Alleged Debtors would be better served by dismissal.

B. The CLO Business: Understanding the Alleged Debtors' Business Operations, Structure, and What Creditors and Interest Holders They Actually Have.

22. Highland set up its first CLO in the year 1996. Highland was one of the early participants in the CLO industry.

23. The Alleged Debtors were formed in 2011 to be the new "brand" or face of the Highland CLO business, after Highland's name had suffered some negative publicity in the marketplace.

24. Acis LP has acted as the portfolio manager of Highland's CLOs since 2011. Acis LP currently has a contractual right to CLO portfolio management fees on five CLOs[18] which were referred to at the Trial as CLO 2013-1; CLO 2014-3; CLO 2014-4; CLO 2014-5; and CLO 2016-6. CLOs typically have an 8-12 year life. Thus, there are still several years of life left on these CLOs (since the oldest one was established in the year 2013).

25. The key "players" in and features with regard to the Highland CLOs, during the time period relevant to the issues adjudicated at the Trial, have been:

(a) <u>The CLO manager.</u> As mentioned earlier, the CLO manager is the Alleged Debtor, Acis LP. Acis LP, has collateral management agreements (hereinafter, the "CLO Collateral Management Agreements") with the CLOs (which CLOs were set up as special purpose entities) and, pursuant thereto, receives

[18] There is still another Highland CLO (CLO 2017-7), set up in April 2017, as to which Acis LP's contractual right to manage was terminated shortly before the Petition Date, as will be further described herein.

management fees[19] from the CLOs in exchange for managing the pool of assets within the CLOs and communicating with investors in the CLOs.[20] As mentioned earlier, Mr. Terry was the human being that performed the management function at Acis LP until Highland fired him on June 9, 2016 and also terminated his limited partnership interest in Acis LP. Mr. Terry, and all employees who have ever provided services to the CLO manager, are Highland employees—which were provided to Acis LP through shared and sub-advisory services agreements—as further explained below. Thus, to be clear, Acis LP has always essentially subcontracted its CLO managerial function out to Highland.

(b) The pool of assets. Within each CLO that the CLO manager manages is a basket of loans that the CLO manager purchases. The basket of loans typically consists of approximately 200 loans-payable (or portions of loans payable), on which large well-known companies typically are the makers/obligors (and which loans, collectively, provide a variable rate of interest).[21] The CLO manager can typically decide to buy and sell different loans to go into the pool of assets, with certain restrictions, during a four or five year reinvestment time period.

[19] These fees typically include "senior fees" (*e.g.*, 15 basis points); additional "subordinate fees" (*e.g.*, 25 basis points) if the CLOs are passing certain tests; and perhaps even an "incentive fee" beyond a certain hurdle rate (*e.g.*, after the equity in the CLO received an internal rate of return of 10%, the CLO manager would get 15% of the excess). Exh. 82, p. 59, lines 14-25.

[20] *See*, as an example, Exh. 3 (the collateral management agreement between Acis LP and CLO 2014-3). Note that the document is entitled "Portfolio Management Agreement" but, to avoid confusion with other similarly titled documents and to highlight the true nature of the agreement, the court uses the defined term "CLO Collateral Management Agreement," which terminology the lawyers also sometimes used at the Trial.

[21] Exh. 8.

(c) The CLO investors (*i.e.*, CLO note holders). These may be any number of persons or entities, including pension funds, life insurance companies, or others who decide to invest in the CLOs and contribute capital to fund the purchase of a CLO's loan pool, and, in return, receive fixed rate notes payable—the ratings on which can range anywhere from Triple-A to Single-B, depending upon the risk option the investor chooses. There are typically five or six traunches of notes issued by the CLO (with the top AAA-rated traunche being the least risky and the bottom traunche being the most risky) and—to be clear—the CLO itself (again, in each case, the CLO is a special purpose vehicle) is the obligor. As the CLO manager receives income from the pool of loans in the CLO, he distributes that income to the CLO investors, in accordance with their note indentures,[22] starting with the top traunche of notes and then down to the other traunches. The top traunche of notes (AAA-rated) is considered the "controlling" class and a majority of holders in this class can terminate the CLO manager (*i.e.*, Acis LP) for cause on 45 days' notice, although all parties seem to agree this would be a rare event.

(d) The CLO equity holder. The CLO equity holder actually is a holder of subordinated notes issued by the CLOs (*i.e.*, the bottom traunche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash

[22] The indenture trustee on the CLO notes may actually operate as a payment agent in some cases, for purposes of making the quarterly note payments to holders.

flow from the CLOs. It, in certain ways, controls the CLO vehicle[23]—for example, by virtue of having the ability to make a redemption call after a certain "no-call" period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the traunches of notes, starting at the top with the Triple A's). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. ("ALF"), which was incorporated under the laws of the island nation of Guernsey,[24] was the CLO equity holder. To be clear, ***ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP***. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the "ALF Portfolio Management Agreement"—not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements). The complicated structure of the CLO business—all parties seemed to agree—has been developed, among other reasons, to comply with "risk-retention requirements" imposed by the U.S. Congress's massive Dodd-Frank financial reform legislation[25] enacted in year 2010, in response to the financial crisis and recession that first began in 2008.

[23] The top traunche of AAA notes also has certain control—such as the ability to terminate the portfolio manager for cause, on notice.

[24] Guernsey is located in the English Channel. ALF was created in August 2015.

[25] Simply put, one of the results of the Dodd-Frank legislation (*i.e.*, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Congress, effective July 21, 2010), which was implemented over a period of several years, was that, ***subsequent to December 2016***, managers of securitizations needed to retain at least a 5% interest in that securitization. Thus, if a $400 million CLO were to be

(e) The Equity Owners of ALF. Until recently (*i.e.*, until October 24, 2017—four days after the Arbitration Award), Acis LP itself, as required for a CLO manager, had a 15% indirect ownership in ALF, in order to be regulatory compliant.[26] The parties sometimes refer to ALF (and the web of ownership between it and Acis LP) as the "risk retention structure."[27] The evidence at the Trial revealed that ALF (which has recently been renamed), now, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or "DAF") that was seeded with contributions from Highland, is managed/advised by Highland, and whose independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero; (ii) 2% is owned by Highland employees; and (iii) finally, ALF ***may*** be 49% owned by a third-party institutional investor based in Boston that Highland believed it was required to keep anonymous at the Trial. Not only is the court unaware of who this independent third-party is, but the evidence seems to suggest that it may have acquired its interest fairly recently or may have simply committed to invest recently.[28]

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issued, the CLO manager would need to retain at least 5% or $20 million of the assets in the CLO (which 5% could be either all at the equity level or vertically, up and down the note traunches). There are multiple ways to accomplish this 5% retention (*i.e.*, with either the CLO manager directly investing in at least 5% of the CLO or doing it through a controlled subsidiary). This particular rule was announced in ***December 2014*** and the SEC thereafter issued a no action letter stating that ***if a CLO was issued prior to December 2014***, then any refinancing of such CLO that happens within four years can be done without risk retention in place. Resets of any CLO (*i.e.*, changes in terms and maturity—as opposed to mere changes in interest rates), on the other hand, must have risk retention in place. ***Four of Acis LP's current CLOs were issued prior to December 2014***. Thus, these four CLOs are still technically able to do a refinancing without a risk retention structure in place. In any event, by early-to-middle 2017, Acis LP was risk retention compliant. Exh. 82, pp. 65-69 & 75. That was recently changed—on October 24, 2017—four days after the Arbitration Award—as later explained herein.

[26] *See* n.23, *supra*.

[27] *See* Demonstrative Aid No. 3.

[28] *See* Exh. 173, which seems to suggest that the only equity owners of ALF just prior to October 24, 2017 were Acis LP and the DAF, until Acis LP's interest in ALF was sold back to ALF on October 24, 2017. *See also* Exh. 82, p. 162, lines 2-7.

(f) The underwriter for the CLO notes. As with any publicly traded notes, there is an underwriter for the CLO notes which solicits investors for the CLO notes (examples given at the Trial: Mizuho Securities USA, LLC; Merrill Lynch; JP Morgan Chase).[29] The CLO notes are traded on the Over-the-Counter Market.

(g) The independent indenture trustee for the CLO notes. As also with any issuance of publicly traded notes, there is an indenture trustee (example given at the Trial: U.S. Bank).[30]

26. Mr. Terry, the Petitioning Creditor, as earlier mentioned, began working for Highland in 2005 until his employment was terminated on June 9, 2016.

27. Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called),[31] which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called),[32] which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements. The court notes that

[29] *See* Exh. 193.

[30] *See* Exh. 7.

[31] Exhs. 17, 99, 179 & 5.

[32] Exhs. 18, 178 & 4.

all iterations of the Shared Services Agreements and Sub-Advisory Agreements between Acis LP and Highland were signed by Mr. Dondero both as President of Acis LP and as President of the General Partner of Highland.

28. Because Acis LP essentially subcontracts out all of its functions to Highland pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, Acis LP has very few vendors or creditors. Rather Highland incurs expenses and essentially bills them to Acis LP through these two agreements.[33] In other words, Highland is one of Acis LP's largest and most frequent creditor.

29. The evidence reflected that at all times Mr. Dondero has been the President of both of the Alleged Debtors, and there have been, at all times, very few, if any, other officers. It appears that the only other officer of Acis GP/LLC that ever existed was Frank Waterhouse, Treasurer.[34] It also appears that the only other officer of Acis LP that ever existed was Frank Waterhouse, Treasurer, Mr. Terry as Portfolio Manager, and someone named Patrick Boyce as Secretary at one time.[35]

30. Mr. Dondero testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) and is rarely involved in "nitty gritty negotiations." Sometimes instructions will come to him from the compliance group headed up by Chief Compliance Officer Thomas Surgent. Additionally, he testified that he signs hundreds of documents per

[33] Exh. 83, pp. 228 (line 8)-230 (line 14).

[34] *See, e.g.*, Exh. 10 & Exh. 173, p.3

[35] Exhs. 14 & 15.

week, and much of what he signs is on advice of counsel and he sometimes even delegates to his assistant the authority to sign his name. As set forth above, Mr. Ellington (who ***did not*** testify at the Trial)[36] and Mr. Leventon (who ***did*** testify at the Trial) are not officers, directors, or employees of the Alleged Debtors. Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-Trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington, although Highland partners can ask him to perform legal services for any of Highland's 2,000 entities.

C. Transfers and Transactions Involving the Alleged Debtors Since the Litigation with Mr. Terry Commenced—and Especially After the Arbitration Award.

31. Below is a listing of some (but not necessarily all) of the transfers and transactions that the Alleged Debtors, Highland, and related parties undertook ***after*** the litigation with Mr. Terry commenced.

(a) Acis LP's Sale to Highland of a "Participation Interest" in its CLO Cash Flow Stream. On October 7, 2016 (approximately one month after the litigation arose among Mr. Terry, Highland, and the Alleged Debtors), Acis LP sold to Highland a participation interest in its expected future cash flow from the CLO Collateral Management Agreements—specifically, it sold a portion of the cash flow it expected to earn from November 2016 to August 2019 (not the full life of the CLOs), for $666,655 cash, plus a $12,666,446 note payable from Highland to

[36] Mr. Ellington did testify at a hearing in the bankruptcy court on February 6, 2018—which the parties asked this court to take judicial notice of—and also provided deposition testimony that was submitted into evidence. *See* Exh. 25.

Acis LP (hereinafter, the "Acis LP Note Receivable from Highland"). Mr. Dondero signed the purchase and sale agreement for both purchaser and seller.[37] Mr. Dondero signed the Acis LP Note Receivable from Highland, which accrued interest at 3% per annum. It appears that the $666,665 cash down payment was actually paid, and a payment required on the Acis LP Note Receivable from Highland of $3,370,694 on May 31, 2017, was actually made. The Acis LP Note Receivable from Highland was payable in three installments, with a $5,286,243 payment required on May 31, 2018, and a $4,677,690 payment required on May 31, 2019. When viewed in complete isolation, this transaction does not necessarily appear problematic. Although there was evidence that Acis LP had been managing the five CLOs for about $10 million per year of fees, some of the recitals in the purchase and sale agreement suggest that there may have been a sound business reason for the transaction and the arbitration panel,[38] viewing this transaction in isolation, did not think it was necessarily problematic or actionable. In any event, Highland is adamant it was a net neutral transaction.

(b) Transfer of Acis LP's interest in ALF. Recall that ALF was the entity that held equity (*i.e.*, the subordinated notes) in the CLO special purpose vehicles, and held voting rights and was a capital provider to the overall risk retention structure supporting the CLOs. And Acis LP, in turn, held a 15% indirect interest in ALF. On October 24, 2017 (***four days after the Arbitration Award***), Acis, LP entered into an agreement with ALF whereby ALF acquired back the shares that Acis LP

[37] Exhs. 14 & 15.

[38] Exh. 1, p. 18.

indirectly held in ALF (966,679 shares) for the sum of $991,180.13.[39] No credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was "toxic" in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.[40] The court finds the testimony about Acis LP's toxicity in the marketplace to not be credible or at all convincing. For one thing, a new CLO (Acis CLO 2017-7, Ltd.) was closed on April 10, 2017 with Acis LP as the portfolio manager. Moreover, Acis LP subcontracts all of its CLO management function to Highland—and there was no evidence to suggest that anyone in the marketplace at this juncture differentiates between Acis LP (whose president is Mr. Dondero) and Highland (whose president is Mr. Dondero). ***In any event, the October 24, 2017 transaction had the highly consequential effect of making Acis LP "noncompliant" or unable to continue serving as a CLO manager for regulatory purposes for any new CLOs or reset CLOs (or for a refinancing of any of the Highland CLOs that had been created after December 2014)[41] because aspects of the federal Dodd Frank legislation require CLO managers to have "skin in the game" with regard to the CLOs they manage (i.e., they must retain at least 5% of CLOs they manage).*** Mr. Akada, who testified that he had been involved with the CLO business from the beginning and that the CLO team

[39] Exh. 173.

[40] There were also a few hearsay-laden emails offered, that the court did not find probative. Exhs, 19-22.

[41] *See* n.23 *supra*.

reported to him (including Mr. Terry before his termination), testified that he had no knowledge of this particular transaction. The document effectuating this transaction was signed by Frank Waterhouse, Treasurer for and on behalf of Acis LP, acting by its general partner, Acis GP/LLC.[42]

(c) ALF Next Decides to Jettison Acis, LP as its Portfolio Manager and Replace it with a new Highland Cayman Island Entity. On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF.[43] This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.[44]

(d) The Acis LP Note Receivable from Highland is Transferred from Acis LP to Yet Another Highland Cayman Island Entity. On November 3, 2017 (10 days after the Arbitration Award), Acis LP assigned and transferred its interests in the Acis LP Note Receivable from Highland—which at that point had a balance owing of over $9.5 million—to a Highland Cayman Island entity known as Highland CLO

[42] Exh. 173, p. 3.

[43] Exh. 43.

[44] Exh. 168.

Management Ltd. which apparently was created sometime recently to be the new collateral manager of the CLOs (in other words, the new Acis LP).[45] The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.[46] The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, ***Highland CLO Management Ltd.*** agreed to reimburse Acis LP (or pays its vendors directly) up to $2 million of future legal expenses and up to $1 million of future accounting/administrative expenses.[47]

(e) Various Additional Transactions that further Transitioned CLO Management and Fees Away from Acis LP to Highland Cayman Island Entity. On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO

[45] Exh. 16.

[46] *Id.* at p.6.

[47] *Id.* at pp. 1 & 2.

Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017[48]).

(f) In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of $5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a $2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7.[49] In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.[50]

(g) Change of Equity Owners of the Alleged Debtors. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the Trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed

[48] Exh. 157.

[49] *See* Ex. 45 (the Transfer Document); *see also* Exh. 4 (the March 17, 2017 Third Amended and Restated Sub-Advisory Agreement between Acis LP and Highland); Exh. 5 (the March 17, 2017 4th Amended & Restated Shared Services Agreement between Acis LP and Highland); Exh. 165 (March 17, 2017 Staff and Services Agreement between Acis CLO Management, LLC and Acis LP); Exh. 166 (March 17, 2017 Master Sub-Advisory Agreement between Acis CLO Management, LLC and Acis LP).

[50] *See* Exhs. 161 & 162.

(*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, more importantly, on the day after entry of Mr. Terry's Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to a Cayman Island entity called Neutra, Ltd., a Cayman Islands exempted company. Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra, Ltd. Mr. Akada testified that he did this on advice of counsel. He also did not dispute that he had made millions of dollars of equity dividends from his equity investment in Acis LP in recent years[51]—which he conveyed away for no consideration on December 18, 2017.

(h) The Intended Reset of Acis CLO 2014-3. With all of the above maneuverings having been accomplished, Highland was posed to do a reset on Acis CLO 2014-3 in February 2018 (until Mr. Terry filed the Involuntary Petitions). The investment bank Mizuho Securities USA, LLC was engaged November 15, 2017[52] and a final offering circular was issued in January 2018[53]—contemplating a reset of Acis CLO 20-14-3 with the recently created Highland CLO Management Ltd.

[51] Exh. 23, p.3.

[52] Exh. 104.

[53] Exh. 31.

Identified as the new portfolio manager, rather than Acis LP. The act of implementing a reset on the CLO was not in itself suspect. However, the reset would, of course, have the effect of depriving Acis LP from a valuable asset—an agreement that could realistically be expected to provide millions of dollars of future collateral management fees—coincidentally (or not) just after Mr. Terry obtained his large judgment.

D. Findings Regarding Credibility of Witnesses.

32. The court found the testimony of Mr. Terry to be very credible. He was very familiar with the financial condition of the Alleged Debtors, since he presided over the business of the Alleged Debtors from their inception until June 9, 2016, and has also closely followed publicly available information regarding the companies since his termination. Mr. Terry credibly testified that the Alleged Debtors have never had a significant number of creditors, since most of the Alleged Debtors' vendors are engaged by and send their invoices to Highland, and Highland simply obtains reimbursement from the Alleged Debtors (and other entities in the Highland family), as its in-house lawyers determine is appropriate, through the Shared Services Agreement and Sub-Advisory Agreement. Thus, Highland should at all times be the Alleged Debtors' main creditor. The court finds that Mr. Terry had a good faith belief that the Alleged Debtors had only a handful of creditors (maybe four or so) besides him and Highland. The court also finds that Mr. Terry—at the time he filed the Involuntary Petitions—had a good faith belief that the Alleged Debtors and those controlling them were engaged in an orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value (*i.e.*, transferring assets and rights for

less than reasonably equivalent value), which started with intensity after issuance of the Arbitration Award (if not sooner).[54]

33. The court found the testimony of almost all of the witnesses for the Alleged Debtors to be of questionable reliability and, oftentimes, there seemed to be an effort to convey plausible deniability. For example, sometimes business decisions concerning the Alleged Debtors were said to have been made by a "collective," and other times the in-house Highland lawyers (who, of course, are not themselves officers or employees of Acis LP and Acis GP/LLC) stressed that Mr. Dondero (the president and manager of the two entities) had ultimate decision making authority for them. Meanwhile, Mr. Dondero testified that, while he has decision making authority at Acis LP, he usually delegates to Highland's in-house lawyers Scott Ellington and Isaac Leventon. He testified that he signs hundreds of documents per week and often must rely on information of others when signing. Additionally, Mr. Dondero (again, the President of each of the Alleged Debtors) testified that he had never even read the Arbitration Award. While Mr. Dondero is the chief executive of a multi-billion dollar international investment company, and naturally has widespread responsibilities and must delegate to and rely upon others including lawyers, this court simply does not believe that he never read the Arbitration Award. The court perceived the animosity between Mr. Dondero and Mr. Terry to be rather enormous and Mr. Dondero even testified (as did others) that the litigation with Mr. Terry was hurting Acis LP and Highland in the CLO marketplace (*i.e.*, no investors or underwriters wanting to be associated

[54] The court also found that the deposition testimony of Brian Shaw and Rahkee Patel (counsel for Mr. Terry) was also credible and did not demonstrate any bad faith on their parts in filing the Involuntary Petitions on behalf of Mr. Terry.

with the Acis brand).[55] If that were the case, it strains credulity to suggest Mr. Dondero never even read the Arbitration Award.

34. As mentioned earlier, in December 2017, Acis GP/LLC became 100% owned by a Cayman Island entity known as Neutra, Ltd. (whose beneficial owner is a Dondero family trust) and Acis LP became 99.9% owned by Neutra, Ltd. The directors of Acis GP/LLC and Acis LP are provided to it now by an entity known as "Maples Fiduciary Services"—another Cayman Island entity, but the Highland Assistant General Counsel could not remember the names of those directors provided to Acis GP/LLC and Acis LP, except for perhaps one. Mr. Dondero, when questioned about some of the recent transactions pertaining to Acis LP, testified that there were tax reasons—tax lawyers recommended the recent transactions and transfers. No tax lawyers testified. Mr. Dondero also testified that certain transactions were at the directive of the Thomas Surgent group (the Highland chief compliance officer). Neither Mr. Surgent nor anyone else from the compliance group testified.

35. Meanwhile, Mr. Akada, who, while testifying, seemed like a generally lovely person and seemed as knowledgeable as a human being could possibly be on the topic of CLOs generally, had no idea if he was an officer or director of the Alleged Debtors, nor did he know whom its officers were. He could not testify as to the meaning of certain transactions in which Acis LP had engaged in during recent weeks and said that he signed certain documents on advice of counsel. He also could not even testify as to whether Highland was opposing the Involuntary Petitions.

36. Again, there was a lot of plausible deniability at Trial as to the "whos" and "whys" for the recent maneuverings involving the Alleged Debtors assets and rights in the weeks

[55] No such investors or underwriters provided testimony.

since the Arbitration Award. The one thing that the court was wholly convinced of was that conflicts of interest among Highland and the Alleged Debtors abound, and no one is looking out for the interests of the Alleged Debtors as a fiduciary should.

E. Evidence Regarding the Number of Creditors of the Alleged Debtors.[56]

37. The Alleged Debtors do not dispute Mr. Terry's claim for the purposes of counting creditors under section 303(b) of the Bankruptcy Code. However, Mr. Terry asserts that the Alleged Debtors have fewer than 12 creditors, and the Alleged Debtors dispute this fact. Specifically, the Alleged Debtors initially filed on January 31, 2018, a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Dondero listing 18 creditors (the "Original Notice of Creditors").[57] The Alleged Debtors subsequently filed on February 5, 2018, a First Amended Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Leventon listing 19 creditors (the "First Amended Notice of Creditors").[58] Finally, the Alleged Debtors filed on March 6, 2018, a Second Amended Notice of List of Creditors Pursuant to Fed. R. Bank. P. 1003(b) signed by Mr. Leventon listing 20 creditors (the "Second Amended List of Creditors").[59] The following chart summarizes the name, amount, and nature of the 20 creditors listed by the Alleged Debtors in their Second Amended List of Creditors.

[56] The court notes that neither Mr. Terry nor the Alleged Debtors attempted to differentiate between the creditors of Acis GP/LLC versus the creditors of Acis LP, but rather presented evidence regarding the collective number of creditors for both of the Alleged Debtors. This seems legally appropriate, since Acis LP is the entity that incurred most of the debt, and ACIS GP/LLC would be liable on such debt as the general partner of Acis LP.

[57] *See* DE # 7 in Case No. 18-30264 & DE # 7 in Case No. 18-30265.

[58] *See* DE # 17 in Case No. 18-30264 & DE # 16 in Case No. 18-30265.

[59] *See* DE # 39 in Case No. 18-30264 & DE # 38 in Case No. 18-30265.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness[60]
1	Andrews Kurth	Legal Fees	$211,088.13
2	Case Anywhere, LLC	Law Firm Vendor	$417.20
3	CSI Global Deposition Services	Law Firm Vendor	$38,452.56
4	David Langford	Court Reporter/Law Firm Vendor	$550
5	Drexel Limited	Fee Rebate	$6,359.96
6	Elite Document Technology	Data Hosting/Law Firm Vendor	$199.72
7	Highfield Equities, Inc.	Fee Rebate	$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	$1,352.27
10	Jones Day	Legal Fees	$368.75
11	Joshua Terry	Judgment Creditor	$8,060,827.84
12	KPMG LLP	Auditor Fees	$34,000
13	Lackey Hershman LLP	Legal Fees	$236,977.54
14	McKool Smith, P.C.	Legal Fees	$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	$10,000
17	Stanton Law Firm	Legal Fees	$88,133.99
18	The TASA Group. Inc.	Testifying Expert Fees/Law Firm Vendor	$14,530.54
19	CT Corporation	Report Filing Representation	$517.12
20	David Simek	Expense Reimbursement	$1,233.19

38. First, the court believes it necessary to remove certain insider creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code.[61] This would clearly include Highland (the Alleged Debtors do not dispute this).

[60] The dollar amounts listed here are based upon the amounts listed in the Second Amended List of Creditors.

[61] *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000).

39. Additionally, there were certain creditors that filed sworn statements saying they were not creditors of the Alleged Debtors or were subsequently removed from the creditor list by agreement of the Alleged Debtors. These creditors would include Case Anywhere, CSI Global Deposition Services,[62] Elite Document Technology, JAMS, Inc.,[63] Stanton Advisors LLC,[64] and the TASA Group, Inc..[65] Thus, the updated chart now shows 13 creditors of the Alleged Debtors.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	$211,088.13
~~2~~	~~Case Anywhere, LLC~~	~~Law Firm Vendor~~	~~$417.20~~
~~3~~	~~CSI Global Deposition Services~~	~~Law Firm Vendor~~	~~$38,452.56~~
4	David Langford	Court Reporter/Law Firm Vendor	$550
5	Drexel Limited	Fee Rebate	$6,359.96
~~6~~	~~Elite Document Technology~~	~~Data Hosting/Law Firm Vendor~~	~~$199.72~~
7	Highfield Equities, Inc.	Fee Rebate	$2,510.04
~~8~~	~~Highland Capital Management, L.P.~~	~~Advisory and Participation Fees~~	~~$2,770,731.00~~
~~9~~	~~JAMS, Inc.~~	~~Law Firm Vendor~~	~~$1,352.27~~
10	Jones Day	Legal Fees	$368.75
11	Joshua Terry	Judgment Creditor	$8,060,827.84
12	KPMG LLP	Auditor Fees	$34,000
13	Lackey Hershman LLP	Legal Fees	$236,977.54
14	McKool Smith, P.C.	Legal Fees	$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	$17,383.75

[62] CSI Global Deposition Services was removed as a creditor by the agreement of the Alleged Debtors.

[63] JAMS, Inc. was removed as a creditor by agreement of the Alleged Debtors.

[64] Stanton Advisors LLC was removed as a creditor by agreement of the Alleged Debtors.

[65] *See* Exh. 40B, Exh. 186, Exh. 92, and Exh. 94.

~~16~~	~~Stanton Advisors LLC~~	~~Testifying Expert Fees/Law Firm Vendor~~	~~$10,000~~
17	Stanton Law Firm	Legal Fees	$88,133.99
~~18~~	~~The TASA Group. Inc.~~	~~Testifying Expert Fees/Law Firm Vendor~~	~~$14,530.54~~
19	CT Corporation	Report Filing Representation	$517.12
20	David Simek	Expense Reimbursement	$1,233.19

40. Next, the court finds that there are certain creditors included in the "Law Firm Vendor" category (*e.g.*, experts, data hosting, document managers, court reporters) that are really creditors of the individual law firms and/or Highland, and that these law firm vendor creditors should not be considered creditors of the Alleged Debtors. For these, there was no evidence of a direct contractual obligation on the part of either the Alleged Debtors or Highland—although the court certainly understands that, when the law firms would retain vendors, they would bill these to either the Alleged Debtors or Highland as an expense to be reimbursed. Most of these were already eliminated with agreement of the Alleged Debtors but, from the remaining list of creditors, this would include David Langford (a Dallas County court reporter).[66] To be clear, while the individual law firm creditors may ultimately have a right to reimbursement for these vendor expenses from Highland (who may then potentially have a right to reimbursement from the Alleged Debtors via the Shared Services and Sub-Advisory Agreements), the court does not find this vendor to have a claim ***directly*** against the Alleged Debtors for purposes of section 303(b) of the Bankruptcy Code.

[66] *See* Exh. 40D, Exh. 187, Exh. 40O.

41. Next, as to the Stanton Law Firm, the court finds that this creditor should also be removed from the pool of creditors that "count," for section 303(b) purposes, since this claim appears to be the subject of a "bona fide dispute as to liability or amount,"[67] based on the evidence presented at the Trial. First, there was no engagement letter between either of the Alleged Debtors and the Stanton Law Firm produced.[68] Second, the heavily redacted invoice of the Stanton Law Firm dated October 18, 2016 shows only that it was relating to the "Joshua Terry Matter" and that it was billed to Highland.[69] Third, the Responses and Objections to Mr. Terry's Notice of Intention to Take Depositions by Written Questions sent to the Stanton Law Firm[70] provides the following responses:

> **Question No. 11**: What is the total amount of debt Acis Capital Management L.P. to the Firm. is liable to the Firm.
>
> **Answer**: Acis Capital Management L.P.'s debt to the Firm is unknown at this time.
>
> **Question No. 12**: What is the total amount of debt Acis Capital Management GP, LLC is liable for to the firm?
>
> **Answer**: Acis Capital Management GP, LLC to the Firm is unknown at this time.
>
> **Question No**. **13**: Is any other party also liable for the debt of Acis Capital Management L.P. to the Firm? If so, please state the liable party and portion of Acis Capital Management L.P. debt the other party is liable for to the Firm.

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[67] *See Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014) (a claimholder does not have standing to file a petition under section 303(b) if its claim is "the subject of a bona fide dispute as to liability or amount"); *In re Smith*, 415 B.R. 222, 237 (Bankr. N.D. Tex. 2009) (only "a holder of a claim ... that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount" is counted in determining the number of creditors necessary to file an involuntary petition).

[68] Rather, there is only an engagement letter between Lackey Hershman LLP (acting on behalf of its client, Highland) and Stanton Advisors LLC to act as an expert in the Terry litigation. *See* Exh. 144. As previously noted, the claim of Stanton Advisors LLC was removed from the creditor list by agreement of the Alleged Debtors.

[69] *See* Exh. 40R.

[70] The court notes that these responses were actually signed by James Michael Stanton, attorney for Stanton LLP. *See* Exh. 139.

> **Answer**: Whether any other party is also liable to the firm for the debt of Acis Capital Management, L.P. is unknown at this time.
>
> **Question No**. **14**: Is any other party also liable for the debt of Acis Capital Management GP, LLC to Firm? If so, please state the liable party and portion of Acis Capital Management GP, LLC debt the other party is liable for to the Firm.
>
> **Answer**: Whether any other party is also liable for the debt of Acis Capital Management GP, LLC is unknown at this time. . . .
>
> **Question No. 21**: Does the Firm currently represent Acis Capital Management, L.P.? If so, please state the representation.
>
> **Answer**: Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time.
>
> **Question No. 22**: Does the Firm currently represent Acis Capital Management GP, LLC? If so, please state the representation?
>
> **Answer**: Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time. . . .[71]

The court finds that this evidence demonstrates that the claim of the Stanton Law Firm is the subject of a bona fide dispute as to either liability or amount and should not be counted since there is no real way of even knowing who the Stanton Law Firm was engaged by and, thus, whether the Alleged Debtors are even responsible for these alleged legal fees. The court would also specifically refer to the testimony of Mr. Leventon, the in-house lawyer employed by Highland who was in charge of allocating all of the bills that came into Highland's legal invoicing system, where he described a process in which all legal bills relating to the "Terry Matter" would automatically be assigned to the Alleged Debtors, without any real regard to whether the particular law firm had even been engaged by the Alleged Debtors or if whether the

[71] *See* Exhibit 139.

representation was actually relating to one of the other parties in the Terry litigation (*e.g.*, Highland, Mr. Dondero, etc.). Accordingly, the court finds that there is a bona fide dispute as to whether the Alleged Debtors are actually liable for the Stanton Law Firm legal fees and that they should not be counted as a creditor for purposes of section 303(b) of the Bankruptcy Code.[72]

42. Thus, it appears, at most, that there are 11 creditors[73] of the Alleged Debtors as set forth in the chart below:

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	$211,088.13
~~2~~	~~Case Anywhere, LLC~~	~~Law Firm Vendor~~	~~$417.20~~
~~3~~	~~CSI Global Deposition Services~~	~~Law Firm Vendor~~	~~$38,452.56~~
~~4~~	~~David Langford~~	~~Court Reporter/Law Firm Vendor~~	~~$550~~
5	Drexel Limited	Fee Rebate	$6,359.96
~~6~~	~~Elite Document Technology~~	~~Data Hosting/Law Firm Vendor~~	~~$199.72~~
7	Highfield Equities, Inc.	Fee Rebate	$2,510.04
~~8~~	~~Highland Capital Management, L.P.~~	~~Advisory and Participation Fees~~	~~$2,770,731.00~~
~~9~~	~~JAMS, Inc.~~	~~Law Firm Vendor~~	~~$1,352.27~~
10	Jones Day	Legal Fees	$368.75

[72] *See also In re CorrLine Int'l, LLC*, 516 B.R. 106, 152 (Bankr. S.D. Tex. 2014) (bankruptcy court found that creditors contained in the alleged debtor's list of creditors with uncertain or unknown amounts could not be counted towards the numerosity requirement of section 303(b)).

[73] The court notes that, in all likelihood, the list of creditors that should be tallied for purposes of section 303(b) may actually be less than 11, because certain of the remaining creditors (*i.e.*, Drexel Limited, Highfield Equities, Inc., Lackey Hershman LLP, and David Simek) received payments during the 90 days preceding the Petition Date—and, thus, arguably should not be counted as creditors pursuant to section 303(b) of the Bankruptcy Code (which instructs that transferees of voidable transfers should not be counted). *See, e.g.*, Exh. 124 & Exh. 131. Additionally, certain of the remaining law firm creditors that are owed legal fees are also creditors of Highland and Highland-affiliates, not just the Alleged Debtors. To elaborate, many of these law firm creditors were employed to represent not only the Alleged Debtors, but also Highland and Highland-affiliates, so there may be an actual dispute as to the allocation of these legal fees among Highland and the Alleged Debtors (thus there could be bona fide disputes as to the amounts allocated by Highland's in-house lawyers to the Alleged Debtors). *See, e.g.*, Ex. 123 (McKool Smith, P.C. engagement letter referencing representation of numerous parties) & Exhibit 90 (Reid Collins & Tsai's Answers and Objections to Mr. Terry's Deposition by Written Questions, questions 13 & 14, stating that based upon allocation determinations to be made by Highland, other individuals may be liable for the full amount of the debt including Acis LP, Highland, Mr. Dondero, and Mr. Okada).

11	Joshua Terry	Judgment Creditor	$8,060,827.84
12	KPMG LLP	Auditor Fees	$34,000
13	Lackey Hershman LLP	Legal Fees[74]	$236,977.54
14	McKool Smith, P.C.	Legal Fees	$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	$17,383.75
~~16~~	~~Stanton Advisors LLC~~	~~Testifying Expert Fees/Law Firm Vendor~~	~~$10,000~~
~~17~~	~~Stanton Law Firm~~	~~Legal Fees~~	~~$88,133.99~~
~~18~~	~~The TASA Group. Inc.~~	~~Testifying Expert Fees/Law Firm Vendor~~	~~$14,530.54~~
19	CT Corporation	Report Filing Representation	$517.12
20	David Simek	Expense Reimbursement	$1,233.19

43. Finally, on the topic of creditor numerosity, the court further finds that the evidence strongly suggested hurried manufacturing of creditors on the part of the Alleged Debtors and Highland, in order to bolster an argument that having a sole petitioning creditor was legally inadequate in this case.[75] For example, the Klos Declaration and other information, that was provided to State Court 2 and in discovery, only days before the Involuntary Petitions were filed,

[74] Mr. Terry has also argued that certain of the law firm creditors (McKool Smith, P.C., Lackey Hershman, LLP, and Reid Collins & Tsai) are "insiders" that must be excluded from the creditor list pursuant to section 303(b) of the Bankruptcy Code. While there may be some support in case law for such an argument, Mr. Terry would ultimately need to show by a preponderance of the evidence that the law firms exercised such control or influence over the Alleged Debtors as to render their transactions not at arm's length. *See In re CorrLine Intern., LLC*, 516 B.R. 106, 157-58 (Bankr. S.D. Tex. 2014) (citing to *Kepler v. Schmalbach (In re Lemanski)*, 56 B.R. 981, 983 (Bankr.W.D.Wis.1986)). *See also In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992) (in evaluating whether insider status existed for purposes of evaluating alleged fraudulent conveyance court considered (1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm's length). Because there was no evidence suggesting abuse or control by these law firm creditors, nor was there any evidence that would suggest that their dealings with the Alleged Debtors were anything but arm's length, the court finds that these law firm creditors should not be excluded from the creditor list as "insiders" pursuant to section 303(b) of the Bankruptcy Code.

[75] *See* the Original Notice of Creditors, the First Amended Notice of Creditors, and the Second Amended Notice of Creditors.

seemed to show only a small number of creditors of Acis LP—Mr. Terry credibly testified that he thought there were less than 12 creditors based on his review of such information, as well as his understanding of the Alleged Debtors' business. Yet, only a few days later, the Alleged Debtors filed their Original Notice of Creditors, which showed 18 creditors, which was amended twice to add another creditor and then yet another. This simply does not jive in the court's mind and supports this court's belief that the Alleged Debtors were scurrying to determine which Highland creditors might cogently be painted as Acis LP creditors—so as to preclude Mr. Terry from being able to file the Involuntary Petitions as the single, petitioning creditor.

F. Evidence Regarding Whether the Alleged Debtors are Generally Not Paying Debts as They Become Due (Unless Such Debts are the Subject of a Bona Fide Dispute as to Liability or Amount).

44. The evidence submitted reflects that, for the 11 creditors identified above, 9 out of 11 have unpaid invoices that were more than 90 days old. The remaining 2 of the 11 were McKool Smith, P.C. (current counsel for the Alleged Debtors) and the Petitioning Creditor.[76] The court makes findings with regard to each of the 11 creditors below—focusing specifically on whether the Alleged Debtors have been paying these creditors as their debts have become due.

45. First, with regard to Andrews Kurth & Kenyon ("AKK"), the evidence reflected that out of the $211,088.13 allegedly owed by Acis LP to AKK, the great majority of it—$173,448.42—was invoiced on November 16, 2016[77] (more than 14 months before the Petition Date). Other, smaller amounts were invoiced on a monthly basis in each of the months August 2017, September 2017, October 2017, November 2017, and December 2017. Although requested in discovery, no engagement letter for AKK was produced and AKK represented in

[76] Exhs. 40 & 54.

[77] Exh. 40.

written discovery that, to its knowledge, none existed.[78] The court notes anecdotally that AKK's invoices (although allegedly related to Acis LP legal matters) were addressed to Highland.[79] In any event, AKK represented that both the Alleged Debtors and Highland are jointly and severally liable for the fees owed to it.[80] AKK also represented that, to its knowledge, the amounts owing to it by Acis LP and Highland are not disputed.[81] AKK also represented that it has not provided legal work on a contingency basis for the Alleged Debtors or Highland.[82] The court makes a logical inference that AKK expected timely payment of its invoices—the largest of which was dated more than 14 months prior to the Petition Date—and, thus, it has generally not been paid timely.

46. Next, with regard to Drexel Limited, the Petitioning Creditor concedes that its $6,359.96 indebtedness (which is a fee rebate owing to it) is not past-due.

47. Next, with regard to Highfield Equities, Inc., the Petitioning Creditor concedes that its $2,510.04 indebtedness (which is also a fee rebate owing to it) is not past-due.

48. Next, with regard to the Jones Day law firm, the $368.75 indebtedness owed to it is well more than 90 days old. Specifically, there is a six-and-a-half-month old invoice dated July 19, 2017 invoice in the amount of $118.75, and two five-month old invoices dated August 30, 2017 (both in the amount of $150).[83] The court makes a logical inference that Jones Day

[78] Exh. 98, Requests 1-2.

[79] Exh. 98, pp. AKK000061-AKK000060.

[80] Exh. 98, Question 13.

[81] Exh. 98, Questions 52-55.

[82] Exh. 98, Questions 73-75.

[83] Exh. 40K.

expected timely payment of its invoices prior to the Petition Date and, thus, it has generally not been paid timely.

49. Next with regard to the Petitioning Creditor, Mr. Terry, the court notes that his liquidated claim in the amount of $8,060,827.84 first arose with the final Arbitration Award on October 20, 2017 (although such award was not confirmed by State Court 2 until December 18, 2017). The judgment was unstayed as of the January 30, 2018 Petition Date, although the Alleged Debtors state that they still desire to appeal it—as difficult as that is in the situation of an arbitration award. The court makes a logical inference that the Alleged Debtors had, on the Petition Date, no intention of paying this claim any time soon based on their conduct after the Arbitration Award—although the Arbitration Award had only been in existence for three-and-a-half months as of the Petition Date. The cash in the Alleged Debtors' bank accounts is wholly insufficient to cover the Arbitration Award and, meanwhile, corporate transactions have been ongoing to ensure that no cash streams will be coming into Acis LP in the future in the same way that they have in the past. Thus, this court finds that this large claim, as of the Petition Date, was not being paid timely.

50. Next with regard to KPMG LLP, the $34,000 indebtedness owed to it was for the service of auditing Acis LP's financial statements, pursuant to an engagement letter with it dated March 1, 2017.[84] KPMG's engagement letter reflected a $40,000 flat fee was agreed to by Acis LP for the service, of which 40% was due October 2017 (*i.e.,* $16,000), with another 45% was due in January 2018 ($18,000), and the remaining 15% would be due at the time that a final bill was sent. Acis LP has only paid $6,000 of the agreed upon amount—meaning $28,000 was overdue as of the January 30, 2018 Petition Date (with $10,000 of that being four months past

[84] Exh. 40M.

due). The court makes a logical inference that KPMG LLP expected payment of its audit fees in accordance with its engagement letter and, thus, it has generally not been paid timely.

51. Next with regard to Lackey Hershman LLP, the $236,977.54 indebtedness owed to it was for legal services provided to the Alleged Debtors and Highland in connection with the arbitration and litigation with Mr. Terry. No engagement letter was provided, but the invoices for their services are all directed to Highland.[85] The evidence reflected that three invoices had not been paid as of the Petition Date: an October 31, 2017 invoice in the amount of $56,909.53; a November 30, 2017 invoice setting forth new fees in the amount of $84,789.83; and a December 31, 2017 invoice setting forth new fees in the amount of $95,278.18.[86] The court makes a logical inference that Lackey Hershman LLP expected prompt payment on its invoices (if nothing else, the statement on its invoice indicating "Total now due")[87] and, thus, it has generally not been paid timely.

52. Next with regard to Reid Collins & Tsai LLP, the $17,383.75 indebtedness owed to it was billed in an invoice dated August 31, 2017, indicating an August 31, 2017 "Due Date" (five months before the Petition Date).[88] Although requested in discovery, no engagement letter for this firm was produced and Reid Collins & Tsai LLP in fact represented in written discovery that none existed.[89] Moreover, written discovery propounded on the law firm indicated that, while Acis LP was liable on this debt, other parties including Acis GP/LLC, Highland, Mr.

[85] Demonstrative Aid No. 1 (Lackey Hershman tab).

[86] Exh. 40, p. 3.

[87] Demonstrative Aid No. 1 (Lackey Hershman tab).

[88] Exh. 40P; Exh. 130, pp. 7-8.

[89] Exh. 90, Requests 1 & 2; Ex. 130, Requests 1 & 2.

Dondero, the Dugaboy Trust, and Mr. Akada might also be liable for the full amount of the debt—subject to Highland's allocation determinations.[90] Based on this evidence, the court makes a logical inference that Reid Collins & Tsai LLP generally has not been paid timely.

53. Next with regard to CT Corporation and the $517.12 indebtedness that the Alleged Debtors represent is owed, CT Corporation asserts that $4,074.84 is, in fact, owed to it by Acis LP and Acis GP/LLC.[91] CT Corporation also believes Highland has liability for the Alleged Debtors' indebtedness.[92] CT Corporation also believes the amount owed to it is undisputed.[93] CT Corporation further represents that its invoices are due upon receipt.[94] CT Corporation produced several invoices in discovery, all showing due upon receipt, and one was dated as far back as December 31, 2016 (in the amount of $932).[95] Based on this evidence, the court makes a logical inference that CT Corporation expected prompt payment on its invoices and, thus, has not been paid timely.

54. Next with regard to David Simek, the Petitioning Creditor concedes that his $1,233.19 indebtedness (which is apparently an expense reimbursement relating to some consulting) is not past-due.

[90] Exh. 90, Questions 13 & 14; Exh. 130, Questions 13-14.

[91] Exh. 143, Questions 12 & 13.

[92] *Id.* at Question 14.

[93] *Id.* at Questions 22 & 23.

[94] *Id.* at Question 30.

[95] *Id.* at p. 8; Exh. 40T.

55. In summary, the evidence reflects that the creditors of the Alleged Debtors are generally not being paid timely (except for perhaps four that are relatively insignificant and which may also be able to look to Highland for payment).[96]

56. Further on the topic of timeliness, Mr. Leventon (Highland's in-house Assistant General Counsel) testified that 96% of bills submitted get paid more than 90 days after they are submitted, that approximately 70% of bills are later than 120 days after they are submitted, and some are even later than 150 days. Mr. Leventon testified that this was a result of Acis LP receiving cash on a quarterly basis from the CLOs. He further elaborated and testified that, for example, if Acis LP got cash on say February 1st, and it received a legal bill on that same day, that he would probably not approve it and allocate it until say February 8th. By that time, Acis LP would have already used up all its cash, and that particular creditor would need to wait until the next quarterly payment was received in order to be paid. He further testified that he explained this to law firms before their engagements and that, if they wanted the business, they would need to understand the process. There are several things the court finds problematic about this testimony. First, no testimony was offered showing that this was, in fact, the understanding of the law firms or other creditors, and, moreover, none of the engagement letters or invoices submitted into evidence reflect such payment terms. Without this additional evidence, the court believes that the Alleged Debtors' testimony regarding how it paid invoices was mostly self-serving and did not support a finding that the Alleged Debtors were generally paying their debts

[96] Courts have also held that a debtor is generally not paying its debts as they become due when a debtor is found to have been transferring assets so as to avoid paying creditors. *See, e.g., In re Moss*, 249 B.R. 411, 423 (Bankr. N.D. Tex. 2000) (bankruptcy court determined that an alleged debtor was not paying its debts as they came due when the alleged debtor "attempted to delay creditors through the transfers of assets she has made," concluding that "[the alleged debtor's] overall conduct of her financial affairs has been poor"). This court has also found that there may have been significant transfers of the Alleged Debtors' assets prior to the filing of the Involuntary Petitions to potentially avoid paying creditors (*i.e.*, Mr. Terry) and this may provide further support for the court's finding that the Alleged Debtors are generally not paying their debts as they become due under section 303(h).

as they became due.[97] Second, to the extent Mr. Leventon's testimony demonstrates that creditors of the Alleged Debtors expected to be paid on a quarterly basis (at the latest), certain of the remaining 11 creditors have debts that are significantly older than four months (*i.e.*, CT Corporation, Jones Day, AKK, and possibly even Reid Collins & Tsai LLP). Third, the Financial Statements of Acis LP submitted into evidence do not support the notion that the cash balances at Acis LP were only sufficient enough to pay vendors once every quarter.[98] For example, the balance sheet for January 31, 2017 shows a cash balance in Acis LP bank accounts of $1,061,663.19; the balance sheet for February 28, 2017 shows a cash balance in Acis LP bank accounts of $905,212.36; the balance sheet for March 31, 2017 shows a cash balance in Acis LP bank accounts of $525,626.59; the balance sheet for April 30, 2017 shows a cash balance in Acis LP bank accounts of $117,885.96; the balance sheet for May 31, 2017 shows a cash balance in Acis LP bank accounts of $62,733.31; the balance sheet for June 30, 2017 shows a cash balance in Acis LP bank accounts of $10,329.15; the balance sheet for July 31, 2017 shows a cash balance in Acis LP bank accounts of $701,904.39; the balance sheet for August 31, 2017 shows a cash balance in Acis LP bank accounts of $332,847.05.[99] In summary, while there may be cash fluctuations with Acis LP, there is not a clear pattern of Acis LP being only able to pay vendors once every quarter.

[97] *See In re Trans-High Corp.*, 3 B.R. 1, 2-3 (Bankr. S.D.N.Y. 1980) (bankruptcy court found that evidence showing that the petitioning creditor gave the debtor generous terms of payment (90 days) which were substantially better than the terms set forth in the actual writings between the parties supported finding that the alleged debtors were generally paying debts as they became due and that the involuntary petition must be dismissed).

[98] Exh. 147.

[99] *Id.*

II. Conclusions of Law

Section 303 of the Bankruptcy Code sets forth the various requirements for initiating an involuntary bankruptcy case. First, pursuant to section 303(b) of the Bankruptcy Code, an involuntary case may be filed against a person by the filing with the bankruptcy court of a petition under Chapter 7—

> (1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount ... [that] aggregate at least $15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
>
> (2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $15,775 of such claims . . .[100]

Thus, if there are twelve or more eligible creditors holding qualified claims on the Petition Date, three or more entities must participate in the involuntary filing and must hold unsecured claims aggregating $15,775.00. If there are less than twelve creditors, a single creditor with an unsecured claim of $15,775.00 may file the involuntary petition. To the extent a bankruptcy court finds that the requisite number of petitioning creditors have commenced the involuntary case, the court shall order relief against the debtor under the chapter under which the petition was filed only if "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount."[101]

Here, as noted earlier, the Alleged Debtors have made four arguments as to why an order for relief should not be entered against the Alleged Debtors: (1) the Alleged Debtors have 12 or

[100] 11 U.S.C.A § 303(b) (West 2018).

[101] 11 U.S.C.A § 303(h) (West 2018).

more creditors, and, thus, with Mr. Terry being the sole petitioning creditor, the Involuntary Petitions were not commenced by the requisite number of creditors; (2) the Alleged Debtors are generally paying their debts as they become due; (3) the Involuntary Petitions were filed in bad faith by Mr. Terry; (4) the interests of creditors and the debtors would be better served by dismissal and the court should abstain pursuant to section 305 of the Bankruptcy Code.

A. Have the Requisite Number of Creditors Commenced the Involuntary Proceedings?

Pursuant to section 303(b)(2) of the Bankruptcy Code, a sole petitioning creditor holding at least $15,775 in claims can initiate an involuntary bankruptcy case so long as the alleged debtors have fewer than 12 creditors. After the Second Amended List of Creditors was filed, Mr. Terry had the burden, by a preponderance of the evidence, of showing that the Alleged Debtors actually had less than 12 qualified creditors.[102] Here, the court has found that the Alleged Debtors have, ***at most***, 11 qualified creditors.[103] Accordingly, Mr. Terry has met his burden of showing that the Alleged Debtors have less than 12 creditors for section 303(b) purposes, and that he, as the sole petitioning creditor, was permitted to file the Involuntary Petitions. While Mr. Terry has made additional arguments as to why certain of these 11 creditors should not be counted as creditors for purposes of section 303(b) of the Bankruptcy Code, the court does not believe it necessary to address these arguments at this time.[104]

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[102] *See In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222, 229 (Bankr. N.D. Tex. 2009).

[103] To be clear, the court believes that even on these 11, there are likely bona fide disputes as to the liability or amount that ***Acis LP*** has—as opposed to the liability or amount that Highland or other insiders bear responsbility.

[104] Moreover, as previously stated, since the court has determined there are fewer than 12 creditors, the court need not address whether there is a "special circumstances" exception to the statutory requirements of section 303, in situations where an alleged debtor may have engaged in fraud, schemes, or artifice to thwart a creditor or creditors. *See, e.g.*, *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

B. Are the Alleged Debtors Generally Paying Their Debts as They Become Due?

Section 303(h) of the Bankruptcy Code requires that a court shall enter order for relief in an involuntary case "if … (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount . . . ."[105] Again, the burden is on the Petitioning Creditor to prove this element by a preponderance of the evidence.[106] The determination is made as of the filing date of the Involuntary Petitions.[107] In determining whether an alleged debtor is generally paying its debts as they come due, courts typically look to four factors: (i) the number of unpaid claims; (ii) the amount of such claims; (iii) the materiality of the non-payments; and (iv) the nature of the debtor's overall conduct in its financial affairs.[108] No one factor is more meritorious than another; what is most relevant depends on the facts of each case.[109] Courts typically hold that "generally not paying debts" includes regularly missing a significant number of payments ***or*** regularly missing payments which are significant in amount in relation to the size of the debtor's operation.[110]

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[105] 11 U.S.C.A § 303(h) (West 2018).

[106] *See Norris v. Johnson (In re Norris)*, No. 96-30146, 1997 WL 256808, at *3-*4 (5th Cir. Apr. 11, 1997) (unpublished).

[107] *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993).

[108] *See, e.g., In re Moss*, 249 B.R. 411, 422 (Bankr. N.D. Tex. 2000) (citing *In re Norris*, 183 B.R. 437, 456-57 (Bankr. W.D. La. 1995)).

[109] *In re Bates*, 545 B.R. 183, 186 (Bankr. W.D. Tex. 2016) (also noting that petitioning creditors' counsel consistently argued that the final prong—overall conduct in financial affairs—should be afforded more weight than the other factors, and the court found no authority to support this assertion).

[110] *See, e.g., In re All Media Props., Inc.*, 5 B.R. 126, 143 (Bankr. S.D. Tex. 1980). See also *Concrete Pumping Serv., Inc. v. King Constr. Co. (In re Concrete Pumping Serv., Inc.)*, 943 F.2d 627, 630 (6th Cir.1991) (a debtor was not paying his debts as they became due where the debtor was in default on 100% of its debt to only one creditor); *Knighthead Master Fund, L.P. v. Vitro Packaging, LLC (In re Vitro Asset Corp.)*, No. 3:11–CV–2603–D (N.D.Tex. Aug. 28, 2012) (district court found error in bankruptcy court ruling that the debtors were generally paying their debts as they became due, where bankruptcy court had relied on the fact that the alleged debtors had a significant number of third-party creditors/trade vendors, which had been continually paid, even though the unpaid debts to the petitioning creditors far exceeded the paid debts in terms of dollar amount; petitioning creditors were holders of promissory notes that were guaranteed by the alleged debtors, as to which the primary obligor and alleged

Furthermore, any debt which the alleged debtor is not current on as of the petition date should be considered as a debt not being paid as it became due.[111]

Here, the court concludes that the creditors of the Alleged Debtors—what few there are—are generally not being paid as their debts have become due (except for perhaps four[112] that are relatively insignificant and which may also be able to look to Highland for payment). Mr. Terry has met his burden by a preponderance of the evidence as to section 303(h) of the Bankruptcy Code.

C. With the Section 303 Statutory Requirements Being Met by the Petitioning Creditor, Should the Court, Nonetheless, Dismiss the Involuntary Petitions Because They Were Filed in Bad Faith?

Despite Mr. Terry meeting the necessary statutory requirements for this court to enter orders for relief as to the Alleged Debtors pursuant to section 303 of the Bankruptcy Code, the Alleged Debtors have argued that the Involuntary Petitions must, nonetheless, be dismissed because they were filed in "bad faith" by Mr. Terry. As support for this argument, the Alleged Debtors rely primarily on the Third Circuit's decision in *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328 (3d Cir. 2015). While the court certainly acknowledges that authority exists in other circuits that suggests that dismissal of an involuntary bankruptcy case may be appropriate—even when section 303's statutory requirements have been met—based upon an

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debtors had ceased making interest payments; the unpaid debts represented 99.9% of the total dollar amount of debt of each of the alleged debtors); *Crown Heights Jewish Cmty. Council, Inc. v. Fischer (In re Fischer)*, 202 B.R. 341, 350–51 (E.D.N.Y. 1996) (even though the debtor only had two outstanding debts, the total dollar amount failed to establish that, in terms of dollar amounts, the debtor was paying anywhere close to 50% of his liabilities, so he was not generally paying his debts as they became due); *In re Smith*, 415 B.R. 222, 231 (Bankr. N.D. Tex. 2009) (while the debtor was paying small recurring debts, he was not paying 99 percent of his debts in the aggregate amount and thus was not generally paying his debts as they became due).

[111] *In re Bates*, 545 B.R. 183, 188 (Bankr. W.D. Tex. 2016).

[112] Those four are: Drexel Limited ($6,359.96); Highfield Equities ($2,510.04); David Simek ($1,233.19); and McKool Smith ($70,082.18).

independent finding of "bad faith," the court need not ultimately decide the efficacy or applicability of such authority, because the court does not believe that the evidence demonstrated any "bad faith" on the part of Mr. Terry (or his counsel) in filing the Involuntary Petitions. Indeed, the evidence suggested that Mr. Terry and his counsel filed the Involuntary Petitions out of a legitimate concern that Highland was dismantling and denuding Acis LP of all of its assets and value and that a bankruptcy filing was the most effective and efficient way to preserve value for the Acis LP creditors. The court concludes that Mr. Terry was wholly justified in pursuing the Involuntary Petitions.

D. Should This Court, Nonetheless, Abstain and Dismiss the Involuntary Petitions Pursuant to Section 305 of the Bankruptcy Code?

Section 305(a)(1) of the Bankruptcy Code provides that:

> (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
> (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; . . .[113]

Courts construing section 305(a)(1) of the Bankruptcy Code have found that abstention in a properly filed bankruptcy case is an ***extraordinary remedy***.[114] Moreover, granting an abstention motion pursuant to section 305(a)(1) of the Bankruptcy Code requires more than a simple balancing of harm to the debtor and creditors; rather, the interests of ***both*** the ***debtor*** and its ***creditors*** must be served by granting the request to abstain.[115] The moving party bears the

[113] 11 U.S.C.A. § 305(a)(1) (West 2018).

[114] *In re AMC Investors, LLC*, 406 B.R. 478, 487 (Bankr. D. Del. 2009); *see also In re Compania de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007); *In re 801 S. Wells St. Ltd. P'ship*, 192 B.R. 718, 726 (Bankr. N.D. Ill. 1996).

[115] *In re Smith*, 415 B.R. 222, 238-39 (Bankr. N.D. Tex. 2009) (citing to *AMC Investors, LLC*, 406 B.R. at 488).

burden to demonstrate that dismissal benefits the debtor and its creditors.[116] Courts must look to the individual facts of each case to determine whether abstention is appropriate.[117]

Case law has set forth a litany of factors to be considered by the court to gauge the overall best interests of the creditors and the debtor for section 305(a)(1) purposes:

> (1) the economy and efficiency of administration;
> (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
> (3) whether federal proceedings are necessary to reach a just and equitable solution;
> (4) whether there is an alternative means of achieving an equitable distribution of assets;
> (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
> (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
> (7) the purpose for which bankruptcy jurisdiction has been sought.[118]

While all factors are considered, not all are given equal weight in every case and the court should not conduct a strict balancing.[119]

i. Factor 1: The Economy and Efficiency of Administration.

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[116] *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2008).

[117] *In re Spade*, 258 B.R. 221, 231 (Bankr. D. Colo. 2001).

[118] *Monitor Single Lift I, Ltd.*, 381 B.R. at 464-65 (citing to *In re Paper I Partners, L.P.*, 283 B.R. 661, 679 (Bankr. S.D.N.Y. 2002)); *see also Smith*, 415 B.R. at 239; *AMC Investors, LLC*, 406 B.R. at 488; *In re Euro-American Lodging Corp.*, 357 B.R. 700, 729 (Bankr. S.D.N.Y. 2007); *but see Spade*, 258 B.R. at 231-32 (Bankr. D. Colo. 2001) (applied a four criteria test in evaluating section 305 abstention which included: (1) the motivation of the parties who sought bankruptcy jurisdiction; (2) whether another forum was available to protect the interests of both parties or there was already a pending proceeding in state court; (3) the economy and efficiency of administration; and (4) the prejudice to the parties). The Alleged Debtors cite to the case of *In re Murray*, 543 B.R. 484 (Bankr. S.D.N.Y. 2016), in particular, as support for why this court should abstain under section 305(a) of the Bankruptcy Code and dismiss the Involuntary Petitions. However, in *Murray*, Judge Gerber was analyzing dismissal of an involuntary proceeding pursuant to section 707 of the Bankruptcy Code, more specifically for "cause," and not based upon abstention under section 305(a) of the Bankruptcy Code. Thus, the court is not convinced *Murray* is relevant to this court's section 305 abstention analysis.

[119] *In re TPG Troy, LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013) (citing *Monitor Single Lift*, 381 B.R. at 464).

The economy and efficiency of administering a case in the bankruptcy court is routinely evaluated in considering abstention under section 305 of the Bankruptcy Code. Here, the evidence suggests that the most economical and efficient forum for these parties to resolve their disputes is the bankruptcy court. The court heard ample evidence that the Alleged Debtors are already, essentially, in the process of being liquidated by Highland. This is not a situation where an ably-functioning, going-concern business is being foisted in disruptive fashion into a bankruptcy.[120] Because of the fact that the Alleged Debtors are already in the process of being liquidated, the bankruptcy court (and not a state court) is the most efficient and economical forum to complete this liquidation and distribute whatever assets remain to creditors in accordance with the distribution scheme set forth in the Bankruptcy Code and with the oversight of a neutral third-party trustee. Thus, with the bankruptcy court being the more economic and efficient forum for administering this case, this factor goes against abstention.

ii. Factors 2, 3, 4, 5, and 6: Whether Another Forum is Available to Protect the Interests of Both Parties or There is Already a Pending Proceeding in State Court; Whether Federal Proceedings are Necessary to Reach a Just and Equitable Solution; Whether There is an Alternative Means of Achieving an Equitable Distribution of Assets; Whether the Debtor and the Creditors are Able to Work Out a Less Expensive Out-of-Court Arrangement Which Better Serves All Interests in the Case; and Whether a Non-Federal Insolvency Has Proceeded so Far in Those Proceedings That it Would Be Costly and Time Consuming to Start Afresh With the Federal Bankruptcy Process.

[120] *See, e.g., In re The Ceiling Fan Distrib., Inc.*, 37 B.R. 701 (Bankr. M.D. La. 1983) (noting that while the dissection of a living business may not properly be the business of a bankruptcy court, the division of a "carcass" and the reclamation of pre-petition gouging may well be); *In re Bos*, 561 B.R. 868, 898-99 (Bankr. N.D. Fla. 2016) (citing as one of the reasons to abstain under section 305 of the Bankruptcy Code the fact that entities and subsidiaries under the alleged debtor's umbrella were still operating successful businesses and had employed more than 500 people); *but see Remex Elecs. Ltd. v. Axl Indus., Inc. (In re Axl Indus., Inc.)*, 127 B.R. 482, 484-86 (S.D. Fla. 1991) (in affirming the bankruptcy court's decision to dismiss an involuntary bankruptcy case, the district court also found that "the interests of a defunct business enterprise would be little affected by the pendency of a bankruptcy proceeding," which the district court believed favored abstention).

The court believes that factors 2-6 should be grouped together for purposes of its abstention analysis, since all of these factors specifically touch on the availability of an alternative forum to achieve an ***equitable*** distribution.[121] By way of example, where bringing a case into the bankruptcy court would simply add an additional layer of expense to the resolution of a two-party dispute and another forum already provides a suitable place to resolve the dispute, some courts have found that abstention is the more appropriate choice since keeping the case would transform the bankruptcy process into a collection device.[122] Here, the Alleged Debtors have repeatedly argued that, because there is already pending state court litigation involving Mr. Terry, Highland, and the Alleged Debtors, these cases should be dismissed and the parties should go back to state court to resolve their issues. The court does not agree for several reasons.

First, it is worth noting that this court has already heard multiple days of evidence in this case (including almost five days just for the Trial) and would certainly not be "starting afresh" by any means if things go forward in the bankruptcy court. Additionally, while the Alleged Debtors have argued that a significant amount of attorney's fees have already been spent litigating this case in state court (which they believe supports abstention), the court surmises that these fees have not been wasted dollars, as the money expended by the parties developed discovery of facts that could assist a bankruptcy trustee in pursuing avoidance actions that may be viable and might lead to value that could pay creditors' claims.[123]

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[121] *See, e.g., In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 460-70 (Bankr. S.D.N.Y. 2008).

[122] *AMC Investors, LLC*, 406 B.R. at 488; *see also Axl Indus., Inc.*, 127 B.R. at 484-86.

[123] *See, e.g., The Ceiling Fan Distributor, Inc.*, 37 B.R. at 703 (the court noted that, despite there being significant legal expenses in the state court, such expenses were not wasted since the legal work done to date would be quite helpful to a trustee).

Second, this court heard considerable evidence involving potentially voidable transfers that may have occurred involving the Alleged Debtors and Highland/Highland-affiliates and, while the state court certainly provides a forum for eventually bringing fraudulent transfer claims, the court also heard evidence that none of these claims have actually been brought in the state court.[124] Moreover, to the extent fraudulent transfer claims were to be pursued in state court and were successful, the state court would still need the ability to reach the assets of alleged fraudulent transfer recipients (which, in this situation, include certain Highland-affiliates located in the Cayman Islands). The bankruptcy court has concerns whether a state court process could efficiently accomplish this task.[125] Similarly, it is worth noting that, while a request for a receiver was filed in the state court by Mr. Terry, such request had not yet been heard and decided by the state court. Thus, at the present time, it does not appear that there is an alternative forum to address the pertinent issues in this case, without the necessity of significant, additional steps being taken by the parties in the state court.

Third, this court believes that a federal bankruptcy proceeding is necessary in order to achieve an equitable result in this case. Specifically, the court heard evidence from the Alleged Debtors that, if this court chose to abstain and dismiss the Involuntary Petitions, the Alleged Debtors would ultimately pay all of their creditors in full, except for Mr. Terry. This clearly demonstrates how keeping the case in the bankruptcy court is necessary to allow an equitable

[124] *See, e.g., In re Texas EMC Mgmt., LLC,* Nos. 11-40008 & 11-40017, 2012 WL 627844, at *3 (Bankr. S.D. Tex. 2012) (noting that one of the reasons abstention was proper under section 305 of the Bankruptcy Code was because the issues to be litigated amongst the parties were already joined in the state court litigation); *Spade*, 258 B.R. at 236 (court held that one of the reasons abstention was warranted under section 305 of the Bankruptcy Code was because the petitioning creditors had already filed and had pending a "collection case" in the state court).

[125] *See, e.g.*, *Smith*, 415 B.R. at 239 (the bankruptcy court held that there "are remedies under the Bankruptcy Code that are not available to Rhodes under state law, due to Mr. Smith's transfer of the majority of his assets to the Cook Island Trust," and "federal proceedings may be necessary to reach a just and equitable solution").

distribution to ***all creditors***, including Mr. Terry. Additionally, a federal bankruptcy court has certain tools available to it that are not available to a state court such as the ability to invalidate potential *ipso facto* clauses in contracts pursuant to section 365 of the Bankruptcy Code, sell assets free and clear of liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, and impose the automatic stay pursuant to section 362 of the Bankruptcy Code. These are all useful tools available to the Alleged Debtors in a bankruptcy case that would be lost if this court were to ultimately abstain.

Finally, there was more than enough evidence showing the acrimonious and bitter relationship that exists between Mr. Terry and Mr. Dondero. Thus, the availability of an out-of-court arrangement being obtained in this case is, in this court's mind, slim to none.

In summation, the court finds that all of the factors above support this case staying with the bankruptcy court.

iii. Factor 7: The Purpose for Which Bankruptcy Jurisdiction Has Been Sought.

The Alleged Debtors have repeatedly argued that Mr. Terry filed this case in bad faith and as a litigation tactic to gain some sort of advantage in the state court proceedings. The court has already found above that these cases were not filed in bad faith and that Mr. Terry has met the necessary statutory requirements of section 303 of the Bankruptcy Code. Moreover, it is worth noting that at least one court has stated that the filing of an involuntary bankruptcy petition is always a "litigation tactic," but whether the filing is inappropriate for abstention purposes is a fact-dependent determination.[126] Here, the facts show that there was no inappropriateness

[126] *In re Marciano*, 459 B.R. 27, 50 (B.A.P. 9th Cir. 2011) (noting that while the filing of the involuntary bankruptcy was a litigation tactic, the bankruptcy court did not abuse its discretion in denying the alleged debtor's motion to dismiss based upon the bankruptcy court's primary concern that the issue of equality of distribution would not effectively be dealt with in another forum).

behind Mr. Terry's decision to file the Involuntary Petitions. Specifically, Mr. Terry repeatedly and credibly testified that the purpose for filing the Involuntary Petitions was to ensure that creditors (including him) were treated fairly and received an equal distribution from the Alleged Debtors' assets, not to gain some sort of advantage in the state court. This testimony was absolutely consistent with additional evidence showing that, since the entry of the arbitration award, there has been a calculated effort (largely by Highland) to effectively liquidate the Alleged Debtors. Unlike the bankruptcy court in *In re Selectron Mgmt. Corp.*,[127] which had no evidence or "smoking gun" showing that steps were being taken by the alleged debtor to evade payment on the petitioning creditor's judgment, thereby necessitating abstention, this court has heard ample evidence showing that the Alleged Debtors, with the aid of Highland, were transferring assets away from the Alleged Debtors, so that Mr. Terry would have nowhere to look at the end of the day.

In light of the court's analysis of all the seven factors above, the Alleged Debtors have not credibly shown how both the Alleged Debtors and the creditors are better served outside of bankruptcy. If this matter were to remain outside of bankruptcy, there seems to be a legitimate prospect that the Alleged Debtors and Highland will continue dismantling the Alleged Debtors, to the detriment of Acis LP creditors. Abstention would fly in the face of fundamental fairness and the principles underlying the Bankruptcy Code.

Beyond just addressing the factors above, the Alleged Debtors have also argued that, if this court were to not abstain under section 305 of the Bankruptcy Code, there would be

[127] *In re Selectron Mgmt. Corp.*, No. 10-75320-DTE, 2010 WL 3811863, at *6-7 (Bankr. E.D.N.Y. Sept. 27, 2010); *see also In re White Nile Software, Inc.*, No. 08–33325–SGJ–11, 2008 WL 5213393, at *4 (Bankr. N.D. Tex. Sept. 16, 2008) (finding that where the filing of a voluntary chapter 11 did not appear to be about insuring a distribution to creditors or winding down or giving a soft landing to a business or avoiding dismantling and dissipation of valuable assets or preserving avoidance actions, but rather was about changing the forum of ongoing litigation between the parties, abstention under section 305 was proper).

significant harm to the "equity" of the Alleged Debtors. Specifically, the Alleged Debtors have argued that, if this court were to enter orders for relief, the equity would be forced to "call" and ultimately liquidate CLO 2014-3 (and perhaps all of the CLOs Acis LP manages), resulting in substantial losses to the equity on their investments. First, to be clear, the current equity of the Alleged Debtors is being held by a Highland-affiliate called Neutra, Ltd., which actually only became the equity of the Alleged Debtors on December 19, 2017. But this is not the "equity" being referred to by the Alleged Debtors in its argument. Rather, the so-called "equity," about which the Alleged Debtors seemed so concerned, is actually ***certain parties that own the equity of the entity that owns the equity in the CLOs***—which includes (a) an unnamed third-party investor out of Boston (49%),[128] (b) a charitable foundation managed by a Highland-affiliate (49%), and (c) Highland employees (2%). However, abstention under section 305 of the Bankruptcy Code does not require this court to look at what is in the best interests of these third-parties (who are not current creditors or interest holders of the Alleged Debtors), but rather what is in the best interests of the Alleged Debtors and the creditors. Accordingly, the Alleged Debtors' effort to argue potential harm to these parties is misplaced for purposes of evaluating abstention under section 305 of the Bankruptcy Code, and, if anything, further highlights who the Alleged Debtors are really out to protect—Highland and Highland-affiliates. Moreover, the court would note that, even if there were to be a "call" and liquidation of CLO 2014-3, thereby ending the Alleged Debtors' right to receive future management fees, there would still be potential assets for a chapter 7 trustee to administer such as chapter 5 causes of action (which include fraudulent transfers) as well as the Alleged Debtors' contingent claim for approximately

[128] Notably, this entity never appeared at the Trial or filed papers stating that it would be harmed by entry of orders for relief in these cases.

$3 million in expense reimbursement owing by Highland CLO Management Ltd., as part of the November 3, 2017 transfer of the Acis LP Note Receivable from Highland. Thus, even if the so-called doomsday scenario of an equity call on CLO 2014-3 (or other CLOs) were to happen, there is still a potential benefit to creditors if this court chooses not to abstain.

III. CONCLUSION

In conclusion, these involuntary proceedings were appropriately filed under section 303, and orders for relief will be issued forthwith. This court declines to exercise its discretion to abstain, because a chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP, as discussed above. A chapter 7 trustee appears necessary to resolve the inherent conflicts of interest between the Alleged Debtors and Highland. A chapter 7 trustee will have tools available to preserve value that a state court receiver will not have. The bankruptcy court is single handedly the most efficient place to administer property of the estate for creditors. This is not just a two party dispute between Mr. Terry and the Alleged Debtors, and even if it were, dismissal or abstention is clearly not warranted.

###END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW###

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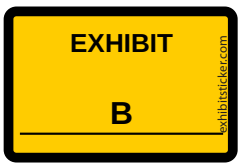
COUNSEL FOR ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC, PLAINTIFFS AND REORGANIZED DEBTORS

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

In re:	§	**Case No. 18-30264-SGJ-11**
	§	**Case No. 18-30265-SGJ-11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,	§	**(Jointly Administered Under Case No. 18-30264-SGJ-11)**
Debtors.	§	**Chapter 11**

ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors,	§	**Adversary No. _____**
Plaintiffs,	§	
vs.	§	
JAMES DONDERO, FRANK WATERHOUSE, SCOTT ELLINGTON, HUNTER COVITZ, ISAAC LEVENTON, JEAN PAUL SEVILLA, THOMAS SURGENT, GRANT SCOTT, HEATHER BESTWICK, WILLIAM SCOTT, AND CLO HOLDCO, LTD.,	§	
Defendants.	§	



ORIGINAL COMPLAINT

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors," "Acis," or "Plaintiffs")[1] the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Original Complaint* (this "Complaint"), against James Dondero, Frank Waterhouse, Scott Ellington, Hunter Covitz, Isaac Leventon, Jean Paul Sevilla, Thomas Surgent, Grant Scott, Heather Bestwick, William Scott, and CLO HoldCo, Ltd. (collectively, the "Defendants") and respectfully state as follows:

I. INTRODUCTION[2]

1. The Court is all-too familiar with the background here. In order to ensure that Josh Terry would collect nothing for his hard-fought Arbitration Award of close to $8 million against Acis, James Dondero ("Dondero"), through Highland Capital and many of its affiliates, orchestrated a massive scheme to fraudulently transfer Acis's assets, including its portfolio management rights that constituted the core of Acis's revenue stream, worth tens of millions of dollars (at a minimum), to the Highlands (defined below). These actions by Dondero—even during the Bankruptcy Cases—were flagrant breaches of his fiduciary duties to Acis, as he was also an officer and member of Acis GP.

2. But Dondero could not do this alone. To perpetrate this fraud, the other Defendants knowingly colluded and coordinated with Dondero, aiding and abetting his breaches of fiduciary duty. Dondero's accomplices had a choice—they could have done the right thing

[1] Prior to February 15, 2019, the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

[2] Any capitalized term not otherwise defined in this Introduction shall have the meaning ascribed to such term later in this Complaint.

and refused to participate in what they all knew was wrongdoing, but they decided otherwise. As he orchestrated this brazen scheme, like a puppet master, Dondero completely controlled Highland Capital, its affiliates, and those that did his dirty work. Dondero is Highland Capital, and through Highland Capital he pulls the strings for the rest of the Highlands. He is their alter ego.

3. Accordingly, pursuant to the Plan and Confirmation Order, which preserved the causes of action pleaded herein against the Defendants, Acis brings this Adversary Proceeding against Dondero and Waterhouse for breaching their fiduciary duties to Acis, as its officers, and against the other individual Defendants for aiding and abetting Dondero's and Waterhouse's breaches of fiduciary duties to Acis. Acis also pleads that Dondero, Covitz, Leventon, William Scott, and Bestwick willfully violated of the automatic stay by attempting to force optional redemptions of the CLOs, as part of the attempted stealth liquidation of Acis, and to facilitate Highland Capital's own issuance of CLOs, after the filing of the Bankruptcy Cases. Further, Acis pleads turnover and money had and received against CLO Holdco, another Dondero-controlled Highland Capital affiliate, for amounts due Acis for investment management services provided to CLO Value Fund, and which amounts Dondero diverted to CLO Holdco. Finally, Acis pleads that Dondero is the alter ego of the Highlands, and Acis should be able to pierce the corporate veil to recover against Dondero for all damages flowing from the actions of the Highlands.

II. JURISDICTION, VENUE, AND STATUTORY PREDICATE

4. This Court has subject matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334. *See U.S. Brass Corp. v. Travelers Ins. Group (In re U.S. Brass Corp.)*, 301 F.3d 296, 303-06 (5th Cir. 2002) (holding that proceedings within the contemplation of "11 U.S.C. § 1142(b), which authorizes post-confirmation bankruptcy orders 'necessary for the consummation of the plan,'" are "arising in" a case under title 11, and therefore

within the jurisdictional grant of section 1334); *Coho Oil & Gas, Inc. v. Finley Res., Inc. (In re Coho Energy, Inc.)*, 309 B.R. 217, 220-21 (Bankr. N.D. Tex. 2004) (citing *U.S. Brass* and finding post-confirmation jurisdiction when the claims at issue in the adversary proceeding arose pre-petition between the debtor and defendants, the plan contemplated the prosecution of such claims and distribution of any recovery to creditors under the plan, and the prosecution of such claims would impact compliance with the plan). Venue is proper in this district pursuant to 28 U.S.C. § 1409.

5. This matter is core within the meaning of 28 U.S.C. § 157(b), *see U.S. Brass*, 301 F.3d at 305-06, or is a proceeding related to a case under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"). To the extent it is determined that the Court may not finally adjudicate any claim(s) herein, Plaintiffs consent to the entry of final orders or judgments by the Court.

6. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 105, 108, 362, 542, 1123(b)(3), 1141(b), and 1142 of the Bankruptcy Code, and Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7001.

III. PARTIES & PERSONAL JURISDICTION

7. Acis LP is a limited partnership and Acis GP is a limited liability company, both of which are organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Dondero is an individual who resides at 3807 Miramar Avenue, Dallas, Texas 75205-3125 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, on information and belief,

Dondero has served in numerous officer/partnership positions for Acis, Highland Capital Management, L.P. ("Highland Capital"), and affiliates of Highland Capital, including but not limited to the following: President of Acis GP until May 7, 2018; Sole Member of Acis GP from October 14, 2015 until December 19, 2017; President and/or Chief Executive of Highland Capital; President of Highland HCF Advisor, Ltd. ("Highland Advisor"); President of Strand Advisors Inc. ("Strand"); and President & Principal Executive Officer of NexPoint Strategic Opportunities Fund.

9. Frank Waterhouse ("Waterhouse") is an individual who resides at 2604 Dublin Park Drive, Parker, Texas, 75094 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, on information and belief, Waterhouse has served in a number of officer positions for Acis, Highland Capital, and affiliates of Highland Capital, including but not limited to the following: Treasurer of Acis GP until May 7, 2018; Treasurer and/or Chief Financial Officer of Highland Capital; Treasurer of Stand; Treasurer, Principal Accounting Officer & Principal Financial Officer of NexPoint Strategic Opportunities Fund.

10. Scott Ellington ("Ellington") is an individual who resides at 2525 N. Pearl Street, #1202, Dallas, Texas 75201-2235 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, on information and belief, Ellington has served in a number of officer positions for Highland Capital and its affiliates, including but not limited to the following: Secretary and/or General Counsel & Chief Legal Officer of Highland Capital; Secretary of Strand.

11. Hunter Covitz ("Covitz") is an individual who resides at 6612 Sondra Drive, Dallas, Texas 75214-3403 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, on information and

belief, Covitz has served (at least) as Managing Director and Head of Structured Products at Highland Capital.

12. Isaac Leventon ("Leventon") is an individual who resides at 409 Pleasant Valley Lane, Richardson, Texas 75080 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, Leventon has served (at least) as Assistant General Counsel of Highland Capital.

13. Jean Paul Sevilla ("Sevilla") is an individual who resides at 7155 Shook Avenue, Dallas, Texas 75214-3827 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, Sevilla has served (at least) as Assistant General Counsel of Highland Capital.

14. Thomas Surgent ("Surgent") is an individual who resides at 4441 Beverly Drive, Dallas, Texas 75205-3001 and regularly conducts business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. At times relevant to the facts pleaded in this Complaint, on information and belief, Surgent has served (at least) as Chief Compliance Officer and Deputy General Counsel of Highland Capital.

15. Grant Scott is an individual who resides at 5311 Tannat Court, Apartment 204, Raleigh, North Carolina 27612-4689 and/or regularly conducts business at 4140 Parklake Avenue, Suite 600 Raleigh, North Carolina 27612-2730. At times relevant to the facts pleaded in this Complaint, Grant Scott has served (at least) as Director of CLO HoldCo, Ltd. ("CLO Holdco"), an affiliate of Highland Capital.

16. Heather Bestwick ("Bestwick") is an individual who, on information and belief, resides at Two Harbour Reach, La Rue 10 De Carteret, St. Helier, Jersey and regularly conducts business at First Floor, Dorey Court, Admiral Park St Peter Port, Guernsey, GY1 6HJ. At times

relevant to the facts pleaded in this Complaint, Bestwick has served (at least) as a Director of Highland CLO Funding, Ltd. ("Highland Funding").

17. William Scott is an individual who, on information and belief, regularly conducts business at First Floor, Dorey Court, Admiral Park St Peter Port, Guernsey, GY1 6HJ. At times relevant to the facts pleaded in this Complaint, William Scott has served (at least) as a Director of Highland Funding.

18. CLO Holdco is a company organized under the laws of the Cayman Islands, with its principal place of business at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands; however, in its most recent Schedule 13-D filed with the SEC on June 8, 2018, CLO Holdco listed its principal place of business at 300 Crescent Court, Suite 700 Dallas, Texas 75201. CLO Holdco may also be served through its director, Grant Scott, at 4140 Parklake Avenue, Suite 600 Raleigh, North Carolina 27612-2730. Acis reserves the right to serve CLO Holdco by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

19. Acis submits that the Court has personal jurisdiction over each of the Defendants named herein. The Fifth Circuit recently explained:

> Unlike Rule 4, Bankruptcy Rule 7004 permits nationwide service of process without limitation to the reach of the forum state's courts. There remains the requirement of a "constitutionally sufficient relationship" with the forum. With nationwide service, the forum is the United States. So minimum contacts with the United States (Fifth Amendment due process) suffice; minimum contacts with a particular state (Fourteenth Amendment due process) are beside the point. And residents of the United States—which Defendants undisputedly are—have enough contact with the United States that hailing them into federal court "does not offend traditional notions of fair play and substantial justice."

Double Eagle Energy Servs., L.L.C. v. Markwest Utica Emg, L.L.C., 936 F.3d 260, 264 (5th Cir. 2019) (internal citations omitted); *see also In re Correra*, 589 B.R. 76, 118 (Bankr. N.D. Tex.

2018) (explaining that Bankruptcy Rule 7004 "extends personal jurisdiction over any person who has sufficient minimum contacts with the United States," and discussing the various considerations related to bankruptcy court personal jurisdiction).

20. With respect to the individual Defendants who, on information and belief, are not residents of the United States—William Scott and Bestwick—each of whom have testified in the Bankruptcy Cases, each has sufficient minimum contacts with the United States in connection with the actions pleaded herein (e.g., by actively participating in Acis's bankruptcy case, demanding Acis carry out multiple optional redemptions, and authorizing the filing of an adversary proceeding in the Bankruptcy Cases)[3] so that exercise of jurisdiction over them does not offend traditional notions of fair play and substantial justice. *See Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).

IV. PROCEDURAL BACKGROUND

21. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

22. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Involuntary Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case

[3] Notices of appearance for Highland Funding, of which Bestwick and William Scott, as purported independent directors of Highland Funding, authorized filing, are attached hereto as **Exhibit A**; the Optional Redemption Notices (defined below), which William Scott and/or Bestwick signed, as purported independent directors of Highland Funding, and caused to be transmitted to Acis, are attached hereto as **Exhibit B**; the complaint initiating Adversary No. 18-03078, which Bestwick and William Scott, as purported independent directors of Highland Funding, authorized filing, is attached hereto as **Exhibit C**.

No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Involuntary Opinion is hereby incorporated by reference as if fully set forth herein.

23. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

24. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint* Plan (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

25. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863].

26. On June 20, 2019, Acis filed its *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (the "Second Amended Complaint") in Adversary No. 18-03078 (the "Highland Adversary"), in which Acis asserted numerous claims, counterclaims, and third-party claims against Highland Capital, Highland Funding, Highland Advisor, Highland CLO Management, Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings", and collectively, with Highland Capital,

Highland Funding, Highland Advisor, and Highland Management, the "Highlands") in connection with, *inter alia*, the Highlands' scheme, at the direction of Dondero (as both President of Acis GP and President of Highland Capital) and in coordination with the other Defendants, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP.[4] *See* Adv. No. 18-03078, Docket No. 157.

27. On October 16, 2019, Highland Capital filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, which effectively stayed the Highland Adversary. *See* Case No. 19-12239, Docket No. 1. On December 4, 2019, Highland Capital's chapter 11 case was transferred to the Northern District of Texas, before this Court. *See* Case No. 19-34054, Docket No. 1.

V. STANDING & TOLLING OF LIMITATIONS

28. As of the Effective Date, pursuant to the Plan, Acis (as the Reorganized Debtors) substituted for the Trustee in the Bankruptcy Cases and any related adversary proceedings and gained exclusive standing and authority to pursue estate claims:

> Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

[4] Prior to filing the Second Amended Complaint, on March 11, 2019, the Court consolidated Adversary Nos. 18-03078 (initiated by Highland Capital and Highland Funding against the Trustee) and 18-03212 (initiated by the Trustee against Highland Capital, Highland Funding, and their affiliates) and directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al*. *See* Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63. Later, on June 10, 2019, the Court ordered Adversary No. 19-03103 (comprising Highland Capital's application for administrative expense claim) consolidated with Adversary 18-03078 and directed Acis to file the Second Amended Complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to Highland Capital's proofs of claim and purported administrative claim.

Plan § 7.03; *see also id.* § 15.01 (providing for the Bankruptcy Court's retention of jurisdiction of all matter or disputes relating to the Estate Claims and Estate Defenses).

29. Further, the Confirmation Order provides that upon the Effective Date, "all Estate Claims and Estate Defenses, including without limitation all Estate Claims and Estate Defenses identified in Exhibit A to the Plan [were] fully, completely and irrevocably transferred to, and vested in, the Reorganized Debtor." Confirmation Order at 31; *see also id*. at 39-40.

30. Additionally, pursuant to section 108(a) of the Bankruptcy Code:

> If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—
>
> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) two years after the order for relief.

11 U.S.C. § 108(a).

31. For each of claim or causes of action pleaded herein, the relevant limitations period had not expired before the Petition Date. Accordingly, the limitations period for each such claim or cause of action expires on the later of April 13, 2020 (two years after the Orders for Relief were entered), or when applicable limitations period naturally expires. *See id*. Plaintiffs assert that, as of the filing of this Complaint, the applicable limitations period for each claim or cause of action pleaded herein, subject to the discovery rule, has not yet expired or has been tolled pursuant to section 108 of the Bankruptcy Code.

32. During the course of this proceeding, Acis may learn (through discovery or otherwise) of: other breaches of fiduciary duty, other acts of aiding and abetting breaches of fiduciary duty, and other aspects of Highlands' scheme, at the direction of Dondero (as both President of Acis GP and President of Highland Capital) and in coordination with the other

Defendants, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. It is Acis's intention to avoid and recover all transfers made of an interest of Acis in property, or obligation incurred, to or for the benefit of the Highlands or the Defendants or any other transferee. Acis reserves its right to amend this Complaint to include: (i) further information regarding the claims and causes of action set forth herein; (ii) additional transfers; (iii) modifications of and/or revisions to Defendants' names; (iv) additional defendants; and/or (v) additional causes of action authorized by the Plan, if applicable (collectively, the "Amendments"), that may become known to Acis at any time during this Adversary Proceeding, through formal discovery or otherwise, and which Amendments relate back to this Complaint.

VI. FACTUAL BACKGROUND

A. The Debtors' Business

33. Dondero, Mark Okada ("Okada"), and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").[5] The CLOs are governed by certain indentures (the "Indentures").[6] Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").[7] *See* Involuntary Opinion ¶¶ 22-28. Dondero made and approved the higher-level

[5] The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

[6] The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

[7] The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by

financial strategies and decisions of Acis, and Terry was responsible for the day-to-day management of Acis.

34. Acis LP's business as portfolio manager for the CLOs was incredibly successful. Between 2011 and 2017, Acis LP distributed profits of $11,037,445.00 to Dondero, $4,598,935.00 to Terry, and $2,759,361.00 to Okada, its partners. Further, on August 31, 2017, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly $3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others was very valuable and lucrative.

35. As is common with numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement,* originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

36. As the Court explained in the Involuntary Opinion:

> Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office'" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr.

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and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

> Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Involuntary Opinion at 14 (footnotes omitted).

37. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Involuntary Opinion ¶ 30.

> Mr. Dondero [the Chief Executive of Highland Capital] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

Id.

38. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),[8] holds most of the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Involuntary Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of 2017 (described below), Acis LP had considerable control over ALF, now known as Highland Funding, and its valuable subordinated note rights to further enhance its successful portfolio management business.

B. Section 3.10(a) of the Limited Partnership Agreement

39. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust[9] (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"),

[8] On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

[9] Dondero was the trustee and the beneficial owner of the Trust, and he was President of Acis GP.

dated to be effective as of January 21, 2011.[10] The LPA is governed by Delaware Law. LPA § 6.11.

40. Until May 7, 2018, the officers of Acis GP were Dondero, as President, and Waterhouse, as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152. While Dondero and Waterhouse were officers of Acis GP, Dondero also served as President and/or Chief Executive Officer of Highland Capital, and Waterhouse also served as Treasurer and/or Chief Financial Officer of Highland Capital.

41. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

> Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, ***may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group***.

LPA § 3.10(a) (emphasis added).

42. An Affiliate under the LPA is defined as:

> [A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

Id. § 2.01.

[10] The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

43. Highland Capital was at all times relevant to this Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Complaint, an insider of Acis GP and Acis LP.

C. ACIS CLO Value Fund

44. In addition to acting as portfolio manager of the CLOs, Acis LP also acted as investment manager for Acis CLO Value Fund II, L.P. (the "Domestic Fund"), Acis CLO Value Fund II (Cayman), L.P. (the "Offshore Fund"), and Acis CLO Value Master Fund II, L.P. (the "Master Fund," and collectively with the Domestic Fund and the Offshore Fund, "CLO Value Fund"). In its role as investment manager for CLO Value Fund, was entitled to a "Performance Allocation" pursuant to that certain Amended and Restated Investment Management Agreement, dated May 1, 2016, and the limited partnership agreements for CLO Value Fund.

45. Dondero had exclusive control over CLO Value Fund.

46. While he was also employed at Highland Capital, Terry and his wife, Jennifer Terry, invested in CLO Value Fund. At the time of Terry's termination, the cumulative value of Mr. and Mrs. Terry's investment in CLO Value Fund was $353,919.38.

47. As discussed below, upon the wind-up of CLO Value Fund, Acis LP was owed at least $678,159 for its Performance Allocation; however, of that amount, Acis LP did not receive at least $332,284. Dondero wrongfully caused such amount to be diverted from the Master Fund to CLO Holdco.

D. State Court Litigation and Arbitration

48. In June 2016, at Dondero's direction, Highland Capital advised Terry that he had been terminated. One consequence of Terry's termination was that his partnership interest in Acis was forfeited, leaving Okada and Dondero (beneficially) as the only equity owners of Acis. Okada and Dondero were also the only equity owners of Highland Capital.

49. In September 2016, Terry filed an arbitration against Highland Capital, Acis and others for various claims, including that Acis owed him compensation for his forfeited partnership interest pursuant to the partnership agreement. Highland Capital also sued Terry the same month in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry requested the State Court to stay the litigation in favor of the arbitration already filed by Terry. Involuntary Opinion ¶ 8.

50. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

E. The Arbitration Award

51. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of $7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award found in favor of Terry under theories of breach of contract and breach of fiduciary duties, all ultimately committed by Dondero and his cronies.

1. *Findings Regarding the Expense Overpayments in Violation of the LPA*

52. In the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

> It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.
>
> . . . .
>
> The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

53. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

> The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of $1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

54. In its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

55. The Arbitration Award makes clear that Highland Capital wrongly received at least $7,021,924.00 (collectively, the "Expense Overpayments") in excess of the contractual cap under Section 3.10(a) of the LPA.[11] On information and belief, pursuant to Dondero's direction and control, Highland Capital wrongfully received the Expense Overpayments and other

[11] If $1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least $7,021,924.00.

overpayments of expenses for many years in excess of the express limitations contained in the LPA. Such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. Accordingly such Expense Overpayments rightfully belong to Acis LP.

2. *Findings Regarding CLO Value Fund*

56. Additionally, the arbitration panel found after his termination, Mr. and Mrs. Terry requested the redemption, i.e. withdrawal, of their investment in CLO Value Fund. Highland's outside counsel told Mr. and Mrs. Terry's counsel that their accounts had no value, without further explanation. Mr. and Mrs. Terrys' retirement savings were gone, according to Highland Capital.

57. The arbitration panel found that Dondero and Surgent, with the help of others at Highland Capital, concocted a pretext for why they could take approximately $350,000.00 of Mr. and Mrs. Terry's retirement savings. They made up a story about alleged wrongdoing committed by Terry and manufactured imaginary damages to outside investors that they claimed warranted "sweeping" Mr. and Mrs. Terry's retirement funds. The arbitrators flatly rejected such allegations against Terry.

58. Acis was ultimately harmed by Dondero and Surgent's concocted efforts to justify taking Mr. and Mrs. Terry's retirement savings. Indeed, as part of the wind-up of CLO Value Fund in furtherance of their pre-textual cover story, Dondero and Surgent directed part of the Performance Allocation due Acis in the amount of $332,284, *that should have been paid to Acis* as part of the wind-up, to CLO Holdco to compensate it for phantom damages it did not incur, in

connection with Dondero and Surgent's pretext. Thus, Acis was harmed because it did not receive $332,284 of its Performance Allocation.[12]

59. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Involuntary Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

F. Dondero Modifies the Sub-Advisory Agreement and Shared Services Agreement

60. At Dondero's direction, the Sub-Advisory Agreement has been amended from time to time. The first iteration of the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

61. On July 29, 2016—a little over a month after Terry was wrongfully terminated and two days after Mr. and Mrs. Terry were told that approximately $350,000 of their retirement assets were magically gone—Highland Capital and Acis (through Dondero, aided by certain other Defendants) modified the Sub-Advisory Agreement to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional

[12] This amount is distinctly separate and apart from the Terry family's retirement savings, and any claims the Terry's may have related thereto.

amounts to Highland Capital.[13] Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. But as described above, after Terry's termination, the equity ownership of Acis and Highland Capital were now the same (Dondero and Okada), so to them, it did not matter how much Highland Capital charged Acis—it was "left pocket/right pocket."

62. For every amended iteration of the Sub-Advisory Agreement, Dondero signed the agreements for *both parties*—as President of Highland Capital's general partner, Strand Advisors, Inc., and as President of Acis GP, the general partner of Acis LP.

63. The Shared Services Agreement has also been amended from time to time at Dondero's direction. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

[13] Indeed, as reflected in Acis LP's July 2016 bank statement with NexBank (another Highland Capital affiliate), this amendment immediately siphoned off $3,580,193.22 from Acis.

64. Again, for every amended iteration of the Shared Services Agreement, Dondero signed the agreements for *both parties*--as President of Highland Capital's general partner, Strand Advisors, Inc., and as President of Acis GP, the general partner of Acis LP.

65. As described above, Dondero sought to substantially increase fees paid to Highland Capital under the Sub-Advisory Agreement, as reflected in the modifications on or about July 29, 2016—a little over a month after Terry was wrongfully terminated—by increasing the sub-advisory fee from 5 basis points to 20 basis points without any legitimate business justification and to the significant detriment of Acis. The fees charged under the Sub-Advisory Agreement and the Shared Services Agreement were also in clear violation of the LPA, as later determined in the Arbitration Award, resulting in a judgment for breach of fiduciary duty and breach of contract against Acis.

66. Finally, as the Court has previously found, and as described in more detail below, Dondero, in coordination with the other Defendants, directed the Highlands to enter into numerous other transactions through the Fall of 2017 in an attempt to transfer and take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by the Highlands, directed by Dondero, in coordination with the other Defendants,[14] to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. *See* Involuntary Opinion, Section 1.C. (pp. 16-23).

[14] The Debtors were also under Dondero's control at this time and were active participants in Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* [Case No. 18-30264, Docket No, 639] at 21.

G. Dondero Directs Highland Capital's Mismanagement of the CLOs and the Trustee Engages Brigade Capital Management, L.P. to Replace Highland Capital

67. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital, directed and controlled by Dondero, grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland Capital failed to purchase a single loan for the CLOs, while a considerable percentage of available loans were eligible for purchase. At the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Leventon (in coordination with Covitz) directed the Trustee sell numerous loans—even when, on information and belief, the Trustee expressed his concerns to Covitz, Sevilla, and other Highland Capital employees about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs.

68. Highland Capital's mismanagement of the CLOs caused significant damage to Acis and its CLOs. Among other things, because so much cash had been built up during their management of the CLOs, CLO-3 failed its interest coverage test on the November 1, 2018 payment date (which, on information and belief, was the only interest coverage test failure by a post-financial crisis CLO in the market at that time). This CLO-3 test failure forced an automatic pay-down (i.e. partial liquidation) of $11 million of senior notes, depriving CLO-3 of its cheapest financing and depriving Acis of management fees, all in violation of the injunctions in place at various times during the Bankruptcy Cases. Upon information and belief, some of the many loans sold by Highland Capital went into Highland Capital's total return swap ("TRS") warehouse facility in an attempt to facilitate their future issuance of CLOs managed by Covitz and Highland Capital or its affiliates.

69. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors and the CLOs. Ultimately, the Trustee located Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services for the CLOs at a rate far less than that charged by Highland Capital. Brigade agreed to sub-advise the CLOs for 15 basis points, and Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the Shared Services Agreement) for $30,000 per month, $250-$350 per trade, and a one-time fee of $75,000. Cortland's fee equates to roughly 3 basis points per month.[15]

70. On August 1, 2018, with Court approval, Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland Capital, through Sevilla, offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland Capital had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

71. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately $300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No.790 at 100-01 & 134.

[15] Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

H. Dondero, in Coordination with the Other Defendants, Directs the Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.

72. After Terry received the Arbitration Award on October 20, 2017, Dondero and the other Defendants immediately began work to systematically transfer the assets of Acis LP to the Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Dondero's control.

73. Prior to the filing of the Bankruptcy Cases, a large portion of the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: At Dondero's direction, Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) affiliates of Highland Capital that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

74. Notably, in order to accomplish Dondero's scheme, Sevilla was Dondero's point person to form several of the offshore Highland affiliates, including Highland Advisor and Highland Management, which would act as the welcome transferees of Acis's assets.

75. The amount of value destruction and asset concealment caused by Defendants' brazen fraud in just the few months immediately after the Arbitration Award is staggering. Based on Acis LP's balance sheet from August 31, 2017 (on information and belief, created by David Klos, Highland Capital's Controller, who reports to Waterhouse), roughly 45 days before

the Arbitration Award, Acis LP boasted $15,441,551 in total assets—including nearly $4 million in valuable portfolio management investments and the $9.5 million note, as well as $3,372,851 in total equity value. After the Arbitration Award and the judgment enforcing it, Acis presented the declaration of David Klos to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. Based on Klos's declaration, as of February 1, 2018 (the day after the Involuntary Petitions were filed), Acis LP was left with only $2,855,050 in total assets, no investment assets or notes, and a paltry $35,709 in total equity value.

76. Even the filing of the Bankruptcy Cases did not deter Dondero and the other Defendants from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard of the automatic stay, on multiple occasions, Bestwick and William Scott, on behalf of Highland Funding—in coordination with Covitz and Dondero, as President of Highland Advisor, the newly formed Caymans entity created by Dondero to replace Acis LP as Highland Funding's portfolio manager—directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

1. ***The ALF PMA Transfer and the ALF Share Transfer***

77. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA").

78. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the

Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

> (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] …; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).

79. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

80. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, of which Dondero was President, and which was ultimately owned by Highland Capital.[16]

[16] Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. This same document further shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is also an affiliate of Highland Capital. Notably, Covitz also testified, ". . . HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of

81. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q).

82. The Court has explained:

> On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Involuntary Opinion at 19 (footnotes omitted).

83. Dondero consented and signed the October 2017 PMA on behalf of Acis, William Scott signed the October 2017 PMA on behalf of ALF, and John Cullinane, for Summit Management Limited, signed the October 2017 PMA on behalf of Highland Advisor, of which Dondero is President, and which is ultimately owned by Highland Capital.

84. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor (of which Dondero is President, and which is ultimately owned by Highland Capital)

Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor[.] . . . [T]here's really no differentiation between HCF Advisor and Highland." Dec. 18, 2018 Hr'g Tr. at 61, ll. 5, 11-15; 62, ll. 21-23.

under the October 2017 PMA. On information and belief, William Scott (as a purported independent director of ALF) simply followed Dondero's direction in carrying out the transfer, and Acis received no consideration for the transfer.

85. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor (again, from the right pocket to the left pocket), Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.[17]

86. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco (another Highland Capital affiliate), entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). Pursuant the ALF Share Transfer, ALF paid Acis LP $991,180.13 for all of its shares of ALF.

87. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Dondero, in coordination with other Defendants, including William Scott, Waterhouse, and Grant Scott, forced Acis LP to give up all of its shares of ALF, depriving Acis LP of its voting rights and any and all control of ALF.

88. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,[18] Highland Advisor, and CLO Holdco entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share

[17] After the ALF PMA Transfer, at Dondero's direction, Highland Funding and Highland Advisor issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices were withdrawn and/or enjoined by this Court.

[18] ALF had changed its name to Highland Funding at this point.

Transfer were concocted by Dondero and other Defendants, including William Scott, to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.[19]

2. *The Note Transfer*

89. On November 3, 2017, at Dondero's direction, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). The Note Assignment and Transfer Agreement, among other things, transferred the $9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). The Court noted in the Involuntary Opinion:

> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.
>
> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to $2 million of future legal expenses and up to $1 million of future accounting/administrative expenses.

Involuntary Opinion at 20. As the Court notes, yet again, Dondero signed the agreement on behalf of both Acis and Highland Capital.

[19] Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring $150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and … bring the total capital to up to around $325 million." The Arbitration Award was issued against Acis LP exactly two weeks later. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, including Covitz (either individually or via their retirement investment vehicles), as well as Highland Capital itself, received Highland Funding securities in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

90. Acis LP received no or insufficient consideration for the Note Transfer.

91. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of Dondero and the Highlands. Just as importantly to Dondero, and in furtherance of his ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

92. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.[20] Again, Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Dondero's intent to use the Highlands to steal Acis LP's valuable going-concern business.

[20] Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, as part of the scheme to transfer Acis LP's assets away from it, Dondero, in coordination with the other Defendants, slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

3. *The Acis CLO 2017-7 Transfers*

93. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)[21] entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed through Acis. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

94. As is common course for Dondero, he signed the 2017-7 Assignment and Transfer Agreement on behalf of Acis as well as on behalf of Acis CLO Management and other of its affiliates.

95. At Dondero's direction, the 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also,

[21] Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

96. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Dondero/Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Dondero/Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

97. As the Court noted in the Involuntary Opinion:

> On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).
>
> In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of $5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a $2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Involuntary Opinion at 20-21.

98. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a $2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services

Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as those related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the $2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

99. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption*

100. Dondero and certain other of the Defendants did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Dondero/Highland Capital, in coordination with certain other Defendants, conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").[22] Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment

[22] The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

management agreement from Acis LP to another Highland-affiliated manager."[23] Immediately after Leventon sought (and presumably received) advice from Acis's own counsel, on information and belief, Sevilla and/or Covitz reached out to Universal and BVK to solicit their participation in Dondero's scheme. In fact, on information and belief, BVK acknowledged in its very first email with Covitz after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

101. Over the several weeks leading up to this Court's ruling on the Orders for Relief, on information and belief, Covitz and Sevilla (on behalf of Highland Capital) and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, on information and belief, Covitz explained that Highland Capital would volunteer to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the communications did not stop. Dondero/Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

[23] Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer).

102. Finally, Highland Advisor (controlled by Dondero, its President) and its sub-manager, Highland Capital (also controlled by Dondero), used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy Acis and its CLOs, as further described below.

5. *The Attempted Reset of CLO-3 and Fraudulent Transfer of Acis's Portfolio Management Rights*

103. Prior to the Petition Date, Highland Capital, at the direction of Dondero, sought to fraudulently transfer the management of CLO-3 from Acis LP to Highland Management, on or before February 1, 2018. According to the offering circular for the reset transaction, further described below, Highland Management is an affiliate of Highland Capital, and "Portfolio Manager [Highland Management] expects to be treated as a 'majority-owned affiliate" of Highland [Capital]."

104. In the Involuntary Opinion, after describing series of prior transfers and transactions carried out by the Highlands, at Dondero's direction, the Court summarized the attempted reset of CLO-3 as follows:

> With all of the above maneuvering having been accomplished, Highland [Capital] was posed to do a reset on Acis CLO 2014-3 in February 2018 (until Mr. Terry filed the Involuntary Petitions). The investment bank Mizuho Securities USA, LLC was engaged November 15, 2017 and a final offering circular was issued in January 2018—contemplating a reset of Acis CLO 20[]14-3 with the recently created Highland CLO Management Ltd. [i]dentified as the new portfolio manager, rather than Acis LP. The act of implementing a reset on the CLO was not in itself suspect. However, the reset would, of course, have the effect of depriving Acis LP from a valuable asset—an agreement that could realistically be expected to provide millions of dollars of future collateral management fees—coincidentally (or not) just after Mr. Terry obtained his large judgment.

Involuntary Opinion at 22-23.

105. This attempted "reset" was initiated by a notice of optional redemption, dated January 9, 2018, sent by Highland Funding and signed by Dondero, as President of Highland

Advisor, in its capacity as Portfolio Manager of Highland Funding. The "reset" sought to change certain terms of CLO-3, but also remove Acis as portfolio manager (and thereby remove the associated income from Acis) and replace Acis with Highland Management, a different Highland Capital affiliate. Although Ellington testified at length about the purported reasons for the CLO-3 "reset" transaction, this was just another piece of Dondero's continuing scheme to strip Acis of its assets.

106. Ultimately, the CLO-3 "reset" transaction and the transfer of the valuable CLO-3 management agreement away from Acis was halted by the filing of the involuntary petitions and this Court's imposition of section 363 of the Bankruptcy Code during the "gap period," the time after the involuntary petitions were filed, but before the order for relief. See Case No. 18-30264, Docket No. 29 & Case No. 18-30265, Docket No. 31.

6. ***The First Optional Redemption Notices***

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").[24] William Scott and Bestwick, as Directors of Highland Funding, signed the First Optional Redemptions and caused their transmittal to Acis LP. Upon information and belief, Dondero and Covitz advised and coordinated with William Scott and Bestwick with respect to demanding these optional redemptions.

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral

[24] Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like Highland Funding, Nexpoint is an affiliate of Highland Capital.

Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

109. Upon information and belief, Covitz, on behalf of Highland Capital, identified many of the Collateral Obligations (loans) to be sold into its Highland-managed TRS warehouse to facilitate its own new CLOs.

110. Soon after Highland Funding sent the First Optional Redemption Notices, on May 7, 2018, by letter to Diane Reed, Chapter 7 Trustee (prior to the appointment of the Trustee) and Peter Huber, Director of Neutra, Ltd, as sole member of Acis GP, Dondero resigned as President of Acis GP, and Waterhouse resigned as Treasurer of Acis GP.

111. After being appointed on May 14, 2018, the Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). In the Redemption Responses, the Trustee also warned that the First Optional Redemption Notices violated the automatic stay under section 362(a)(3) of the Bankruptcy Code.

7. *The Temporary Restraining Order Against the Highlands and Their Agents*

112. On May 30, 2018, Highland Capital and Highland Funding initiated the Highland Adversary and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

113. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

114. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

115. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO), including Highland Capital, Highland Funding, and their officers, agents, and any other person acting on their behalf, were enjoined until 12:01 a.m. on June 15, 2018, from:

a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and

b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

116. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

117. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to

Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital and its agents, including certain Defendants, apparently violated the TRO by initiating approximately $23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

8. *The Second Optional Redemption Notices*

118. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding's counsel advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

119. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

> That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.[25]

120. On June 15, 2018, at 12:01 a.m., the TRO expired.

121. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional

[25] *See* Case No. 18-30264, Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). William Scott, as a Director of Highland Funding, signed the Second Optional Redemptions and he and/or Bestwick caused their transmittal to Acis LP.[26] Upon information and belief, Dondero and Covitz again advised and coordinated with William Scott and Bestwick with respect to demanding these optional redemptions.

122. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

> to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

123. On June 20, 2018, David Owens, an employee of Highland Capital (who, on information and belief, was directed by Covitz and/or Sevilla) presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. Upon information and belief, many of these loans were designated to be sold into the Highland-managed TRS warehouse to facilitate its own future CLO issuance. In its correspondence to the Trustee regarding such proposed trades, Leventon, on behalf of Highland Capital, further stated:

> **In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline")**. The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.
> **Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.**[27]

[26] The optional redemption notice for CLO-1 was also signed by Dondero on behalf of NexPoint Stategic Opportunities Fund.

[27] Emphasis in original email correspondence.

VII. CAUSES OF ACTION

Count 1: Breach of Fiduciary Duty Against Dondero, as President of Acis GP

124. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

125. Dondero served as President of Acis GP until May 7, 2018. He was also the sole member of Acis GP until December 19, 2017. As an officer and sole member of Acis GP, Dondero owed fiduciary duties to Acis LP, its limited partners, and its creditors. *See In re USACafes, L.P. Litigation*, 600 A.2d 43, 48-49 (Del. Ch. 1991) (holding that directors of a corporate general partner in a limited partnership owe fiduciary duties to the partnership and its limited partners); *Wallace v. Wood*, 752 A.2d 1175, 1180-82 (Del. Ch. 1999) (applying the holding in *USACafes* to the officers of the general partner in a limited partnership); *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 662 (Del. Ch. 2012) (applying the holding in *USACafes* to the members of an LLC, where the LLC is the general partner in a limited partnership); *North Am. Catholic Educ. Programing Found., Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007) (fiduciary duties include creditors when the entity being managed is insolvent)*; In re Performance Nutrition, Inc*., 239 B.R. 93, 111-12 (Bankr. N.D. Tex. 1999) (managers of a bankruptcy debtor owe broad-ranging fiduciary duties).[28]

126. As described in detail above, while President of Acis GP and also President/Chief Executive of Highland Capital, Dondero, in coordination with the other Defendants, masterminded and directed numerous actions that were incredibly detrimental and potentially fatal to Acis, while benefitting the Highlands, including the series of fraudulent transfers and other fraudulent schemes in order to denude Acis of its assets and transfer Acis's valuable business to the Highlands. Such actions masterminded and directed by Dondero, while an officer

[28] To the extent Texas law applies, Texas law imposes the same fiduciary obligations on the president of a corporate general partner to the partnership, when the president is in a position of control over the partnership by virtue of his control over the partnership's general partner. *See McBeth v. Carpenter*, 565 F.3d 171, 177-78 (5th Cir. 2009).

of Acis GP, include: (i) payment of the *ultra vires* Expense Overpayments to Highland Capital; (ii) the various modifications to the Sub Agreements; (iii) diverting a portion of Acis's Performance Allocation to CLO Holdco upon the wind-up of CLO Value Fund; (iv) the ALF PMA Transfer; (v) the ALF Share Transfer; (vi) the Note Transfer; (vii) transfer of the 2017-7 Equity and 2017-Agreements; (viii) the thwarted Universal/BVK Agreement transfer; (xi) the attempted reset of CLO-3 in February 2018; and (x) the First Option Redemption Notices.

127. To carry out these actions, Dondero signed the vast majority of agreements and/or documents on behalf of Acis to effectuate the foregoing transactions. And, as was his modus operandi, Dondero signed many of the same agreements on behalf of Highland Capital or one of its affiliates—demonstrating Dondero's flagrant conflict of interest and self-dealing.

128. By the foregoing actions, Dondero specifically intended to cause harm to Acis LP by denuding it of its assets and enriching the Highlands. In doing so, Dondero, as an officer of Acis GP, breached his fiduciary duties to Acis LP.

129. As a consequence, the Plaintiffs are entitled to an award of punitive damages against Dondero in an amount to be determined by the Court.

Count 2: Breach of Fiduciary Duty Against Dondero, as President of Highland Capital, Sub-Advisor to Acis

130. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

131. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, and pursuant to the Sub-Advisory Agreement, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and

investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Thus, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

132. Dondero controlled the investment decisions of Highland Capital, as sub-advisor to Acis LP, and therefore acted as an investment adviser representative of Highland Capital. Dondero also was an access person of Highland Capital, pursuant to the Investment Advisers Act. Accordingly, as an access person and investment adviser representative of Highland Capital, Dondero shared in the fiduciary duties owed by Highland Capital to Acis LP.

133. While sharing in the fiduciary duties owed by Highland Capital, as sub-advisor to Acis LP, Dondero directed the numerous actions against Acis, specified above in Count 1, each constituting a breach of fiduciary duty to Acis. After May 7, 2018, Dondero continued to direct the actions of the Highlands against Acis, which actions also constitute breaches of fiduciary to Acis. Such additional actions include directing: (i) the Second Optional Redemption Notices; and (ii) the mismanagement of the CLOs during the Bankruptcy Cases, particularly by directing Highland Capital to only sell loans and not purchase loans for the CLOs, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP.

134. By the foregoing actions, Dondero specifically intended to cause harm to Acis LP by denuding it of its assets and enriching the Highlands. In doing so, Dondero, as a control person and investment adviser representative of Highland Capital, in its capacity as sub-advisor to Acis, breached his fiduciary duties to Acis LP.

135. As a consequence, the Plaintiffs are entitled to an award of punitive damages against Dondero in an amount to be determined by the Court.

Count 3: Alter Ego as to Dondero[29]

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "Delaware law permits a court to pierce the corporate veil of a company where there is fraud or where it is in fact a mere instrumentality of its owner." *Official Unsecured Creditors' Comm. of Broadstripe, LLC v. Highland Capital Mgmt., L.P. (In re Broadstripe, LLC)*, 444 B.R. 51, 102 (Bankr. D. Del. 2010) (citing *Geyer v. Ingersoll Publ'ns Co.*, 621 A.2d 784, 793 (Del. Ch. 1992)).[30]

138. As previously found by this Court, the actions of Highland Capital and its affiliates were controlled by Dondero. As described in detail herein, Dondero masterminded and directed Highland Capital and its affiliates to commit the series of fraudulent transfers and other fraudulent schemes in order to denude Acis of its assets and transfer Acis's valuable business to the Highlands. Dondero controlled and used each of the Highlands to carry out this fraud against Acis, and each of the Highlands was a mere instrumentality of Dondero.

139. Accordingly, Dondero is an alter ego of each of the Highlands, and Dondero should therefore be held liable for any actions of the Highlands pleaded herein or in the Highland Adversary.

Count 4: Breach of Fiduciary Duty Against Waterhouse, as Treasurer of Acis GP

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. Waterhouse served as Treasurer of Acis GP until May 7, 2018. As an officer of Acis GP, Waterhouse owed fiduciary duties to Acis LP, its limited partners, and its creditors. *See In re USACafes, L.P. Litigation*, 600 A.2d 43, 48-49 (Del. Ch. 1991) (holding that directors of a

[29] To the extent appropriate, Plaintiffs' alternatively plead alter ego as a remedy herein.

[30] To the extent Texas law applies to the alter ego claims, Texas similarly recognizes alter ego "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp*., 275 S.W.3d 444, 451 (Tex. 2008).

corporate general partner in a limited partnership owe fiduciary duties to the partnership and its limited partners); *Wallace v. Wood*, 752 A.2d 1175, 1180-82 (Del. Ch. 1999) (applying the holding in *USACafes* to the officers of the general partner in a limited partnership); *North Am. Catholic Educ. Programing Found., Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007) (fiduciary duties include creditors when the entity being managed is insolvent)*; In re Performance Nutrition, Inc*., 239 B.R. 93, 111-12 (Bankr. N.D. Tex. 1999) (managers of a bankruptcy debtor owe broad-ranging fiduciary duties).[31]

142. As described in detail above, while Treasurer of Acis GP, Waterhouse in coordination with Dondero and the other Defendants, participated in numerous actions that were incredibly detrimental and potentially fatal to Acis, while benefitting the Highlands, including the series of fraudulent transfers and other fraudulent schemes in order to denude Acis of its assets and transfer Acis's valuable business to the Highlands. Such actions include: (i) payment of the *ultra vires* Expense Overpayments to Highland Capital; (ii) the various modifications to the Sub Agreements; (iii) diverting a portion of Acis's Performance Allocation to CLO Holdco upon the wind-up of CLO Value Fund; (iv) the ALF PMA Transfer; (v) the ALF Share Transfer; (vi) the Note Transfer; (vii) transfer of the 2017-7 Equity and 2017-Agreements; (viii) the thwarted Universal/BVK Agreement transfer; (ix) the attempted reset of CLO-3 in February 2018; and (x) the First Option Redemption Notices.

143. By participating in the foregoing actions, Waterhouse specifically intended to cause harm to Acis LP by denuding it of its assets and enriching the Highlands. In doing so, Waterhouse, as an officer of Acis GP, breached his fiduciary duties to Acis LP. Like Dondero,

[31] To the extent Texas law applies to the alter ego claims, Texas similarly recognizes alter ego "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp*., 275 S.W.3d 444, 451 (Tex. 2008).

Waterhouse committed these acts while both an officer of Acis GP and an officer of Highland Capital—also demonstrating Waterhouse's flagrant conflict of interest and self-dealing.

144. As a consequence, the Plaintiffs are entitled to an award of punitive damages against Waterhouse in an amount to be determined by the Court.

Count 5: Aiding & Abetting Breach of Fiduciary Duty by Dondero Against Waterhouse, Covitz, Ellington, Leventon, Sevilla, Surgent

145. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

146. Under Delaware law, to prevail on a claim for aiding and abetting a breach of fiduciary duty, the claimant must show: (1) the existence of a fiduciary relationship; (2) proof that the fiduciary breached its duty; (3) proof that a defendant knowingly participated in the fiduciary's breach; and (4) damages to the plaintiff resulting from the concerted action of the fiduciary and the defendant. *Miller v. Greystone Bus. Credit II, L.L.C. (In re USA Detergents, Inc.)*, 418 B.R. 533, 546 (Bankr. D. Del. 2009).[32]

147. As the officers of Acis GP, Dondero and Waterhouse owed fiduciary duties to the partnership, its limited partners and its creditors.

148. As explained above, Dondero and/or Waterhouse breached their fiduciary duties to Acis LP by directing and participating in the following actions: (i) payment of the *ultra vires* Expense Overpayments to Highland Capital; (ii) the various modifications to the Sub Agreements; (iii) diverting a portion of Acis's Performance Allocation to CLO Holdco upon the wind-up of CLO Value Fund; (iv) the ALF PMA Transfer; (v) the ALF Share Transfer; (vi) the

[32] Alternatively, to the extent Texas law would apply, to establish the claim of knowing participation in breach of fiduciary duty (the Texas corollary to aiding and abetting a breach of fiduciary duty), the claimant must show: "(1) the existence of a fiduciary relationship; (2) that the third party knew of the fiduciary relationship; and (3) that the third party was aware that it was participating in the breach of that fiduciary relationship." *Meadows v. Harford Life Ins. Co.*, 492 F.3d 634, 639 (5th Cir. 2007). "Citing [] Texas cases, the Fifth Circuit has recognized a cause of action for knowing participation in breach of fiduciary duty with elements that are almost identical to Delaware's cause of action for aiding and abetting." *Milligan v. Salamone (In re Westech Capital Corp.)*, 2018 WL 1605171, 2018 Bankr. LEXIS 969, at *21 n.119 (Bankr. W.D. Tex. Mar. 29, 2018) (citing *Meadows*).

Note Transfer; (vii) transfer of the 2017-7 Equity and 2017-Agreements; (viii) the thwarted Universal/BVK Agreement transfer; (ix) the attempted reset of CLO-3 in February 2018; (x) the First Option Redemption Notices; (xi) the Second Optional Redemption Notices; and (xii) the mismanagement of the CLOs during the Bankruptcy Cases, particularly by directing Highland Capital to only sell loans and not purchase loans for the CLOs, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP.

149. On information and belief, as part of the pattern, practice, and routine in conducting the affairs of Highland Capital, Dondero consulted and coordinated with Waterhouse, Covitz, Ellington, Leventon, Sevilla, Surgent. Accordingly, on information and belief, to carry out the foregoing actions, Waterhouse, Covitz, Ellington, Leventon, Sevilla, and Surgent knowingly participated in Dondero's numerous breaches of fiduciary duty against Acis.

150. Acis suffered significant damages as a proximate result of such concerted actions of Dondero, Waterhouse, Covitz, Ellington, Leventon, Sevilla, and Surgent, including those to transfer Acis's sundry valuable assets to the Highlands, in an effort to destroy Acis.

151. Acis therefore seeks actual and exemplary damages against Waterhouse, Covitz, Ellington, Leventon, Sevilla, and Surgent for aiding and abetting Dondero's numerous breaches of fiduciary duties to Acis LP, its limited partners, and its creditors.

Count 6: Aiding & Abetting Breach of Fiduciary Duty Against Grant Scott

152. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

153. Under Delaware law, to prevail on a claim for aiding and abetting a breach of fiduciary duty, the claimant must show: (1) the existence of a fiduciary relationship; (2) proof that the fiduciary breached its duty; (3) proof that a defendant knowingly participated in the fiduciary's breach; and (4) damages to the plaintiff resulting from the concerted action of the

fiduciary and the defendant. *Miller v. Greystone Bus. Credit II, L.L.C. (In re USA Detergents, Inc.)*, 418 B.R. 533, 546 (Bankr. D. Del. 2009).[33]

154. As the officers of Acis GP, Dondero and Waterhouse owed fiduciary duties to the partnership, its limited partners and its creditors.

155. As explained above, Dondero and/or Waterhouse breached their fiduciary duties to Acis LP by directing and participating in the ALF Share Transfer, among many other actions.

156. Grant Scott coordinated with Dondero and/or Waterhouse to carry out the ALF Share Transfer. Accordingly, Grant Scott knowingly participated in Dondero's and/or Waterhouse's breaches of fiduciary duty against Acis in connection with the ALF Share Transfer.

157. Acis suffered damages as a proximate result of such concerted actions of Grant Scott and Dondero and/or Waterhouse, which were part of Defendants' efforts to destroy Acis.

158. Acis therefore seeks actual and exemplary damages against Grant Scott for aiding and abetting Dondero's and/or Waterhouse's breaches of fiduciary duties to Acis LP, its limited partners, and its creditors, in connection with the ALF Share Transfer.

Count 7: Aiding & Abetting Breach of Fiduciary Duty Against William Scott and Bestwick

159. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

160. Under Delaware law, to prevail on a claim for aiding and abetting a breach of fiduciary duty, the claimant must show: (1) the existence of a fiduciary relationship; (2) proof that the fiduciary breached its duty; (3) proof that a defendant knowingly participated in the

[33] Alternatively, to the extent Texas law would apply, to establish the claim of knowing participation in breach of fiduciary duty (the Texas corollary to aiding and abetting a breach of fiduciary duty), the claimant must show: "(1) the existence of a fiduciary relationship; (2) that the third party knew of the fiduciary relationship; and (3) that the third party was aware that it was participating in the breach of that fiduciary relationship." *Meadows v. Harford Life Ins. Co.*, 492 F.3d 634, 639 (5th Cir. 2007). "Citing [] Texas cases, the Fifth Circuit has recognized a cause of action for knowing participation in breach of fiduciary duty with elements that are almost identical to Delaware's cause of action for aiding and abetting." *Milligan v. Salamone (In re Westech Capital Corp.)*, 2018 WL 1605171, 2018 Bankr. LEXIS 969, at *21 n.119 (Bankr. W.D. Tex. Mar. 29, 2018) (citing *Meadows*).

fiduciary's breach; and (4) damages to the plaintiff resulting from the concerted action of the fiduciary and the defendant. *Miller v. Greystone Bus. Credit II, L.L.C. (In re USA Detergents, Inc.)*, 418 B.R. 533, 546 (Bankr. D. Del. 2009).[34]

161. As the officers of Acis GP, Dondero and Waterhouse owed fiduciary duties to the partnership, its limited partners and its creditors.

162. As explained above, Dondero and/or Waterhouse breached their fiduciary duties to Acis LP by directing and participating in the following actions, among others: (i) the ALF PMA Transfer; (ii) the ALF Share Transfer; (iii) the attempted reset of CLO-3 in February 2018; (iv) the First Option Redemption Notices; and (v) the Second Optional Redemption Notices.

163. William Scott and Bestwick coordinated with Dondero and/or Waterhouse to carry out the foregoing actions. Accordingly, William Scott and Bestwick knowingly participated in Dondero's and/or Waterhouse's breaches of fiduciary duty against Acis in connection with such actions.

164. Acis suffered damages as a proximate result of such concerted actions of William Scott, Bestwick and Dondero and/or Waterhouse, which were part of Defendants' efforts to destroy Acis.

165. Acis therefore seeks actual and exemplary damages against William Scott and Bestwick for aiding and abetting Dondero's and/or Waterhouse's breaches of fiduciary duties to Acis LP, its limited partners, and its creditors.

[34] Alternatively, to the extent Texas law would apply, to establish the claim of knowing participation in breach of fiduciary duty (the Texas corollary to aiding and abetting a breach of fiduciary duty), the claimant must show: "(1) the existence of a fiduciary relationship; (2) that the third party knew of the fiduciary relationship; and (3) that the third party was aware that it was participating in the breach of that fiduciary relationship." *Meadows v. Harford Life Ins. Co.*, 492 F.3d 634, 639 (5th Cir. 2007). "Citing [] Texas cases, the Fifth Circuit has recognized a cause of action for knowing participation in breach of fiduciary duty with elements that are almost identical to Delaware's cause of action for aiding and abetting." *Milligan v. Salamone (In re Westech Capital Corp.)*, 2018 WL 1605171, 2018 Bankr. LEXIS 969, at *21 n.119 (Bankr. W.D. Tex. Mar. 29, 2018) (citing *Meadows*).

Count 8: Willful Violation of the Automatic Stay Against Dondero, Covitz, Leventon, William Scott, Bestwick

166. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

167. A willful violation of the automatic stay does not require a specific intent.

> Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

Campbell v. Countrywide Home Loan, Inc., 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

168. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut),* 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

169. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under section 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

170. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their

jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc*., 495 U.S. 545, 549 (1990).

171. Dondero, Covitz, Leventon, Bestwick, and William Scott knew the automatic stay was in effect when they intentionally acted on behalf of Highland Capital and Highland Funding, without Court approval, to force the Trustee to effectuate the optional redemptions, including when Leventon demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

172. Dondero, Covtiz, Leventon, Bestwick, and William Scott knew the automatic stay was in effect when they intentionally acted on behalf of Highland Capital and Highland Funding, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when the Optional Redemption Notices were sent.

173. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Defendants' violations of the automatic stay. Further, given these blatant and willful violation of the automatic stay (as well as the TRO), Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

Count 9: Turnover of Property of the Estate under 11 U.S.C. § 542(a) Against CLO Holdco for Acis LP's Performance Allocation

174. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

175. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the

value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

176. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

177. Upon the wind-up of CLO Value Fund, Acis LP was owed at least $678,159 for its Performance Allocation; however, Dondero caused at least $332,284 of Acis LP's Performance Allocation to be diverted from the Master Fund to CLO Holdco.

178. The property, or value of such property, wrongfully transferred to CLO Holdco, totaling at least $332,284, in CLO Holdco's possession, custody, or control, was property of the estate, and the value of such property was not of inconsequential value or benefit to the estate.[35]

179. Pursuant to section 542(a) of the Bankruptcy Code, CLO Holdco must deliver to the Acis the property or value of such property, totaling at least $332,284, wrongfully transferred to CLO Holdco.

180. Therefore, Acis, now vested with all claims of the Trustee, seeks turnover of Performance Allocation, totaling at least $332,284, transferred to CLO Holdco, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

Count 10: Money Had and Received Against CLO Holdco for Acis LP's Performance Allocation

181. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

182. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the

[35] Although the bankruptcy estate ceased to exist after the Effective Date, Acis has standing to bring this claim because the Plan specifically and unequivocally provided for retaining and enforcing turnover claims against CLO Holdco. *See* Plan, Ex. "A" ¶¶ 2, 7; *In re Crescent Res., LLC*, 455 B.R. 115, 129-30 (Bankr. W.D. Tex. 2011).

justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

183. Upon the wind-up of CLO Value Fund, Dondero diverted at least $332,284 of the Performance Allocation, which was due and owing to Acis LP, from the Master Fund to CLO Holdco. This money rightfully belongs to Acis LP, and by receipt of such money, CLO Holdco was unjustly enriched in the amount at least $332,284. Therefore, the Plaintiffs are entitled to damages against CLO Holdco in the amount of at least $332,284.

Count 11: Punitive Damages

184. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

185. Dondero masterminded and directed, in coordination with the other Defendants, the fraudulent scheme described herein against Acis and its creditors, and acted with malice toward Acis and its creditors.

186. Further, Plaintiffs are entitled to punitive damages in connection with Dondero's and Waterhouse's breaches of fiduciary duty to Acis described herein. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019).

187. Thus, the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

Count 12: Attorneys' Fees and Costs,
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases

188. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

189. To the extent permitted under applicable law, Plaintiffs seek attorneys' fees and costs incurred in bringing this Adversary Proceeding. Plaintiffs further seek recovery from Defendants of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were

losses to Acis resulting from Dondero's and/or Waterhouse's breaches of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment against Dondero, as an officer and member of Acis GP, for breach of fiduciary duty;

(ii) enter judgment against Dondero, as an officer, access person, and investment adviser representative of Highland Capital, pursuant to the Sub-Advisory Agreement, for breach of fiduciary duty;

(iii) find that Dondero is the alter ego of Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management, and that Dondero is therefore liable for the actions of Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management, as pleaded herein and in the Highland Adversary;

(iv) enter judgment against Waterhouse, as an officer of Acis GP, for breach of fiduciary duty;

(v) enter judgment against Waterhouse, Ellington, Covitz, Leventon, Sevilla, and Surgent for aiding and abetting breach of fiduciary duty by Dondero and/or Waterhouse in connection with each applicable action pleaded herein which caused damages to Acis;

(vi) enter judgment against Grant Scott for aiding and abetting breach of fiduciary duty by Dondero and/or Waterhouse in connection with the ALF Share Transfer;

(vii) enter judgment against William Scott and Bestwick for aiding and abetting breach of fiduciary duty by Dondero and/or Waterhouse in connection with the (i) the ALF PMA Transfer; (ii) the ALF Share Transfer; (iii) the attempted reset of CLO-3 in February 2018; (iv) the First Option Redemption Notices; and (v) the Second Optional Redemption Notices;

(vii) enter judgment against Dondero, Covitz, Leventon, Bestwick, and William Scott for willful violation of the automatic stay, pursuant to 11 U.S.C. § 362(k);

(ix) enter judgment against CLO Holdco for turnover, pursuant to 11 U.S.C. § 542(a), of a portion of Acis LP's Performance Allocation, in the amount of $332,284, for services Acis LP provided to CLO Value Fund;

(x) enter judgment against CLO Holdco for money had and received for a portion of Acis LP's Performance Allocation, in the amount of $332,284, for services Acis LP provided to CLO Value Fund;

(xi) enter judgment against Defendants for punitive damages, as the Court finds appropriate;

(xii) enter judgment against Defendants for pre- and post-judgment interest at the greatest amount permitted by law;

(xiii) enter judgment against Defendants for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases, as the Court finds appropriate; and

(xiv) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: April 11, 2020.

Respectfully submitted,

By: */s/Rakhee V. Patel*

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2020, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Jason A. Enright
One of Counsel

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ATTORNEYS FOR HIGHLAND CLO FUNDING, LTD., CLO HOLDCO, LTD., AND NEUTRA, LTD.

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

IN RE:	§	
	§	CASE NO. 18-30264-7
ACIS CAPITAL MANAGEMENT, L.P.,	§	CHAPTER 7
	§	(INVOLUNTARY)
Debtor.	§	

NOTICE OF APPEARANCE

Highland CLO Funding, Ltd., CLO Holdco, Ltd., and Neutra, Ltd. ("**Interested Parties**"), parties-in-interest in the above-referenced matter, request that the following attorneys receive pleadings and other papers filed in the instant matter:

Daniel P. Elms
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Heather H. Jobe
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The Interested Parties respectfully request that the Court's Clerk ensure that henceforth copies of all orders and notices entered in this matter are forwarded to Mr. Elms, Ms. Jobe, and Mr. Larson.

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 19, 2018, a true and correct copy of the foregoing document was served by electronic submission through the Court's automated Case Management and Electronic Docketing System for the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, on all parties-in-interest submitting to service of papers in this case by said means.

/s/ Scott R. Larson
Scott R. Larson

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ATTORNEYS FOR HIGHLAND CLO FUNDING, LTD., CLO HOLDCO, LTD., AND NEUTRA, LTD.

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

IN RE:	§	
	§	CASE NO. 18-30264-7
ACIS CAPITAL MANAGEMENT, L.P.,	§	CHAPTER 7
	§	(INVOLUNTARY)
Debtor.	§	

NOTICE OF APPEARANCE

Highland CLO Funding, Ltd., CLO Holdco, Ltd., and Neutra, Ltd. ("**Interested Parties**"), parties-in-interest in the above-referenced matter, request that the following attorneys receive pleadings and other papers filed in the instant matter:

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The Interested Parties respectfully request that the Court's Clerk ensure that henceforth copies of all orders and notices entered in this matter are forwarded to Mr. Elms, Ms. Jobe, and Mr. Larson.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 22, 2018, a true and correct copy of the foregoing document was served by electronic submission through the Court's automated Case Management and Electronic Docketing System for the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, on all parties-in-interest submitting to service of papers in this case by said means.

/s/ Scott R. Larson
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Chapter 7**
	§	
ACIS CAPITAL MANAGEMENT, L.P.,	§	**Case No. 18-30264-SGJ7**
	§	
Alleged Debtor.	§	

In re:	§	**Chapter 7**
	§	
ACIS CAPITAL MANAGEMENT, GP, L.L.C.,	§	**Case No. 18-30265-SGJ7**
	§	
Alleged Debtor.	§	

NOTICE OF APPEARANCE AND
REQUEST FOR SERVICE OF PAPERS

PLEASE TAKE NOTICE that Holland N. O'Neil, Jason B. Binford, Shiva D. Beck, Melina N. Bales and the law firm of Foley Gardere, Foley & Lardner LLP, attorneys for Highland CLO Funding, Ltd., CLO Holdco, Ltd. and Neutra, Ltd. (collectively, the "**Equity Holders**"), parties-in-interest in the above-referenced matter, and pursuant to Rules 2002, 3017, and 9010 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 1109(b), request that all notices given or required to be given in this case and all papers served or required to be served in this case be given to and served upon them at the following address:

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Please take further notice that the foregoing request includes notices and papers referred to in the Federal Rules of Bankruptcy Procedure and includes, without limitation, any plans of reorganization, objections, notices of hearings, orders, pleadings, motions, applications, complaints, demands, requests, petitions, disclosure statements, memoranda, briefs and any other documents brought before this Court with respect to these proceedings, whether formal or informal, whether written or oral, whether transmitted or conveyed by mail, hand delivery, telephone, telecopier, telegraph, or telex.

This Notice of Appearance and Request for Notices shall not be deemed or construed to be a waiver of the rights of the Equity Holders (i) to have final orders in non-core matters entered only after de novo review by a District Judge, (ii) to trial by jury in any proceeding so triable in this case or any case, controversy, or proceeding related to this case, (iii) to have a District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, (iv) respecting in personam jurisdiction, or (v) any other rights, claims, actions, setoffs, or recoupments to which the Equity Holders are or may be entitled, in law or in equity, all of which rights, claims, actions, defenses, setoffs, and recoupments are expressly reserved.

Dated: April 18, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appearance and Request for Service of Papers was served electronically by the Court's PACER system on April 18, 2018.

/s/Melina N. Bales
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CHAPTER 11 CASES
ACIS CAPITAL MANAGEMENT, L.P., *et al.*	§	CASE NO. 18-30264-sgj11
	§	(Jointly Administered)
Debtors.	§	

NOTICE OF APPEARANCE AND REQUEST FOR NOTICES

PLEASE TAKE NOTICE that the undersigned counsel for Highland CLO Funding, Ltd. enter this appearance pursuant to 11 U.S.C. § 1109(b) and Rule 9010(b) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), and further requests that all notices, papers, pleadings, motions, and application served, or required to be served, under Bankruptcy Rules 2002, 3017, and 9007, be given and served upon:

Paul R. Bessette
KING & SPALDING LLP
500 West 2nd St., Suite 1800
Austin, TX 78701-4684
(512) 457-2000 (phone)
(512) 457-2100 (fax)
pbessette@kslaw.com

PLEASE TAKE FURTHER NOTICE that the foregoing request includes not only the notices and papers referred to in the Rules specified above, but also includes, without limitation,

orders and notices of any application, motion, petition, pleading, request, complaint or demand, whether informal or formal, whether written or oral, and whether transmitted or conveyed by mail, courier, telephone, facsimile, telegraph, telex, the Court's EM/CMF System or otherwise, that pertain to the above-referenced cases and proceedings therein.

This Notice of Appearance and Request for Notice is without prejudice to Highland CLO Funding, Ltd.'s remedies and claims against any other entities or any objection that may be made. This Notice shall not be deemed or construed to be a waiver of the rights of the undersigned party appearing through counsel: (1) to have final orders in noncore matters entered only after *de novo* review by a United States District Court Judge; (2) to trial by jury in any proceeding so triable in these cases, controversies, or proceeding related to these cases; (3) to have the United States District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal; (4) to have its claims or other rights adjudicated pursuant to any rights of arbitration; or (5) to any other rights, claims, actions, setoffs, or recoupments to which it is or may be entitled under agreements, in law, or in equity, all of which rights, claims, actions defenses, setoffs, and recoupments are hereby expressly reserved. All of the above rights are expressly reserved and preserved including, without exception, and with no purpose of confessing or conceding jurisdiction in any way by this filing or by any other participation in these matters.

Dated June 8, 2018

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul R. Bessette

Paul R. Bessette
Michael J. Biles
Jill R. Carvalho
Rebecca Matsumura
500 West 2nd Street, Suite 1800
Austin, TX 78701-4684
(512) 457-2000 (phone)
(512) 457-2100 (fax)
pbessette@kslaw.com
mbiles@kslaw.com
jcarvalho@kslaw.com
rmatsumura@kslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2018, a true and a correct copy of this document was served via the U.S. Bankruptcy Court for the North District of Texas's ECF system, which gives notice to all counsel of record.

/s/ Paul R. Bessette
Paul R. Bessette

Acis CLO 2013-1 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2013-1 Ltd.
c/o Appleby Trust (Cayman) Ltd.
PO Box 1350
Grand Cayman KY1-1108, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle St., 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – Acis CLO 2013-1
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2013-1 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of March 18, 2013 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2013-1 Ltd. (the "**Issuer**"), Acis CLO 2013-1 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: William Scott
Title: Director

By: _____
Name: Heather Bestwick
Title: Director

NEXPOINT STRATEGIC OPPORTUNITIES FUND (f/k/a NexPoint Credit Strategies Fund)

By: _____

Name: Frank Waterhouse

Title: Treasurer, Principal Accounting Officer and Principal Financial Officer

DREXEL LIMITED

By: _____

Name: S. DUNN G.P. DEAN

Title: For and on behalf of Enmyn Limited
Corporate Director

Acis CLO 2014-3 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-3 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-3 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of February 25, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-3 Ltd. (the "**Issuer**"), Acis CLO 2014-3 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least a Majority of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: William Scott
Title: Director

By: _____
Name: Heather Bestwick
Title: Director

Acis CLO 2014-4 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-4 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-4 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of June 5, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-4 Ltd. (the "**Issuer**"), Acis CLO 2014-4 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: William Scott
Title: Director

By: _____
Name: Heather Bestwick
Title: Director

Acis CLO 2014-5 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-5 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-5 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-5 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of November 18, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-5 Ltd. (the "**Issuer**"), Acis CLO 2014-5 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holderof at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: William Scott
Title: Director

By: _____
Name: Heather Bestwick
Title: Director

Acis CLO 2015-6 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2015-6 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2015-6 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of April 16, 2015 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2015-6 Ltd. (the "**Issuer**"), Acis CLO 2015-6 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: William Scott
Title: Director

By: _____
Name: Heather Bestwick
Title: Director

June 15, 2018

Acis CLO 2013-1 Ltd.
c/o Appleby Trust (Cayman) Ltd.
Clifton House, 75 Fort Street
PO Box 1350, Grand Cayman KYI-1108, Cayman Islands
Attention: The Directors
Facsimile no. (345) 949-4901

U.S. Bank National Association
190 South LaSalle Street, 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – ACIS CLO 2013-1

Acis Capital Management, L.P.
300 Crescent Court
Dallas, TX 75201

Re: Acis CLO 2013-1 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of March 18, 2013 (as amended, modified or supplemented from time to time, the "Indenture"), among Acis CLO 2013-1 Ltd. (the "Issuer"), Acis CLO 2013-1 LLC (the "Co-Issuer") and U.S. Bank National Association (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth or incorporated by reference in the Indenture.

Pursuant to Sections 9.2 and 14.3 of the Indenture, the undersigned Noteholders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

[Signature pages follow.]

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: WILLIAM SCOTT
Title: DIRECTOR

NEXPOINT STRATEGIC OPPORTUNITIES FUND (f/k/a NexPoint Credit Strategies Fund)

By: _____
Name: James Dondero
Title: President and Principal Executive Officer

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By:_____
Name:
Title:

NEXPOINT STRATEGIC OPPORTUNITIES FUND (f/k/a NexPoint Credit Strategies Fund)

By:_____
Name:
Title:

DREXEL LIMITED

By:
Name: OWEN BYRNE SP DEAN, DIRECTORS
Title:
For and on behalf of Enmyn Limited
Corporate Director

June 15, 2018

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman, KY1-1102
Cayman Islands
Telephone: +1 (345) 945-7099
Facsimile: +1 (345) 945-7100

U.S. Bank National Association
190 S. LaSalle Street, 8th Floor
Chicago, IL 60603
Attn: Global Corporate Trust – ACIS CLO 2014-3 Ltd.

Acis Capital Management, L.P.
300 Crescent Court
Dallas, TX 75201

Re: Acis CLO 2014-3 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of February 25, 2014 (as amended, modified or supplemented from time to time, the "Indenture"), among Acis CLO 2014-3 Ltd. (the "Issuer"), Acis CLO 2014-3 LLC (the "Co-Issuer") and U.S. Bank National Association (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth or incorporated by reference in the Indenture.

Pursuant to Sections 9.2 and 14.3 of the Indenture, the undersigned Noteholders of at least a Majority of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

[Signature pages follow.]

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: WILLIAM SCOTT
Title: DIRECTOR

June 15, 2018

Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman, KY1-1102
Cayman Islands
Telephone: +1 (345) 945-7099
Facsimile: +1 (345) 945-7100

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – ACIS CLO 2014-4
Fax: 312-332-8030
Email: ACIS.CLO.2014.04@usbank.com

Acis Capital Management, L.P.
300 Crescent Court
Dallas, TX 75201

Re: Acis CLO 2014-4 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of June 5, 2014 (as amended, modified or supplemented from time to time, the "Indenture"), among Acis CLO 2014-4 Ltd. (the "Issuer"), Acis CLO 2014-4 LLC (the "Co-Issuer") and U.S. Bank National Association (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth or incorporated by reference in the Indenture.

Pursuant to Sections 9.2 and 14.3 of the Indenture, the undersigned Noteholders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

[Signature pages follow.]

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: WILLIAM SCOTT
Title: DIRECTOR

June 15, 2018

Acis CLO 2014-5 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman, KY1-1102
Cayman Islands
Telephone: +1 (345) 945-7099
Facsimile: +1 (345) 945-7100

U.S. Bank National Association
190 South LaSalle Street, 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – ACIS CLO 2014-5
Fax: 312-332-8030
Email: ACIS.CLO.2014.05@usbank.com

Acis Capital Management, L.P.
300 Crescent Court
Dallas, TX 75201

Re: Acis CLO 2014-5 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of November 18, 2014 (as amended, modified or supplemented from time to time, the "Indenture"), among Acis CLO 2014-5 Ltd. (the "Issuer"), Acis CLO 2014-5 LLC (the "Co-Issuer") and U.S. Bank National Association (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth or incorporated by reference in the Indenture.

Pursuant to Sections 9.2 and 14.3 of the Indenture, the undersigned Noteholders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

[Signature pages follow.]

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: WILLIAM SCOTT
Title: DIRECTOR

June 15, 2018

Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman, KY1-1102
Cayman Islands
Telephone: +1 (345) 945-7099
Facsimile: +1 (345) 945-7100

U.S. Bank National Association
190 South LaSalle Street, 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – ACIS CLO 2015-6
Email: ACIS.CLO.2015.06@usbank.com

Acis Capital Management, L.P.
300 Crescent Court
Dallas, TX 75201

Re: Acis CLO 2015-6 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of April 16, 2015 (as amended, modified or supplemented from time to time, the "Indenture"), among Acis CLO 2015-6 Ltd. (the "Issuer"), Acis CLO 2015-6 LLC (the "Co-Issuer") and U.S. Bank National Association (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings set forth or incorporated by reference in the Indenture.

Pursuant to Sections 9.2 and 14.3 of the Indenture, the undersigned Noteholders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

[Signature pages follow.]

Very truly yours,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: _____
Name: WILLIAM SCOTT
Title: DIRECTOR

Holland N. O'Neil (TX 14864700)
Jason B. Binford (TX 24045499)
Shiva D. Beck (TX 24086882)
Melina N. Bales (TX 24106851)
FOLEY GARDERE
FOLEY & LARDNER LLP
2021 McKinney Avenue, Ste. 1600
Dallas, Texas 75201
Telephone: (214) 999.3000
Facsimile: (214) 999.4667
honeil@foley.com

Michael K. Hurst (TX 10316310)
Ben A. Barnes (TX 24092085)
LYNN PINKER COX & HURST, LLP
2100 Ross Avenue, Ste. 2700
Dallas, Texas 75201
Telephone: (214) 981.3800
Facsimile: (214) 981.3839
mhurst@lynnllp.com

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND HIGHLAND CLO FUNDING, LTD

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

In re:	§	
	§	
ACIS CAPITAL MANAGEMENT, L.P. and	§	Case No. 18-30264-SGJ-11
ACIS CAPITAL MANAGEMENT GP, LLC,	§	Case No. 18-30265-SGJ-11
	§	(Jointly Administered Under
Debtors.	§	Case No. 18-30264-SGJ-11)
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLO FUNDING LTD,	§	Adversary No. 18-
Plaintiffs,	§	
v.	§	
ROBIN PHELAN, CHAPTER 11 TRUSTEE,	§	
Defendant.	§	

ORIGINAL COMPLAINT AND REQUEST FOR PRELIMINARY INJUNCTION OF HIGHLAND CLO FUNDING, LTD AND HIGHLAND CAPITAL MANAGEMENT AGAINST CHAPTER 11 TRUSTEE OF ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC

I.
INTRODUCTION

1. Investment advisor Acis Capital Management, L.P. ("**Acis LP**") and its general partner Acis Capital Management GP, LLC ("**Acis GP**") were put into an involuntary bankruptcy by a purported creditor, Josh Terry.[1] Because of the pending involuntary bankruptcy of Acis LP and Acis GP (the "**Debtors**"), certain structured funds (which, in the aggregate, hold assets with an aggregate value of approximately $2 billion) managed by Acis LP were unable to complete reset transactions that would prevent $20 million in lost profits every year to the investors of the funds.

2. Under the funds' governing documents, the investors have the right to have their money returned upon demand. Consequently, to mitigate their on-going losses, the investors have instructed the Indenture Trustee and Acis LP, as the putative portfolio manager of the funds,[2] to sell the funds' assets through a redemption process provided for in the Indenture, and return the investors' money to be invested elsewhere with higher yields. This instruction was issued on April 30, 2018, with a redemption date of June 14, 2018. The Debtors, which are controlled by a Chapter 11 Trustee, have refused to authorize the necessary processes to effectuate a redemption of the funds to allow the return of the investors' money so that the Debtors can "earn" management fees for management services the investors do not want. The investors are suffering daily losses because of the Chapter 11 Trustee's inaction. The structured funds' assets are not the property of the bankruptcy estates nor are they in the possession of the

[1] Mr. Terry received an arbitration award, which was subsequently confirmed by the 44th District Court of Dallas County. The Debtors have moved to appeal the award, but that action was stayed by the filing of the involuntary petitions by Mr. Terry.

[2] Acis LP is a pass-through entity, with no employees and few assets other than some cash and contracts.

Debtors. The Chapter 11 Trustee's/Debtors' improper actions contravene the applicable agreements. The Plaintiffs file this Complaint to protect their interests and urge the Court to promptly enter a preliminary injunction enjoining the Chapter 11 Trustee from interfering with the redemption process and allowing the investors to have their money returned before they incur further losses.

II.
PARTIES

3. Plaintiff Highland CLO Funding, Ltd. (f/k/a Acis Loan Funding, Ltd.) ("**HCLOF**") is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

4. Plaintiff Highland Capital Management, L.P. ("**Highland**") is a Delaware limited partnership with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

5. Defendant is the Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC ("**Chapter 11 Trustee**"). The Chapter 11 Trustee is Robin Phelan, whose principal place of business is located at 4214 Woodfin Drive, Dallas, Texas 75220.

6. Non-Party Acis CLO 2013-1, Ltd. ("**Acis-1**") is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at Clifton House, 75 Fort Street, P.O. Box, 1350, Grand Cayman, KY1-1108, Cayman Islands.

7. Non-Party Acis CLO 2014-3, Ltd. ("**Acis-3**") is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

8. Non-Party Acis CLO 2014-4, Ltd. ("**Acis-4**") is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

9. Non-Party Acis CLO 2014-5, Ltd. ("**Acis-5**") is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

10. Non-Party Acis CLO 2015-6, Ltd. ("**Acis-6**") is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

11. Collectively Non-Parties Acis-1, 3, 4, 5, and 6 are "**the CLOs**."

III.
JURISDICTION AND VENUE

12. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(d) and Rules 7001(2) and 7001(9) of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**").

13. This is a non-core proceeding. The Plaintiffs do not consent to entry of final orders or judgment by the Bankruptcy Court.

14. Venue is proper in this Court under 28 U.S.C. § 1409.

15. The predicates for the relief sought herein are 22 U.S.C. § 2201, 28 U.S.C. § 157(d) and Bankruptcy Rules 3007(b), 5011, 7001(2) and (9), 7003, and 7008.

16. A real and justiciable controversy presently exists between the parties, and speedy relief is necessary to preserve the parties' respective rights.

IV.
FACTS

17. Prior to the 2008 financial crisis, Highland was one of the largest managers of collateralized loan obligations in the world. Collateralized loan obligations are securitized packages of syndicated business loans. After the financial crisis, the securities markets for collateralized loan obligations recovered slowly.

18. To create separation from the Highland brand that had suffered during the financial crisis, Highland created two special purpose entities: (1) Acis LP as an affiliated investment advisor to newly launched post-crisis collateral loan obligations funds; and (2) Acis GP to serve as Acis LP's general partner. Formed in 2011, Acis LP now serves as the putative portfolio manager of the five CLOs launched between 2012 to 2016.

19. Acis LP does not now, nor has it ever had, the employees necessary to provide the services of a portfolio manager. Rather, starting at its inception in 2011, Acis LP signed two agreements with Highland. The first is a Shared Services Agreement[3] for Highland employees to

[3] Ex. 1, Fourth Amended and Restated Shared Services Agreement by and between Acis Capital Management, L.P. and Highland Capital Management, L.P. dated March 17, 2017.

provide Acis LP with back- and middle-office services such as operations, accounting, and legal support. The second agreement is a Sub-Advisory Agreement[4] whereby Highland provides Acis LP with front-office services, namely, the investment management advice necessary to operate the CLOs. Absent these agreements, Acis is unable to perform its obligations to the CLOs.

A. Structure of the Collateralized Loan Obligations

20. Each CLO is a special purpose vehicle that acquires a portfolio of diversified syndicated leveraged loans through the private placement of rated secured notes and unsecured, equity-like securities, providing investors with differentiating risk and reward profiles.

21. The standard collateralized loan obligation fund structure is designed to provide:

a. Credit enhancement through portfolio over-collateralization;

b. Priorities of payments to ensure higher rated securities receive available funds prior to subordinated securities;

c. A reinvestment period in which principal proceeds are used to acquire additional portfolio assets; and

d. Mechanisms to protect investors from portfolio deterioration.

22. In a typical collateralized loan obligation structure, the players are:

a. The CLO fund or "Issuer" – a bankruptcy remote corporate entity with an independent board of directors, that contracts with an Indenture Trustee. The CLO issues the secured and unsecured securities.

b. Indenture Trustee – maintains custody of the CLO funds' assets (the portfolio assets) and cash flows, and accounts and remits available funds to investors on payment dates. The CLO Indenture is a contract between the Issuer and the Indenture Trustee.

c. Portfolio Manager – an entity employed by the CLO to manage the trades of the CLO's portfolio of syndicated leveraged loans in compliance with the

[4] Ex. 2, Third Amended and Restated Sub-Advisory Agreement by and between Acis Capital Management, L.P. and Highland Capital Management, L.P. dated March 17, 2017.

CLO's indenture criteria. The Indenture Trustee approves, reconciles and funds the actual trades as recommended by the portfolio manager.

d. Collateral Administrator – typically employed by the Indenture Trustee to act as the CLOs bookkeeper.

e. Investors –these are the equity holders of the CLO Fund, whose interests are reflected in subordinated notes that receive the residual yields from the CLO's investments, after satisfaction of the fixed obligations.

23. The Indenture is the primary contract that establishes the rights of the investors and the indenture investment criteria. It is a contract solely between the CLO and the Indenture Trustee, in this case US Bank National Association ("**USB**"). Through the Indentures, the CLOs pledged various collateral debt obligations and other assets to USB as security for the secured notes issued by the CLOs.[5]

24. USB also acts as the CLOs' Collateral Administrator pursuant to the Collateral Administration Agreements ("**CMAs**"). The CMAs require USB to perform certain administrative services over the collateral on the CLOs' behalf, including bookkeeping services.[6]

25. The CLOs also engaged Acis LP as their portfolio manager. Through a Portfolio Management Agreement ("**PMA**") for each CLO, Acis LP agreed, among other things, to manage the assets securing the secured notes issued by the CLOs according to the criteria specified in the respective Indentures. Under the PMAs, which are governed by New York law,

[5] Ex. 3A, Acis CLO 2013-1 Ltd Indenture at 1-2; Ex. 3B, Acis CLO 2014-3, Ltd. Indenture at 1-2; Ex. 3C, Acis CLO 2014-4, Ltd. Indenture at 1-2; Ex. 3D, Acis CLO 2014-5, Ltd. Indenture at 1-2; Ex. 3E, Acis CLO 2015-6, Ltd. Indenture at 1-2.

[6] Ex. 4A, Collateral Administration Agreement between Acis CLO 2013-1, Ltd. and US Bank National Association at 1-5; Ex. 4B, Collateral Administration Agreement between Acis CLO 2014-3, Ltd. and US Bank National Association at 1-5; Ex. 4C, Collateral Administration Agreement between Acis CLO 2014-4, Ltd. and US Bank National Association at 1-5; Ex. 4D, Collateral Administration Agreement between Acis CLO 2014-5, Ltd. and US Bank National Association at 1-5; Ex. 4E, Collateral Administration Agreement between Acis CLO 2015-6, Ltd. and US Bank National Association at 1-5.

Acis LP represented that it is, and will act as, an "Investment Adviser" within the meaning of the Investment Advisers Act of 1940, as amended.[7]

26. Under the PMAs, Acis LP earns a management fee, which is approximately 0.4% of the total assets under management, paid quarterly. Currently, Acis LP's management fee amounts to approximately $9 million per year. In turn, it is obligated to pay Highland approximately 90% of its revenue in exchange for performance of the services under the Shared Services and Sub-Advisory Agreements with Highland, leaving Acis LP with net annual revenue of around $900,000 per year.

B. The Economics of the Collateralized Loan Obligations

27. As independent corporate entities, the CLOs issue secured notes ("**Secured Notes**" purchased by "**Secured Noteholders**") and unsecured, equity-like notes ("**Subordinated Notes**" purchased by "**Subordinated Noteholders**"). The CLOs issue the Secured Notes in various tranches at varying rates of interest based on the Secured Noteholders' desired rate of return and risk tolerance. Plaintiff HCLOF purchased the Subordinated Notes for each CLO. Plaintiff HCLOF holds a supermajority of the Aggregate Outstanding Amount of Subordinated Notes for each CLO.[8]

28. The CLOs generate income by loaning capital to third parties and receiving the interest income from those loans. Currently, the CLOs have approximately $2 billion in loans,

[7] Ex. 5A, Portfolio Management Agreement between Acis CLO 2013-1, Ltd. and Acis Capital Management, LP at 4-8, 29; Ex. 5B, Portfolio Management Agreement between Acis CLO 2014-3, Ltd. and Acis Capital Management, LP at 5-8, 31; Ex. 5C, Portfolio Management Agreement between Acis CLO 2014-4, Ltd. and Acis Capital Management, LP at 4-8, 30; Ex. 5D, Portfolio Management Agreement between Acis CLO 2014-5, Ltd. and Acis Capital Management, LP at 5-9, 31; Ex. 5E, at Portfolio Management Agreement between Acis CLO 2015-6, Ltd. and Acis Capital Management, LP 5-9, 31.

[8] There is one exception: HCLOF does not hold a supermajority of the Subordinated Notes for Acis-1, but acted collectively with other Subordinated Noteholders in Acis-1 in relation to the facts stated *infra*.

bonds, and other assets. The CLOs accumulate profits when their portfolio income exceeds their fixed interest obligations to the Secured Noteholders.

29. The Secured Noteholders earn a specified rate of return based on the terms of their notes, and are paid first out of the income received by the CLOs. The Subordinated Noteholders receive what income is left after the Secured Notes are paid. Therefore, the Subordinated Notes only are paid when the CLOs' income exceeds their fixed obligations to the Secured Noteholders. For this reason, the Subordinated Noteholders bear substantially more risk than the Secured Noteholders. As consideration for this risk, the Subordinated Noteholders bargained for the right to, among other things, withdraw their investments under certain conditions specified in the CLOs' Indentures.

30. Pursuant to the terms of the Indentures, the Subordinated Noteholders can redeem the Secured Notes under certain conditions, including "at the written direction of 66 2/3% of the Subordinated Notes."[9] Through this right of redemption, the Subordinated Noteholders have the absolute right to windup the CLOs and get their money back, in their discretion, when the CLOs no longer meet their investment objectives. This is the typical secured financing structure of collateralized loan obligations.

31. Acis LP is not a party to the Indenture, but it must comply with certain aspects of the Indenture in its capacity as the Portfolio Manager of the CLOs. As relevant here, the Indentures require that Acis LP, "[u]pon receipt of a notice of a redemption of the Secured

[9] Acis-1, 4, 5, and 6 require 66 2/3% of Subordinated Noteholders to effectuate an optional redemption. Acis-3 requires only a simple majority.

Notes," to "direct the sale of all or part of the Collateral Obligations and other Assets" to effect redemption.[10]

C. To stop on-going losses, the CLOs' investors directed the CLOs to pursue "resets" prior to the filing of the involuntary bankruptcies

32. The amount of money paid to the Subordinated Noteholders in a given quarter will depend on the amount of cash paid *into* the CLO by the borrowers, less the amount that has to be paid *out* to the CLO's Secured Noteholders for that quarter. When loan interest rates are high in the market, the borrowers pay more cash into the CLO and the Subordinated Noteholders receive a good return each quarter. The CLOs were created in calendar years 2012 – 2016, when interest rates were higher than they are presently. Given these lower interest rates, borrowers have refinanced their loans to lower interest rates.[11] As a result, the borrowers pay less into the CLOs each quarter than the prior quarter. This is what is currently happening with the CLOs.

33. Importantly, as structured, the amounts owed to the Secured Noteholders are basically fixed and do not change with interest rates. Therefore, as interest rates fall, there is less, and potentially no money left for the Subordinated Noteholders at the end of each quarter. The CLO industry has solved this problem through the process of refinancing currently-existing collateral loan obligations, called a "reset." Once refinanced, the reset CLO will pay lower interest rates to the CLO's Secured Noteholders and, thus, maintaining or improving the yield to

[10] Ex. 3A, at 164; Ex. 3B, at 168; Ex. 3C, at 159; Ex. 3D, at 157; Ex. 3E, at 152.

[11] This is no different than a homeowner taking advantage of lower interest rates to refinance their home, which would result in the lender receiving reduced interest payments.

the Subordinated Noteholders. As loan interest rates fall, a CLO must reset or its Subordinated Noteholders will receive declining or no return on their investment.[12]

34. Just like many other CLO investors, by the spring of 2017, the Subordinated Noteholders—Plaintiff HCLOF—had suffered significantly reduced returns. Therefore, HCLOF directed the CLOs to undergo reset transactions to refinance their Secured Notes to reduce the fixed payments required to be made to the Secured Noteholders.

35. Specifically, with respect to CLO-3, Highland determined that CLO-3 would increase its net income payable to the Subordinated Noteholders by over $1 million *every quarter* by refinancing its fixed debt obligations. Highland projected similar increased payments for the CLO-1, 4, 5, and 6. At $1 million per CLO per quarter, the "resets" stood to increase the CLOs' aggregate net income by $20 million per year. Because the CLOs' annual net income has been decreasing due to the interest rates over the past year, these increased annual payments would be closer to those received by the Subordinated Noteholders when they originally purchased their notes, rather than the reduced payments created by today's interest rate environment.

36. The CLOs hired an investment bank, Mizuho, in November 2017, to complete the reset transactions. The same month, Highland and Mizuho identified an equity investor with sufficient capital to allow the CLOs to reset. The CLOs were scheduled to reset in the following order: CLO-3, then 4, then 5, then 1 and 6. Once investors were located for one reset and it was completed, the next reset would begin. Each transaction was expected to take between three and six weeks to complete.

[12] Last year, 125 CLOs reissued for a total of $62 billion, and in 2018 at least 19 more CLOs reset for a total of $10 billion in transactions. *See* Ex. 6, January 29, 2018 CLO Weekly New Issue Data Sheet provided by JP Morgan.

37. By January 2018, Highland had identified sufficient third-party investors to effectuate a reset of CLO-3 on February 1. Although Highland had trade commitments and was otherwise ready to complete the reset transaction, the transaction never closed. At midnight on January 30, 2018, former Highland employee Joshua Terry ("**Terry**") filed the involuntary bankruptcy petitions against the Debtors, which prevented the CLOs from moving forward with these planned transactions in the markets.

D. Bankruptcy Procedural History

38. On January 30, 2018 (the "**Petition Date**"), Terry filed involuntary petitions (the "**Involuntary Petitions**") for relief under Chapter 7, Title 11 of the United States Code (the "**Bankruptcy Code**") against the Debtors.

39. On January 31, 2018, the Debtors filed the Joint Motion of Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Dismiss Involuntary Petitions and Request for Award of Fees, Costs, and Damages ("**Motion to Dismiss**") [Docket No. 8].

40. The Bankruptcy Court thereafter held a trial over a 7-day time period[13] on the Motion to Dismiss. On April 13, 2018, the Bankruptcy Court entered (i) Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petitions ("**FF&CL**") [Case No. 18-30265, Docket No. 113; Case No. 18-30264, Docket No. 119] and (ii) *Orders for Relief in an Involuntary Case* (the "**Orders for Relief**") [Case No. 18-30265, Docket No. 114; Case No. 18-30264, Docket No. 118].[14]

[13] March 21, 22, 23, 27 and 29, 2018.

[14] On April 23, 2018, Neutra, Ltd, Highland CLO Funding, Ltd., and CLO Holdco, Ltd. appealed the Orders for Relief [Case No. 18-30265, Docket No. 135; Case No. 18-30264, Docket No. 145], which are pending before the United States District Court for the Northern District of Texas.

41. On April 13, 2018, the Bankruptcy Court appointed Diane G. Reed (the "**Chapter 7 Trustee**") as the Chapter 7 Trustee for the Debtors.

42. On April 17, 2018, the Chapter 7 Trustee filed the *Trustee's Expedited Motion to Operate the Debtors' Businesses in Chapter 7* (the "**Operating Motion**") [Docket No. 127]. On April 18, 2018, the Bankruptcy Court entered its *Interim Order Granting Trustee's Expedited Motion to Operate the Debtors' Businesses in Chapter 7* [Docket No. 130], authorizing the Chapter 7 Trustee to temporarily operate the Debtors' businesses.

43. On April 19, 2018, the Bankruptcy Court entered an Order Directing Joint Administration of the Debtors' bankruptcy cases [Docket No. 137].

44. On April 23, 2018, the Bankruptcy Court held a hearing on the Operating Motion, and on May 6, 2018 the Bankruptcy Court granted the Operating Motion [Docket No. 178]. The Chapter 7 Trustee thereafter proceeded to operate the Debtors in the ordinary course of business, yet failed to effectuate the resets of the CLOs.

45. After only a couple of weeks of operating the Debtors, on May 04, 2018, the Chapter 7 Trustee filed an *Expedited Motion to Convert Cases to Chapter 11* [Doc. No. 171] (the "**Motion to Convert**"). Also on May 4, 2018, Terry filed an *Emergency Motion for an Order Appointing Trustee for the Chapter 11 Estates of Acis Capital Management, L.P. and Acis Capital Management GP, LLC Pursuant to Bankruptcy Code Section 1104(a)* [Doc. No. 173] (the "**Motion to Appoint Chapter 11 Trustee**").

46. On May 11, 2018, after a hearing on the matter, the Bankruptcy Court entered orders granting the Motion to Convert [Doc. No. 205] and the Motion to Appoint Chapter 11 Trustee [Doc. No. 206] in the Acis LP bankruptcy case. Also on May 11, 2018, the Bankruptcy

Court entered an order granting the Motion to Convert [Doc. No. 167] in the Acis GP bankruptcy case.

47. On May 14, 2018, the Office of the U.S. Trustee filed a Notice of Appointment of Trustee and Amount of Bond [Doc. No. 213] (the "**Notice of Appointment**") in the Acis L. bankruptcy case. Pursuant to the Notice of Appointment, Robin Phelan was named as Chapter 11 Trustee for Acis LP's estate (the "**Chapter 11 Trustee**").

48. On May 16, 2018, the Bankruptcy Court entered a supplemental order [Doc. No. 219] making clear that the Bankruptcy Court was directing the U.S. Trustee to appoint one Chapter 11 Trustee for the two bankruptcy estates.

49. On May 17, 2018, the Bankruptcy Court entered an order [Doc. No. 221] approving Robin Phelan's appointment as Chapter 11 Trustee in the Acis GP case as well.

E. The Subordinated Noteholders issue redemption instructions, and the CLOs issue notices of redemption.

50. Irrespective of the Acis bankruptcies, the Subordinated Noteholders including Plaintiff HCLOF continued to lose money due to the CLOs' above-market fixed debt obligations.

51. With the bankruptcies pending, there is no prospect that the CLOs can effectuate a reset within a reasonably certain time-frame. Plaintiff HCLOF determined it should get its money back by initiating an "Optional Redemption" as allowed by the Indentures.

52. The Indentures prescribe the following procedure for the CLOs to effect an Optional Redemption:

a. Step 1: the Subordinated Noteholders must provide their written direction concerning the redemption to the Indenture Trustee, the applicable CLO, and

Acis LP at least 30 days, and in one case 45 days, prior to the proposed redemption date.[15]

b. Step 2: the CLO, upon receiving instructions from Holders of 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes, must provide a notice of redemption to the Indenture Trustee that, contains the redemption date and redemption price, among other details, at least 20 days prior to the proposed redemption date.[16]

c. Step 3: the CLO must provide a notice of redemption to each noteholder not later than 10 days prior to the redemption date.[17]

53. Upon receipt of a notice of redemption, Acis LP, as portfolio manager, must "direct the sale of all or part of the Collateral Obligations and other Assets."[18] While the Indentures give Acis LP, as the portfolio manager, discretion to determine the best method for selling the assets, they require the portfolio manager to effect the sale.

54. On April 30, 2018, in accordance with the Indentures, HCLOF directed each CLO, the Indenture Trustee, and Acis LP to effect an "Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018."[19]

55. On May 21, 2018, Highland, in its role as subadvisor to Acis LP, advised the Chapter 11 Trustee to begin selling the CLOs' assets to effectuate HCLOF's redemption instructions.[20] Although HCLOF gave the CLOs until June 14, 2018 to complete the

[15] Ex. 3A, at 167 (30 days); Ex. 3B, at 171 (45 days); Ex. 3C, at 161 (30 days); Ex. 3D, at 157 (30 days); Ex. 3E, at 152 (30 days).

[16] Ex. 3A, at 164; Ex. 3B, at 168; Ex. 3C, at 158-59; Ex. 3D, at 157; Ex. 3E, at 152.

[17] Ex. 3A, at 167 (10 days); Ex. 3B, at 171 (9 days); Ex. 3C, at 161 (10 days); Ex. 3D, at 160 (10 days); Ex. 3E, at 155 (10 days).

[18] Exs, 3A, 3B, 3C, 3D, and 3E at § 9.2.

[19] Ex. 7A, Redemption Instruction Acis CLO 2013-1 Ltd.; Ex. 7B, Redemption Instruction Acis CLO 2014-3 Ltd.; Ex. 7C, Redemption Instruction Acis CLO 2014-4, Ltd.; Ex. 7D, Redemption Instruction Acis CLO 2014-5 Ltd.; Ex. 7E, Redemption Instruction Acis CLO 2015-6 Ltd.

[20] Ex. 8 May 21, 2018 email from Isaac Leventon to Robin Phelan.

redemption, Highland determined it was in the best interests of all noteholders to liquidate the CLOs' assets systematically and over time rather than dumping $2 billion in securities onto the market in a shortened period of time.

56. The next day, and in violation of the Indentures and the PMAs, the Chapter 11 Trustee responded that he would prevent Acis LP from effecting any redemption. As justification, and referring to HCLOF's redemption instructions, the Chapter 11 Trustee averred that "[i]t does not appear that the Redemption Notice[s were] sent by properly authorized parties," and that "[t]he Redemption Notice[s themselves] fail[] to comply with the Indenture[s]."[21]

57. On May 24, 2018, as prescribed by the Indentures, the CLOs issued Notices of Redemption (the "**Issuers Order**") that included the redemption date and redemption price, among other information.[22] On that same date, the Issuers Orders were provided to the Chapter 11 Trustee.

58. Thereafter, on May 25, 2018, the Indenture Trustee issued letters acknowledging receipt of the Issuers Orders, but stating that the Chapter 11 Trustee objected to the Optional Redemption.[23]

[21] Ex. 9, Chapter 11 Trustee's Response to Redemption Notices Letter dated May 22, 2018.

[22] Ex. 10A, Acis CLO 2013-1, Ltd. Notice of Optional Redemption; Ex. 10B, Acis CLO 2014-3, Ltd. Notice of Optional Redemption; Ex. 10C, Acis CLO 2014-4, Ltd. Notice of Optional Redemption; Ex. 10D, Acis CLO 2014-5, Ltd. Notice of Optional Redemption; Ex. 10E, Acis CLO 2015-6, Ltd. Notice of Optional Redemption.

[23] Ex. 11A, May 25, 2018 letter from Mark Kotwick concerning Acis CLO 2013-1, Ltd. redemption notice; Ex. 11B, May 25, 2018 letter from Mark Kotwick concerning Acis CLO 2014-3, Ltd. redemption notice; Ex. 11C, May 25, 2018 letter from Mark Kotwick concerning Acis CLO 2014-4, Ltd. redemption notice; Ex. 11D, May 25, 2018 letter from Mark Kotwick concerning Acis CLO 2014-5, Ltd. redemption notice; Ex. 11E, May 25, 2018 letter from Mark Kotwick concerning Acis CLO 2015-6, Ltd. redemption notice.

59. On May 27, 2018, the Chapter 11 Trustee further asserted that the May 24, 2018 Issuer Orders "do not comply with the relevant Indentures and Portfolio Management Agreements" and that the orders therefore are ineffective.[24] The Chapter 11 Trustee provided no justification for his conclusion. As of the filing of this Complaint, the Chapter 11 Trustee has refused to comply with his obligations under both the Indentures and the PMAs to effectuate the redemptions.

60. With each passing day, Plaintiff HCLOF loses money, while Acis LP purports to "earn" management fees arising from providing "management" of assets its clients have directed it to sell.

61. The Chapter 11 Trustee has also stated that the exercise of the Optional Redemptions "seemingly" violates 11 U.S.C. § 362(a)(3). Section 362(a)(3) of the Bankruptcy Code states:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> **(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.**

11 U.S.C. § 362(a)(3) (emphasis added).

62. The Subordinated Noteholders' rights to exercise the Optional Redemption arise directly from the respective CLO Indentures. In exercising their unilateral rights to compel the redemption and liquidate their investments in the CLOs, there are no assets of the Debtors' estates involved because the Debtors have no property rights in the CLOs.

[24] Ex. 12, May 27, 2018 email from Robin Phelan.

63. Simply stated, the automatic stay of 11 U.S.C. § 362(a) is not implicated because estate property is not at issue. That is, there is no property of the estate that the Subordinated Noteholders are attempting to take possession of or that the Subordinated Noteholders are exercising control over. Any assertion that the Optional Redemption may have a secondary effect on the Debtors' estates is not relevant. Such a "butterfly effect" argument – requiring an analysis of how lawful acts relating to non-estate property may have some effect on property debtor's estate – stretches the automatic stay far beyond the statute's text and its intended purpose of protecting assets belonging to a debtor.

64. In the daily investment function of the CLOs, the Debtors provide accounting and investment advisory services indirectly through Highland. They are not in a position to consummate trades because the CLOs funds are not in their possession or control. To the contrary, the Indenture Trustee is responsible for that function. As such, the Debtors cannot argue custodial control over the funds even assuming that was persuasive.

65. As previously stated, the structure of the CLOs is specifically designed to protect investors from portfolio deterioration. This is exactly why the Subordinated Noteholders have the unilateral right to exercise the Optional Redemption and likewise why the Chapter 11 Trustee's attempts to thwart the exercise of that right must fail.

66. In the alternative, assuming arguendo that the Court determines that the automatic stay is implicated in these circumstances, Congress established a broad safe-harbor for financial markets contracts, such as these CLO Indentures. *See* 11 U.S.C. § 555. Section 555 was enacted precisely to prevent the operation of the automatic stay from sparking a chain reaction which interferes with security market participants responding to market fluctuations. Moreover,

a successful automatic stay argument by the Debtors would require a wildly broad interpretation of section 362 (ignoring that no estate property is involved), while simultaneously engaging in an exceedingly narrow interpretation of section 555 (ignoring the language and public policy underpinnings of the statute). The Debtors cannot have it both ways. Consequently, any contention that the automatic stay is applicable is a red herring.

V.
CLAIMS FOR RELIEF

A. Count 1 – Breach of Contract (ACIS 2013-1 PMA)

67. The ACIS 2013-1 Portfolio Management Agreement is valid and enforceable contract between Acis CLO 2013-1, Ltd. and Acis LP.

68. Under the PMA, Acis LP provides investment advisory services to the CLO. Plaintiff HCLOF, who holds an equity position in the CLO, is a third-party beneficiary of the PMA.

69. The Chapter 11 Trustee, as Acis LP's Chapter 11 trustee, has anticipatorily breached the PMA by communicating his refusal to effect the Subordinated Noteholders' requested redemption as required by the PMA.

70. The Chapter 11 Trustee's breach has caused damage to HCLOF.

71. HCLOF and Acis CLO 2013-1 have substantially performed their contractual obligations and both are ready, willing, and able to perform those obligations not yet performed.

72. Further, any remedies at law are incomplete and inadequate to accomplish substantial justice.

73. Accordingly, the Court should grant HCLOF specific performance under the PMAs.

B. Count 2 – Breach of Contract (ACIS 2014-3 PMA)

74. The ACIS 2014-3 Portfolio Management Agreement is valid and enforceable contract between Acis CLO 2014-3, Ltd. and Acis LP.

75. Under the PMA, Acis LP provides investment advisory services to the CLO. Plaintiff HCLOF, who holds an equity position in the CLO, is a third-party beneficiary of the PMA.

76. The Chapter 11 Trustee, as Acis LP's Chapter 11 trustee, has anticipatorily breached the PMA by communicating his refusal to effect the Subordinated Noteholders' requested redemption as required by the PMA.

77. The Chapter 11 Trustee's breach has caused damage to HCLOF.

78. HCLOF and Acis CLO 2014-3 have substantially performed their contractual obligations and both are ready, willing, and able to perform those obligations not yet performed.

79. Further, any remedies at law are incomplete and inadequate to accomplish substantial justice.

80. Accordingly, the Court should grant HCLOF specific performance under the PMAs.

C. Count 3 – Breach of Contract (ACIS 2014-4 PMA)

81. The ACIS 2014-4 Portfolio Management Agreement is valid and enforceable contract between Acis CLO 2014-4, Ltd. and Acis LP.

82. Under the PMA, Acis LP provides investment advisory services to the CLO. Plaintiff HCLOF, who holds an equity position in the CLO, is a third-party beneficiary of the PMA.

83. The Chapter 11 Trustee, as Acis LP's Chapter 11 trustee, has anticipatorily breached the PMA by communicating his refusal to effect the Subordinated Noteholders' requested redemption as required by the PMA.

84. The Chapter 11 Trustee's breach has caused damage to HCLOF.

85. HCLOF and Acis CLO 2014-4 have substantially performed their contractual obligations and both are ready, willing, and able to perform those obligations not yet performed.

86. Further, any remedies at law are incomplete and inadequate to accomplish substantial justice.

87. Accordingly, the Court should grant HCLOF specific performance under the PMAs.

D. Count 4 – Breach of Contract (ACIS 2014-5 PMA)

88. The ACIS 2014-5 Portfolio Management Agreement is valid and enforceable contract between Acis CLO 2014-5, Ltd. and Acis LP.

89. Under the PMA, Acis LP provides investment advisory services to the CLO. Plaintiff HCLOF, who holds an equity position in the CLO, is a third-party beneficiary of the PMA.

90. The Chapter 11 Trustee, as Acis LP's Chapter 11 trustee, has anticipatorily breached the PMA by communicating his refusal to effect the Subordinated Noteholders' requested redemption as required by the PMA.

91. The Chapter 11 Trustee's breach has caused damage to HCLOF.

92. HCLOF and Acis CLO 2015-5 have substantially performed their contractual obligations and both are ready, willing, and able to perform those obligations not yet performed.

93. Further, any remedies at law are incomplete and inadequate to accomplish substantial justice.

94. Accordingly, the Court should grant HCLOF specific performance under the PMAs.

E. Count 5 – Breach of Contract (ACIS 2015-6 PMA)

95. The ACIS 2015-6 Portfolio Management Agreement is valid and enforceable contract between Acis CLO 2015-6, Ltd. and Acis LP.

96. Under the PMA, Acis LP provides investment advisory services to the CLO. Plaintiff HCLOF, who holds an equity position in the CLO, is a third-party beneficiary of the PMA.

97. The Chapter 11 Trustee, as Acis LP's Chapter 11 trustee, has anticipatorily breached the PMA by communicating his refusal to effect the Subordinated Noteholders' requested redemption as required by the PMA.

98. The Chapter 11 Trustee's breach has caused damage to HCLOF.

99. HCLOF and Acis CLO 2015-6 have substantially performed their contractual obligations and both are ready, willing, and able to perform those obligations not yet performed.

100. Further, any remedies at law are incomplete and inadequate to accomplish substantial justice.

101. Accordingly, the Court should grant HCLOF specific performance under the PMAs.

F. Count 7 – Declaratory Judgment (by HCLOF)

102. Under the PMAs and Indentures, HCLOF has a contractual right to redeem the Secured Notes issued by the CLOs.

103. HCLOF properly directed the CLOs as "Issuers" under the Indentures to redeem the Secured Notes.

104. In response to HCLOF's written direction, the CLOs issued Notices of Redemption.

105. Under Article 8 of the PMA, Acis LP has a duty to liquidate (or direct the liquidation of) assets necessary to carry out the redemptions.

106. The Chapter 11 Trustee, acting on behalf of Acis LP, has indicated that he will refuse to honor the Notices of Redemption.

107. Thus, an actual controversy exists over Acis LP's contractual obligations under the PMAs and Indentures.

108. Pursuant to 22 U.S.C. § 2201, HCLOF seeks a declaration that (1) HCLOF and the CLOs have fully complied with the optional redemption process set forth under the Indentures and (2) Acis LP (and thus the Chapter 11 Trustee) has a duty to sell (or permit the sale of) assets necessary to allow the requested redemptions to take place.

G. Count 7 – Declaratory Judgment (by Highland)

109. Highland hereby repeats and incorporates by reference the allegations set forth in the preceding paragraphs.

110. HCLOF properly directed the CLOs as "Issuers" under the Indentures to redeem the Secured Notes.

111. In response to HCLOF's written direction, the CLOs issued Notices of Redemption.

112. Under Article 8 of the PMA, Acis LP has a duty to liquidate (or direct the liquidation of) assets necessary to carry out the redemptions.

113. Acis LP delegated its advisory obligations to Highland under the Third Amended and Restated Sub-Advisory Agreement dated March 17, 2017 (the "Sub-Advisory Agreement") by and between Acis LP and Highland.

114. The Sub-Advisory Agreement requires certain consents from Acis LP to sell assets.

115. The Chapter 11 Trustee, acting on behalf of Acis LP, has indicated that he will not consent to the sale of assets that are required to carry out the Notices of Redemption.

116. Thus, an actual controversy exists over Acis LP's (and thus the Chapter 11 Trustee's) contractual obligations under the Sub-Advisory Agreement.

117. Pursuant to 22 U.S.C. § 2201, Highland seeks a declaration that it has the right and obligation to sell the assets necessary to redeem the Secured Notes described in the Notices of Redemption.

VI.

REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

118. HCLOF and Highland are entitled to preliminary injunctive relief that enjoins Acis LP from interfering with the sale of assets necessary to redeem the Secured Notes issued by the CLOs, including the withholding of consent.

119. As described above, HCLOF and Highland have demonstrated a substantial likelihood of success on merits on their claims.

120. HCLOF and Highland have also shown they will suffer irreparable harm. Monetary damages are inadequate because, to the extent Plaintiffs prevail, they will hold a claim against an insolvent entity, Acis LP. With each passing day, Plaintiff HCLOF loses money, while Acis LP continues to accrue management fees arising from providing "management" of assets its clients have directed it to sell.

121. Finally, the weight of the equities favors entry of an injunction in HCLOF's and Highland's favor, and such an injunction will not disserve the public interest.

122. HCLOF and Highland are also entitled to permanent injunctive relief that enjoins Acis LP from interfering with the sale of the CLO's securities necessary to redeem the Secured Notes issued by the CLOs, including the withholding of consent.

123. HCLOF and Highland respectfully request that the Court set a hearing on their request and enter an expedited briefing schedule.

VII.
PRAYER

124. For the foregoing reasons, HCLOF and Highland respectfully asks the Court to enter judgment against the Chapter 11 Trustee for declaratory judgment, specific performance, court costs, and for any such other relief it deems appropriate.

Dated: May 30, 2018

Respectfully submitted,

/s/ Holland N. O'Neil

Holland N. O'Neil (TX 14864700)
Jason B. Binford (TX 24045499)
Shiva D. Beck (TX 24086882)
Melina N. Bales (TX 24106851)
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and

Michael K. Hurst (TX 10316310)
Ben A. Barnes (TX 24092085)
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bbarnes@lynnllp.com

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND HIGHLAND CLO FUNDING, LTD

VERIFICATION

STATE OF TEXAS §
DALLAS COUNTY §

I verify under penalty of perjury that the foregoing is true and correct:

My name is Isaac Leventon. I have read the Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC. The facts stated in it are within my personal knowledge and are true and correct.

/s/ Isaac Leventon
Isaac Leventon

on behalf of Plaintiffs Highland CLO Funding, Ltd. and Highland Capital Management, LP

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Acis Capital Management, L.P. , Acis Capital Management GP, LLC	James Dondero, Frank Waterhouse Hunter Covitz, Scott Ellington, Isaac Leventon, Jean Paul Sevilla, Thomas Surgent, Grant Scott, Heather Bestwick, William Scott, and CLO Holdco, Ltd.
ATTORNEYS (Firm Name, Address, and Telephone No.) Rakhee V. Patel, Phillip Lamberson, Jason Enright, and Annmarie Chiarello, Winstead PC, 500 Winstead Building, 2728 N. Harwood, Dallas, Texas 75201, 214-745-5400	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☒ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other □ Trustee (Reorganized Debtors)	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor ☒ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

1) Breach of Fiduciary Duty Against James Dondero, as President of Acis GP; 2) Breach of Fiduciary Duty Against James Dondero, as President of Highland Capital, Sub-Advisor to Acis; 3) Alter Ego as to James Dondero; 4) Breach of Fiduciary Duty Against Frank Waterhouse, as Treasurer of Acis GP; 5) Aiding & Abetting Breach of Fiduciary Duty by James Dondero against Frank Waterhouse, Hunter Covitz, Scott Ellington, Isaac Leventon, Jean Paul Sevilla, Thomas Surgent; 6) Aiding & Abetting Breach of Fiduciary Duty against Grant Scott; 7) Aiding and Abetting Breach of Fiduciary Duty Against William Scott and Heather Bestwick; 8) Willful Violation of the Automatic Stay under § 362; 9) Turnover under § 542 against CLO Holdco; 10) Money Had and Recieved against CLO Holdco

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☒ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☒ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

punitive damages; pre- and post-judgment interest; attorney's fees and costs

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Acis Capital Management, L.P./ Acis Capital Management, G.P.	BANKRUPTCY CASE NO. 18-30264-sgj11/ 18-30265-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) */s/Jason A. Enright*		
DATE April 11, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jason A. Enright	

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

RECITALS

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

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

Whereas, the Seller operates an investment management business focused on sponsoring and managing collateralized loan obligations ("CLO Investments");

Whereas, Seller has recently engaged an investment bank to actively market a new CLO to prospective investors and Seller currently is uncertain as to the likelihood of success and timing of securing new investors;

Whereas, recent European and U.S. regulatory rules require sponsors of newly issued CLO investments, such as Seller, to retain during the life of the CLO, a five percent ownership interest in the equity or capital structure of the CLO (the "Risk Retention Amount");

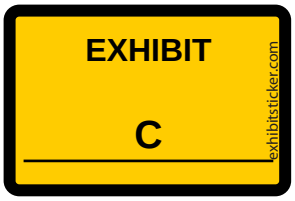
Whereas, in order to fund the Risk Retention Amount, Seller has undertaken a joint venture with another entity to originate and sponsor new CLO investments, pursuant to which Seller is obligated to contribute fifty-one percent of the Risk Retention Amount;

Whereas, Seller has typically paid overhead expenses first with its revenue, then made an annual distribution of excess cash to the partners of Seller;

Whereas, Seller has determined to stop making annual distributions of excess cash to Seller's partners while efforts are underway to form new CLOs;

Whereas, cash flows from the Servicer Fees are unpredictable and unstable;

Whereas, Seller has determined that obtaining a guaranteed fixed amount of cash flow from Buyer is a prudent business decision in order to facilitate Seller's compliance with its



obligation to contribute funds toward the Risk Retention Amount to the joint venture entity;

Whereas, the Purchaser acknowledges it is a sophisticated investor and, in particular, has a knowledge and understanding of CLO Investments;

Whereas, the Purchaser acknowledges that it understands the inherent risk in the timing and amount of the payment of the Servicer Fees by the trustees of the respective CLOs; and

Whereas, the Purchaser acknowledges that it has undertaken all the necessary due diligence to feel comfortable in determining the inherent risks of purchasing such Servicer Fees from the Seller.

AGREEMENT

Now, therefore, in consideration of the premises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Sale and Purchase of Acis Participation Interests.

Subject to and upon the terms and conditions set forth in this Agreement, the Seller hereby sells to the Purchaser, and the Purchaser hereby purchases from the Seller, participation interests in the Servicer Fees (the "ACIS Participation Interests") in an amount equal to (A) the total Servicer Fees paid to Seller by each of the CLOs beginning in November 2016 and ending August 2019 (each, with respect to both a particular CLO payor and a particular payment date, a "Servicer Fee Payment," and in the aggregate for a particular payment date the "Aggregate Servicer Fee Payment") less (B) the Servicer Fee Retention Amount with respect to each CLO, as shown on Schedule A.

Purchase Price; Additional Documents; Termination.

1.1 In consideration of the sale of the Acis Participation Interests to the Purchaser, the Purchaser shall (a) pay to the Seller an amount equal to **$666,655.00** in cash (the "Cash Purchase Price"), and (b) deliver to the Seller a promissory note (the "Note"), duly executed by the Purchaser and substantially in the form of Exhibit 1, with an initial principal balance of **$12,666,446.00** (the Cash Purchase Price and the delivery of such Note, collectively, the "Purchase Price").

1.2 The Purchaser shall pay the Cash Purchase Price to the Seller by wire transfer of immediately available funds to an account designated in writing by the Seller.

1.3 The parties acknowledge and agree that the Purchase Price reflects the arm's-length value of the Acis Participation Interests as of the date of this Agreement as determined by mutually agreed appraisal methods.

1.4 Notwithstanding any other provision of this Agreement, to the extent that the sale and purchase of the Acis Participation Interests hereunder shall require the consent or approval of another party or any governmental authority, the consummation of the transactions contemplated by this Agreement shall not constitute an assignment or an attempted assignment with respect to the Servicer Fees if such assignment or attempted assignment would constitute a breach or violation with respect to the terms of the governing CLO agreements (the "CLO Documents"). Each of the parties hereto shall use its commercially reasonable efforts to obtain any such consent or approval. If such consent or approval is not obtained, each party agrees to cooperate with the other party in any reasonable manner necessary or desirable to provide the Purchaser the benefits of the Acis Participation Interests.

1.5 In the event that any governmental entity commences a formal regulatory proceeding against Seller and within 90 days thereof (or later, but solely in the event of removal of Seller by order of such governmental entity), Seller is terminated or otherwise removed as manager of one or more of the CLOs and such governmental action results in the seizure or forfeiture of Servicer Fees, then the outstanding principal of the Note shall be reduced in proportion to the reduction in Servicer Fees resulting from such termination or seizure.

2. Representations and Warranties of the Seller.

The Seller represents and warrants to the Purchaser that each of the following representations and warranties is true and correct as of the date of this Agreement:

2.1 Organization and Authority of the Seller. The Seller is a limited partnership, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and

any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.

2.2 Title to the Acis Participation Interests. The Seller owns good and valid title to, and is the sole record and beneficial owner of, the Servicer Fees, free and clear of any and all mortgages, liens, pledges, charges, adverse rights or claims, security interests, restrictions on use and/or transfer or encumbrances of any kind (collectively, "Liens"), except as provided herein and in the CLO Documents and agreements governing the CLOs. Other than as provided in the CLO Documents, the Acis Participation Interests are not subject to any rights of first refusal or other rights to purchase such Acis Participation Interests.

2.3 Due Authorization and Enforceability. All action on the part of the Seller necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Seller of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Seller, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.

2.4 Consents. Except as may be required under the CLO Documents, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Seller in connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.

2.5 Non-Contravention. Other than with respect to any consents required under the CLO Documents, the execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a

violation or default, or be in conflict with or constitute a default, under the Seller's organizational documents, or any agreement or contract that the Seller is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order; provided, however, that with respect to any statute, law, regulation or order applicable to any of the CLO Documents the foregoing is limited to the knowledge of the Seller, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by, the Seller that would not reasonably be expected to cause a material adverse effect on the Seller.

3. Representations and Warranties of the Purchaser.

The Purchaser represents and warrants to the Seller that each of the following representations and warranties is true and correct as of the date of this Agreement:

3.1 Organization and Authority of the Purchaser. The Purchaser is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.

3.2 Due Authorization and Enforceability. All action on the part of the Purchaser necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Purchaser of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.

3.3 Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Purchaser in

connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.

3.4 Non-Contravention. The execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a violation or default, or be in conflict with or constitute a default, under the Purchaser's organizational documents, or any agreement or contract that the Purchaser is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by the Purchaser.

3.5 Information Concerning the Acis Participation Interests. The Purchaser (a) has received and had the opportunity to review information with respect to the Seller, the Acis Participation Interests, the CLOs, and the CLO Documents, (b) is familiar with the Seller, the CLOs and the CLO Documents, and (c) has been afforded the opportunity to ask questions of and received satisfactory answers concerning the Seller, the CLOs and the CLO Documents and has asked any questions the Purchaser desires to ask and all such questions have been answered to the full satisfaction of the Purchaser. The Purchaser understands that the purchase and/or receipt of the Acis Participation Interests involves various risks and that the Purchaser may lose some or all of its investment due to economic conditions that could negatively impact the CLOs and/or the Seller and/or for other unforeseen reasons. The Purchaser acknowledges and agrees that no representations or warranties have been made to the Purchaser by the Seller, or any person acting on the Seller's behalf, as to the tax consequences of this investment, or as to profits, losses or cash flow that may be received or sustained as a result of this investment. All documents, records and books pertaining to a proposed investment in and/or receipt of the Acis Participation Interests which the Purchaser has requested have been made available to the Purchaser.

3.6 Acknowledgments of the Purchaser. Subject to Section 1.5, the Purchaser acknowledges and agrees that: (a) except as provided in Section 1.5, should the

Seller's rights with respect to the Servicer Fees be terminated, such termination shall not affect the Purchaser's obligations under the Note; (b) except as provided in Section 1.5, the Seller may exercise all of its legal rights and remedies to enforce the Purchaser's obligations under the Note even if the Acis Participation Interests are not paid, in full or part, by the CLO trustees for any reason, including the termination of the Seller as the manager, a hostile buyout of such CLO, or any other reason (other than as a result of the Seller breaching its covenants under this Agreement or as a result of fraud or by willful misconduct of the Seller); and (c) Purchaser has had the opportunity to consult with its own legal counsel with respect to the purchase of the Acis Participation Interests. The Purchaser understands such actions could negatively impact the timing and amount of payment of such Acis Participation Interests during the pendency of such dispute by the trustee of such CLO. The Purchaser bears the sole risk with respect to non-payment of the Acis Participation Interests (other than as a result of the Seller breaching its covenants under this Agreement or as a result of the fraud or willful misconduct of the Seller).

3.7 No additional Representations. The Purchaser has relied solely upon its investigation and analysis and the representations and warranties of the Seller set forth in this Agreement and the Purchaser acknowledges that, other than as set forth in this Agreement, the Seller does not make any other representation or warranty, either express or implied.

4. Covenants.

4.1 Payments on the Acis Participation Interests. The Seller agrees to promptly remit, or cause to be promptly remitted, to the Purchaser the cash received with respect to the Acis Participation Interests. If the Seller is required at any time to return to any person, any portion of the payments made to the Seller pursuant to the Servicer Fees, then the Purchaser shall, on demand of the Seller, forthwith return to the Seller any such payments transferred to the Purchaser by the Seller but without interest or penalty on such payments.

4.2 Actions With Respect to Servicer Fees. Notwithstanding anything else contained in this Agreement, the Seller shall not, without the Purchaser's written consent, and other than as required by the CLO Documents, take or omit to take any action which would (a) postpone any date fixed for any payment under the CLO Documents of the Servicer Fees; (b) amend the CLO Documents so as to materially and adversely affect the payment of the Servicer Fees; or (c) release any material claim of the Seller under the CLO Documents that relates to the Servicer Fees.

4.3 Reporting. Seller shall provide Purchaser a detailed certification of any Servicer Fees received from the CLOs within forty-five (45) business days of the date such Servicer Fees are received by the Seller.

5. Miscellaneous.

5.1 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties; provided, however, that no party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other parties hereto.

5.2 Terms Confidential. The parties agree that they will keep the terms, amounts and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the principles thereof relating to conflicts of law.

5.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.5 Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

5.6 Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

(i) if to the Purchaser:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse
Telephone: 972-628-4100
Facsimile: 972-628-4147

with copies to:

Hunton & Williams LLP
1145 Ross Avenue, Suite 3700
Dallas, Texas 75202
Attention: Alexander McGeoch
Telephone: 214-979-3041
Facsimile: 214-979-3938

(ii) if to the Seller:

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

5.7 Specific Performance. The Seller and the Purchaser agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Seller and the Purchaser agree that an action for specific performance (including for temporary and/or permanent injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and the Purchaser shall be entitled to such relief without the necessity of proving actual damages or posting a bond.

5.8 Costs, Expenses. The Seller and the Purchaser shall each pay their own costs, fees and expenses in connection with this Agreement and the transactions contemplated herein. The Seller will pay any and all transfer, recording, sales, use or similar taxes and fees in connection with the consummation of the transaction contemplated herein. If any party is forced to institute legal proceedings to enforce its rights in accordance with the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable expenses, including attorneys' fees and expenses, in connection with any such action.

5.9 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.

5.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such

provision(s) were so excluded and shall be enforceable in accordance with its terms.

5.11 Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

5.12 Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

5.13 Construction. The parties acknowledge that each has had the advice of independent counsel selected by it in connection with the terms of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

5.14 Arbitration. Any disputes or controversies arising out of or related to this Agreement that are not resolved by the parties shall be resolved by arbitration under the administration of the American Arbitration Association ("AAA"). The Seller and the Purchaser will seek to agree on an arbitrator. If the parties cannot agree, each of the Seller and the Purchaser will appoint an arbitrator, and such arbitrators will select a third arbitrator to serve as the sole arbitrator to determine the dispute. Such dispute or controversy shall be resolved pursuant to the rules of the AAA with the findings and any award by such arbitrator being final and binding upon all parties. Judgment on any award or finding rendered by the arbitrator may be entered in any court of proper jurisdiction. The location of any such arbitration proceedings shall be in the greater Dallas, Texas metropolitan

area or such other location as mutually agreed by the parties. Each party shall bear its own costs related to any dispute or controversy arising out of or related to this agreement. The parties agree any dispute or controversy arising out of or related to this Agreement shall be kept confidential between the relevant arbitrators, the parties, and their appointed counsel and agents.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

THE PURCHASER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: _____
Name: James Dondero
Title: President

THE SELLER:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____
Name: James Dondero
Title: President

Schedule A

Participation Interests

CLO Issuer	Total Servicer Fee	Servicer Fee Retention Amount	Acis Participation Interests
Acis CLO 2013-1, Ltd.	50 bps	20 bps	30 bps
Acis CLO 2014-3, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-4, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-5, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2015-6, Ltd.	40 bps	20 bps	20 bps

Exhibit 1

PROMISSORY NOTE

$12,666,446 October __, 2016

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

Payments

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

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

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

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

Conditions Precedent

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

(a) this Note executed by Maker;

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

(c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker; and

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

Events of Default

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

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

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

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

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

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

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

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

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

Remedies

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

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

Miscellaneous

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

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

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

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

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

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

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

Maker's address for notice:

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

EXHIBIT A

Amortization Schedule

Interest Rate	3.0%				
Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-

ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "***Agreement***"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***Acis***"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***HCM***") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("***HCLOM***", and together with HCM and Acis, the "***Parties***"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***").

RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "***CLOs***", the governing documents thereof, the "***CLO Documents***" and such fees, the "***Servicer Fees***");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payments***");

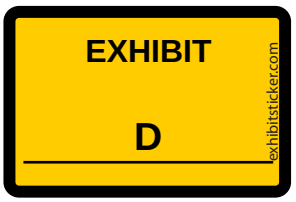
Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "***Notification***");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "***Successor Manager***");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "Acis Legal Expenses"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "Acis Administrative Expenses" and together with the Acis Legal Expenses, the "Acis Expenses").



AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession**. Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a "***Notice***" and the period between the Notice and an Appointment (as such term is defined below), the "***Post-Notice Period***").

2. **Successor Manager.** Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM's appointment as Portfolio Manager of a given CLO, an "***Appointment***").

3. **Assignment and Transfer of the Promissory Note; Stabilization Payments.**

   a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.
   b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
   c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
   d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.

4. **Expense Support**. In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis' written request, to Acis' creditors, the amount of such shortfall, provided that in no event shall HCOLM's obligations under this paragraph exceed greater than $2 million of Acis Legal Expenses in the aggregate, or greater than $1 million of Acis Administrative Expenses in the aggregate.

5. **Indemnity**. Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated ("***Claims***"), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "***Proceeding***"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "***Damages***"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. "***Covered Person***" means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM's and HCM's respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. **Miscellaneous**.

a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

i. If to Acis:
Acis Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

ii. If to HCM:
Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

iii. If to HCLOM:
Highland CLO Management, Ltd.
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands

h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection

j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.

k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By:_____

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.

_____

For and on behalf of Summit Management, Limited

Director