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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Case No. 3:21-cv-00881-X
	§	
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.,	§	(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)
	§	
	§	
Defendants.	§	
	§	

SUPPLEMENTAL APPENDIX AND DECLARATION OF GREGORY V. DEMO IN FURTHER SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO DEEM THE DONDERO ENTITIES VEXATIOUS LITIGANTS AND FOR RELATED RELIEF

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1. I am an attorney at the law firm of Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., the movant in the above-captioned case ("HCMLP"). I submit this supplemental appendix and declaration (the "Declaration") in further support of HCMLP's *Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*.

2. This Declaration is based on my personal knowledge and review of the documents listed below. Each of the documents in the following chart is a true and correct copy.

Ex.	**Description**	**Appx. #**
1.	Chart showing the litigation caused by the Dondero Entities	1-16
2.	Email from Michael Lynn to Douglas Draper and Jim Dondero dated 12/16/2020, forwarded by Jim Dondero to Scott Ellington on 12/16/2020	17-19
3.	Unanimous Consent of the Board of Directors of Highland Capital Management Services, Inc. in Lieu of an Organizational Meeting and Certificate of Amendment of Highland Capital Management Services, Inc.	20-43
4.	SEC Form N-CSR Certified Shareholder Report for Highland Global Allocation Fund for reporting period September 30, 2023	44-113
5.	SEC Form N-CSR Certified Shareholder Report for Highland Income Fund for reporting period December 31, 2022	114-192
6.	SEC Form 10-Q Quarterly Report for quarterly period ended September 30, 2023 for NexPoint Diversified Real Estate Trust	193-284
7.	SEC Form 10-K Annual Report for the fiscal year ended December 31, 2022 for NexPoint Capital, Inc.	285-414
8.	Transcript of Proceedings held on June 8, 2023 in Highland Capital Management, L.P. Case No. 19-34054 before Judge Stacey G.C. Jernigan on HMIT's Motion for Leave to File Verified Adversary Proceeding	415-804
9.	Form ADV Uniform Application for Investment Adviser Registration and Report by Exempt Advisers for Rand Advisors, LLC dated 2/15/2023	805-835
10.	Form ADV Part 2A for Rand Advisors, LLC for February 2023	836-862
11.	Transcript of Videotaped Deposition of Nancy Dondero Monday October 18, 2021	863-946

Ex.	**Description**	**Appx. #**
12.	Transcript of Proceedings held on January 24, 2024 in Highland Capital Management, L.P. Case No. 19-34054 before Judge Stacey G.C. Jernigan on Highland's Motion for Bad Faith Finding and Highland's Motion to Stay Contested Matter	947-1030
13.	Email from John Morris to Amy Ruhland sent on December 26, 2023 attaching filed copy of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint	1031-1081
14.	Email from John Morris to Amy Ruhland sent on January 16, 2024 re: withdrawal of motion for leave to sue PSZJ	1082-1083
15.	Transcript of Proceedings held in Adversary Proceeding No. 21-3020 UBS Securities, LLC et al. v. Highland Capital Management, L.P., on August 8, 2022 on Highland Capital Management L.P.'s Motion to Withdraw its Answer and Consent to Judgment for Permanent Injunctive Relief	1084-1217
16.	Transcript of Proceedings held on December 4, 2023 in Highland Capital Management, L.P. Case No. 19-34054 before Judge Stacey G.C. Jernigan on Motion for Order to Show Cause; and Motion to Strike	1218-1319
17.	NexPoint Hospitality Trust Press Release "NexPoint Hospitality Trust Announces Undertaking Regarding Amendments to COVID Loans" – Release Date June 26, 2023 Dallas and Toronto	1320-1321
18.	NexPoint Hospitality Trust Notice of Annual and Special Meeting of Unitholders and Management Information Circular – to be held on October 12, 2023	1322-1398
19.	Application of Highland Capital Management, L.P. in connection with a transactional proceeding under Rule 16 and Under Subsection 127(1) of the Securities Act, RSO 1990, c S.5	1399-1415
20.	NexPoint Hospitality Trust Press Release "NexPoint Hospitality Trust Issues Clarifying and Supplemental Disclosure" – Release Date October 19, 2023 Dallas and Toronto	1416-1420
21.	Notice of Withdrawal in connection with a transactional proceeding under Rule 16 and Under Subsection 127(1) of the Securities Act, RSO 1990, c S.5 dated October 20, 2023	1421-1423
22.	PolleyFaith LLP letter to Mani Sanghera dated October 27, 2023 enclosing NexPoint Hospitality Trust Prospectus dated March 27, 2019	1424-2150
23.	PolleyFaith LLP letter to Mani Sanghera dated December 18, 2023 re: email from TSXV's Compliance Services that they would likely hear nothing further from TSXV on this matter	2151-2152
24.	Transcript of Proceedings held on March 4, 2020 in Highland Capital Management, L.P. Case No. 19-34054 before Judge Stacey G.C. Jernigan on Motion of the Debtor for Entry of an Order Authorizing, but not Directing, the Debtor to Cause Distributions to certain "Related Entities"	2153-2274

Ex.	**Description**	**Appx. #**
25.	The Royal Court of Guernsey Judgment handed down on December 1, 2023 in CLO Holdco Limited and Highland CLO Funding Limited	2275-2317

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Dated: February 9, 2024

/s/ Gregory V. Demo
Gregory V. Demo

EXHIBIT 1

EXHIBIT 1*

MAIN CASE				
In re Highland Capital Management, L.P., Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)				
Date	**Motion or Claim**	**Movant / Objector**	**Summary of Motion or Claim**	**Status**
7/30/20	First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims [DI[1] 906] **(solely with respect to Proof of Claim No. 146 Filed by HCRE Partners, LLC)**	**Claimant:** HCRE **Objector:** Highland	HCRE asserted Highland had no interest in SE Multifamily due to mutual mistake and lack of consideration. After engaging in substantial discovery and litigating Highland's motion to disqualify HCRE's counsel due to conflict of interest, HCRE filed a motion to withdraw its proof of claim [DI 3443]. Highland objected [DI 3487]. The Court held a hearing on September 12, 2022 and denied withdrawal of the claim after Dondero would not agree to refrain from filing the same claim in a different forum [DI 3525].	**CONCLUDED:** Trial was held November 1, 2022. On April 28, 2023, the Court entered its order sustaining Highland's objection to HCRE's claim, and disallowing the claim [DI 3767].
9/23/20	Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith [DI 1087]	**Movant:** Highland **Objectors:** Dondero	Acis filed a claim for at least $75 million. Acis's claim resulted from an involuntary bankruptcy initiated when Dondero refused to satisfy an arbitration award and instead fraudulently transferred assets to leave Acis judgment proof. Highland settled for an allowed Class 8 claim of $23 million and approximately $1 million in cash. Dondero objected to the settlement [DI 1121] alleging it was unreasonable and constituted vote buying. The Acis Settlement Motion was approved and Dondero's objection was overruled [DI 1302].	**CONCLUDED:** Dondero appealed [DI 1347]. On March 18, 2022, this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 3:20-cv-03390-X, DI 25].
11/18/20	Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements [DI 1424]	**Movant:** Highland **Objectors:** Dondero	Highland filed a motion seeking to retain a sub-servicer to assist in its reorganization consistent with the proposed plan. Dondero alleged the sub-servicer was not needed, was too expensive, and would not be subject to Bankruptcy Court jurisdiction [DI 1447].	**CONCLUDED:** Dondero withdrew his objection [DI 1460] after forcing Highland to incur costs responding [DI 1459]
11/19/20	James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside of the Ordinary Course [DI 1439]	**Movant:** Dondero	Dondero alleged Highland sold assets in violation of 11 U.S.C. § 363 and without providing Dondero a chance to bid. Dondero requested an emergency hearing [DI 1443]. Dondero filed this motion despite having agreed to the Protocols governing such sales.	**CONCLUDED:** Dondero withdrew this motion [DI 1622] after Highland and the Committee were forced to incur costs responding and preparing for trial [DI 1546, 1551].
12/8/20	Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [DI 1522, 1528]	**Movants:** Advisors[2] Funds	Movants sought to prevent Highland from causing the CLOs to sell assets without Movants' consent. Movants provided no support for this position, which directly contradicted the terms of the CLO Agreements. The Motion was filed notwithstanding the Protocols governing such sales. Movants requested an emergency hearing [DI 1523].	**CONCLUDED:** The motion was denied [DI 1605] and was characterized as "frivolous."
12/23/20	Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 150, 153, 154) and Authorizing Actions Consistent Therewith [DI 1625]	**Movant:** Highland **Objectors:** Dondero Trusts[3] CLOH	HarbourVest asserted claims in excess of $300 million in connection with an investment in a fund indirectly managed by Highland for, among other things, fraud and fraudulent inducement, concealment, and misrepresentation. Highland settled for an $80 million allowed Class 8 and 9 claim and the transfer of certain assets to a Highland subsidiary. Dondero and the Trusts alleged the settlement was unreasonable; was a windfall to HarbourVest; and vote buying [DI 1697, 1706]. CLOH argued the settlement could not be effectuated under the operative documents [DI 1707]. After analyzing Highland's response, CLOH publicly withdrew its objection. The settlement was approved and the remaining objections were overruled [DI 1788].	**APPEAL:** The Trusts appealed [DI 1870]. This Court affirmed and dismissed Dugaboy's appeal for lack of standing [Dist. Ct. Case No. 3:21-00261-L, DI 38]. Dugaboy appealed [DI 40]. Oral argument held May 1, 2023. On August 22, 2023, the Fifth Circuit affirmed this Court's order [Case No. 22-10960, Document 00516866778 P]. CLOH and DAF separately filed a complaint in this Court alleging, among other things, the settlement was a breach of duty and a RICO violation. *See infra*.

All capitalized terms used but not defined herein have the meanings given to them in *Highland Capital Management, L.P.'s Memorandum of Law in Support of Its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Sanctions*.

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
1/14/21	Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104I [DI 1745, 1752]	**Movants:** Trusts Dondero [DI 1756]	Movants filed an emergency motion for the appointment of an examiner after commencement of Plan solicitation and 14 months postpetition. [DI 1748].	**CONCLUDED:** The motion was denied [DI 1960].
1/20/21	James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith [DI 1784]	**Objector:** Dondero	Dondero objected to Highland's proposed assumption of two limited partnership agreements [DI 1719].	**CONCLUDED:** Dondero withdrew his objection [DI 1876] after forcing Highland to incur costs responding.
1/22/20	Fifth Amended Plan of Reorganization [DI 1472]	**Objectors:** Dondero [DI 1661] Trusts [DI 1667] Senior Employees [DI 1669] Advisors & Funds [DI 1670] HCRE [DI 1673] CLOH [DI 1675] NexBank Entities [DI 1676]	All objections to the Plan were consensually resolved prior to the confirmation hearing except for the objections of the Dondero Entities and the U.S. Trustee. The U.S. Trustee did not press its objection at confirmation. All objections were overruled and the Confirmation Order was entered. The Confirmation Order specifically found that Dondero threatened to "burn the place down" if his case resolution plan was not accepted.	**APPEAL:** Dondero, the Trusts, the Advisors, and the Funds appealed [DI 1957, 1966, 1970, 1972]. On August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in all respects except with respect to the exculpation. [Case No. 21-10449, DI 00516439341]. On September 2, 2022, the Funds petitioned for rehearing requesting the Fifth Circuit limit the Gatekeeper. On September 7, 2022, the Fifth Circuit granted rehearing but did not grant the requested relief. [DI 516462923]. Highland moved to conform the Plan on September 9, 2022. [DI 3503]. The Dondero Entities objected [DI 3539, 3540, 3551] requesting the Bankruptcy Court limit the Gatekeeper. On February 27, 2023, the Court issued its order granting motion to conform [DI 3672]. The Advisors' appeal of the order was certified for direct appeal to the Fifth Circuit. [Case No. 23-10534]. Oral argument held February 8, 2023; appeal *sub judice*. Highland and the Dondero Entities filed petitions for writ of cert. to SCOTUS on issues of (a) standard of care and (b) exculpation provision in Plan. Case No. 22-631 (Jan. 5, 2023); Case No. 22-669 (Jan. 16, 2023). Solicitor General was invited to file a brief in Supreme Court cases expressing the views of the United States, and brief was filed on October 19, 2023.
1/24/21	Application for Allowance of Administrative Expense Claim [DI 1826]; [rel. Adv. Proc. No. 21-3010-sgj]	**Movants:** Advisors	The Advisors sought an administrative expense claim for approximately $14 million alleging they overpaid Highland under certain Shared Services Agreements ("SSAs") and Payroll Reimbursement Agreements ("PRAs"). Highland brought a breach of contract claim against the Advisors for failure to pay amounts owed under the SSAs and PRAs [AP No. 21-3010, DI 1]. The claims were consolidated under AP 21-3010 since both arose from the SSAs and PRAs. After a two-day trial, the Court granted Highland's breach of contract claim, denied the Advisors' admin claim. [AP No. 21-3010, DI 124], and entered judgment [AP No. 21-3010, DI 126].	**APPEAL:** The Advisors' appeal [AP. No. 21-3010, DI 128] was docketed to Dist. Ct. Case No. 3:22-cv-02170. Oral argument was held January 30, 2023, and appeal is *sub judice*.

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Appeal
3/18/21	James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company's Motion to Recuse Pursuant to 28 U.S.C. § 455 [DI 2060]	**Movants:** Dondero Advisors Trusts HCRE	In March 2021, the Dondero Entities filed a motion to recuse Judge Jernigan [DI 2060, 2061, 2062] (the "Original Recusal Motion"). Judge Jernigan denied the motion finding, among other things, it was untimely and failed to show bias. [DI 2083] (the "Recusal Order"). The Movants appealed [DI 2149, 2169, 2203]. In February 2022, this Court entered its Memorandum Opinion and Order [Dist. Ct. Case No. 3:21-cv-00879-K, DI 39], finding the Recusal Order was a non-appealable interlocutory order. Notwithstanding this Court's Order, in July 2022, Movants filed a supplemental motion to recuse in the Bankruptcy Court, [DI 3470] (the "Supplemental Recusal Motion"), requesting entry of a final, appealable recusal order. On September 1, 2022, the Bankruptcy Court denied the Supplemental Recusal Motion finding it "procedurally improper," [DI 3479], but invited Movants to file (i) a "simple motion" seeking an amended order removing the "reservation of rights" and/or (ii) a new motion to recuse in front of the Bankruptcy Court. On September 27, 2022, Movants filed a renewed motion to recuse [DI 3541] (the "Renewed Recusal Motion"), and then on October 17, 2022, filed an amended renewed motion to recuse, [DI 3570]. On March 6, 2023, the Bankruptcy Court entered its order denying the amended renewed motion to recuse [DI 3676]. Movants filed a petition for writ of mandamus on April 4, 2023 to the District Court [Case No. 21-cv-879, Docket no. 41]. The next day, the District Court entered an order directing the clerk to unfile the mandamus petition [Docket no. 42].	**CONCLUDED:** Petitioners immediately filed their Petition for Writ of Mandamus [Case 3:23-cv-00726-S, Docket No. 1]. On April 30, 2024, following argument on the Advisors' appeal of the admin claim, (*see supra*), this Court informed counsel off the record that it would be issuing an order denying the Mandamus Petition.
4/14/21	Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief [DI 2196]	**Movant:** Highland **Objector:** HCRE [DI 2278]	After Wick Philips refused to withdraw, Highland moved to disqualify them from serving as counsel to HCRE in connection with the prosecution of HCRE's Proof of Claim on the ground that Wick Phillips jointly represented Highland and HCRE (and others) in the negotiation, drafting and formation of the contracts at issue and therefore was conflicted.	**CONCLUDED:** In December 2021, the Bankruptcy Court granted the motion disqualifying Wick Phillips from serving as counsel to HCRE [DI 3106]
4/15/21	Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith [DI 2199]	**Movant:** Highland	UBS) asserted claims against Highland in excess of $1 billion arising from two Highland-managed funds' breach of contract. The settlement resolved over ten years of litigation but had to be renegotiated after Highland discovered Dondero-controlled Highland had caused the funds to fraudulently transfer over $300 million in assets to Sentinel Reinsurance Ltd. ("Sentinel"), a Cayman-based entity controlled by Dondero and Ellington, in 2017 to thwart UBS's ability to collect on its judgment. Only Dondero [DI 2295] and Dugaboy [DI 2268, 2293] objected. The UBS settlement was approved in May 2021 [DI 2389].	**CONCLUDED:** The Dondero Entities appealed [DI 2398]. In September 2022, this Court affirmed the Bankruptcy Court's settlement order, [Dist. Ct. Case No. 3:21-cv-01295-X, DI 34], finding, in pertinent part, that in their' "zeal to bamboozle this Court," they omitted critical facts. *Id*. at 12. In October 2022, the Dondero Entities appealed this Court's order to the Fifth Circuit [USCA Case No. 22-10983]. On August 21, 2023, the Fifth Circuit affirmed this Court's order [id. at Document 00516864561].

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
4/23/21	Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [DI 2242]	**Movants:** DAF CLOH	Over 9 months after its entry and post-confirmation of the Plan, DAF and CLOH filed a motion to modify the July Order, alleging the Bankruptcy Court lacked subject matter jurisdiction. Highland opposed the motion [DI 2311] arguing it was a collateral attack barred by *res judicata*, among other things. The Committee joined the opposition [DI 2315]. The Motion was denied on June 25, 2021 [DI 2506]. DAF and CLOH appealed, [DI 2513], but moved to stay the appeal pending the Fifth Circuit's determination of the appeal of the Confirmation Order [Dist. Ct. Case No. 3:21-cv-01585-S, DI 10]. This Court granted the stay motion [DI 21] and, in connection with the *Partially Opposed Motion for Extension of Time to File Appellants'' Opening Brief*, directed the appellants to file their opening brief within 14 days of resolution of the Confirmation Order [DI 19], which they failed to do.	**APPEAL:** In September 2022, after the Fifth Circuit affirmed the Confirmation Order, Highland moved for summary affirmance [DI 23]. Appellants opposed [DI 24], and filed a motion to reopen the appeal [DI 25], which Highland opposed [DI 27]. Because they missed the deadline to file their opening brief, Appellants also filed a belated motion for an extension of time [DI 29], claiming "excusable neglect." In November 2022, this Court ordered the appeal remain abated pending resolution of the DAF parties' Fifth Circuit appeal of the order holding them in contempt [USCA Case No. 22-11036, DI 34], on the ground that it was a "related case."
4/27/21	Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders [DI 2247]	**Movant:** Highland	Highland filed a motion by order to show cause why Dondero, CLOH, DAF, and their counsel should not be held in contempt of court for violating the January and July Orders. The Bankruptcy Court entered an order to show cause [DI 2255] and set an in-person hearing for June 8, 2021. On August 4, 2021, following briefing and an evidentiary hearing, the Court held Dondero, CLOH, DAF and others (the "Contemnors") in contempt of court [DI 2660].	**APPEAL:** In August 2021, the Contemnors appealed [DI 2712, 2713, 2758]. In September 2022, this Court affirmed the Bankruptcy Courts order in relevant part [Dist. Ct. Case No. 3:21-cv-01974-X, DI 49]. In October 2022, the Contemnors appealed to the Fifth Circuit [USCA Case No. 22-11036]. Oral argument held September 5, 2023, appeal *sub judice*.
4/29/21	Motion to Compel Compliance with Bankruptcy Rule 2015.3 [DI 2256]	**Movants:** Trusts	The Trusts filed a motion seeking to compel Highland to file certain reports under Bankruptcy Rule 2015.3 [DI 2256]. Highland [DI 2341] and the Committee [DI 2343] opposed the motion. Following a hearing in June 2021 [DI 2442], the motion was adjourned and later denied as moot after Highland's Plan became effective. [DI 2812].	**APPEALS:** In August 2022, following the Trusts' appeal, [DI 2840], this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 3:21-cv-02268-S, DI 21]. The Dondero Entities appealed to the Fifth Circuit. [USCA Case No. 22-10831]. In February 22023, the Fifth Circuit issued its order and judgment affirming the District Court [USCA Case No. 22-10831, Docket Nos. 46, 47].
6/25/21	Debtor's Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) entry into an Indemnity Trust Agreement and (ii) Granting Related Relief [DI 2491]	**Movant:** Highland	Highland filed a motion seeking authority to create an indemnity trust to secure the Reorganized Highland, Claimant Trust, and Litigation Trust's indemnification obligations [DI 2491]. Dondero, HCMFA, NPA, and Dugaboy objected [DI 2563] arguing it was an improper plan modification. A hearing was held in July 2021 and Highland's motion was granted [DI 2599].	**APPEAL:** After the Dondero Entities appealed [DI 2673], this Court affirmed the Bankruptcy Court's order [Dist. Ct. Case No. 3:21-cv-01895-D, DI 45]. The Dondero Entities appealed. [USCA Case No. 22-10189]. In January 2023, the Fifth Circuit affirmed this Court's order [USCA Case No. 22-10189, Document No. 90-1].

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
7/8/21	Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief [DI 2535]	**Movant:** Highland **Objector:** NPA	Highland filed a motion seeking authority to sell certain real property [DI 2535]. NPA objected [DI 2621] arguing Highland created a sale process designed to exclude NPA without a sound business justification.	**CONCLUDED:** A hearing was held on August 4, 2021 and Highland's motion was granted over NPA's objection [DI 2687].
7/8/21	Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief [DI 2537]	**Movant:** Highland **Objector:** NPA	Highland filed a motion seeking authorization to sell, among other things, certain limited partnership interests in PetroCap Partners III, L.P. [DI 2537]. NPA objected, seeking to inject itself into the bidding process. [DI 2626].	**CONCLUDED:** In August 2021, the Bankruptcy Court overruled NPA's objection and granted Highland's motion [DI 2699].
10/8/21	Final Fee applications of FTI [DI 2902], Teneo Capital [DI 2903], Sidley Austin [DI 2904], PSZJ [DI 2906], and Wilmer Cutler [2907]	**Movants:** Highland's professionals **Objector:** NPA	PSZJ, Wilmer Cutler, Teneo Capital, Sidley Austin, and FTI filed final fee applications in the Bankruptcy Court. NPA objected [DI 2977, 3015], sought permission to employ a fee examiner to review the fee applications, and sought expansive discovery. In November 2021, the fee applications were granted after substantial briefing and a hearing. [DI 3047, 3048, 3056, 3057, and 3058].	**APPEALS:** NPA filed notices of appeal to this Court [DI 3076, 3077, 3078, 3079, and 3080], which were then consolidated [Dist. Ct. Case No. 21-cv-3086-K, DI 9]. In May 2022, this Court dismissed the appeal as constitutionally moot [Dist. Ct. Case No. 21-cv-3086-K, DI 37]. NPA appealed [DI 39]. On July 19, 2023, the Fifth Circuit affirmed this Court's order [USCA 22-10575, Docket No. 97].
1/11/22	Motion to Ratify Second Amendment to Proof of Claim [Claim No. 198] and Response to Objection to Claim [DI 3177, 3178]	**Movant:** CLOH **Objector:** Litigation Trustee	CLOH's requested to ratify its Second Amended CLO HoldCo Crusader Claim [Proof of Claim No. 198], and deny the Litigation Trustee Objection as moot.	**STATUS:** CLOH's motion was denied by the Bankruptcy Court [DI 3457], and its appeal was rejected by this Court. *See CLO Holdco, Ltd. v. Kirschner (In re Highland Cap. Mgmt., L.P.)*, No. 3:22-CV-2051-B, 2023 U.S. Dist. LEXIS 87842, at *1 (N.D. Tex. May 18, 2023). CLOH has appealed to the Fifth Circuit [Case No. 3:22-cv-02051-B D, DI 20].
Jan. 2022	NPA acquisition of claim [DI 3146]	N/A	In January 2022, NPA acquired a disputed employee claim [DI 3146], which was expunged [DI 3180]. NPA has appealed. Case 3:22-cv-00335-L	Briefing complete.

Date	Motion or Claim	Movant / Objector	Summary of Motion or Claim	Status
6/30/22	Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust [DI 3382]	**Movant:** Dugaboy **Objector:** Highland	Dugaboy moved for a determination of the current value of the estate and an accounting of its assets available for distribution, arguing it was somehow in the money and therefore had appellate standing and rights (the "Valuation Motion") [DI 3382]. Highland objected. [DI 3465]. After Dugaboy amended its Valuation Motion in September 2022 [DI 3533, 3535], Highland filed its reply in further opposition [DI 3614].	**STATUS:** During a hearing held in November 2022, the Court questioned whether the relief could only be obtained through an adversary proceeding and requested additional briefing [DI 3625]. After reviewing the supplemental briefs, the Court ruled an adversary proceeding was required [DI 3645]. On May 10, 2023, Dugaboy and Hunter Mountain filed a complaint seeking declaratory relief as to the value of the Claimant Trust assets and their interest therein [AP No. 23-03038-sgj, Docket No. 1]. On November 22, 2023, Highland filed a motion to dismiss the valuation complaint [*id.* at Docket No. 13], and oral argument is scheduled for February 14, 2024.
2/6/23	Motion for Leave to File Proceeding [DI 3662]	**Movants:** Dugaboy and Hunter Mountain Investment Trust **Objector:** Highland	Following the ruling on the Valuation Motion, Dugaboy and Hunter Mountain Investment Trust filed a motion for leave to file a complaint against Highland seeking information about the estate's current assets, results of asset sales, and amounts distributed to creditors.	**STATUS:** On May 10, 2023, the parties filed a stipulation withdrawing the motion [DI 3662].
3/28/23	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [DI 3699]	**Movant:** Hunter Mountain Investment Trust **Objector:** Highland, Highland Claimant Trust, James P. Seery, Jr., Farallon, Stonehill	Hunter Mountain seeks leave of the Bankruptcy Court to file a complaint against defendants Seery, Stonehill, and Farallon alleging both direct and derivative claims on behalf of Highland of insider trading and breach of fiduciary duty. The proposed complaint alleges that Seery engaged in a *quid pro quo* with Stonehill and Farallon by which Seery put Stonehill and Farallon on the Oversight Board in exchange for a "rubber stamp" of Seery's compensation as CEO of Highland.	**APPEALS** Trial was held June 8, 2023, and on August 25, 2023, the Bankruptcy Court issued its order denying the motion for leave [DI 3904]. HMIT appealed, and briefing is in process [Case No. 3:23-cv-02071].
6/15/23	The Dugaboy Investment Trust's Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.'s Phone [DI 3802]	**Movant:** Dugaboy	Dugaboy seeks to preserve the ESI contained on Seery's iPhone and to permit the recoveryof his text messages. The basis for this motion was information learned through discovery in a separate action brought by Scott Ellington, Highland's former general counsel, against a former Highland employee, in which Ellington subpoenad Highland's independent directors and bankruptcy counsel, as well as other parties to the bankruptcy case, requiring a motion for a protective order. *See infra.*	The timing of Highland's objection must be fixed.
12/4/23	Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint [Docket No. 3981]	**Movants:** James Dondero Strand Advisors, Inc.	Dondero and Strand moved to sue Highland's counsel, PSZJ, alleging for the first time that PSZJ had represented them since 2019 and violated its fiduciary duties by simultaneously representing Highland in matters adverse to Dondero and Strand. PSZJ opposed the motion and threatened to seek sanctions if the motion was not withdrawn.	**CONCLUDED** Dondero and Strand withdrew the motion [DI 4015].
1/1/24	Motion for Leave to File Delaware Complaint [DI 4000]	**Movant:** Hunter Mountain Investment Trust	HMIT moved for leave to petition to remove Seery as Claimant Trustee based on HMIT's alleged status as a Claimant Trust "beneficiary." HMIT opposed Highland's request to stay the motion pending final resolution of Highland's motion to dismiss the valuation complaint in AP 23-03038-sgj, which will resolve HMIT's status as a "Claimant Trust Beneficiary."	**STATUS** The Bankruptcy Court granted the stay, holding that the motion is stayed until at least the court rules on the motion to dismiss the valuation complaint [DI 4033].

ADVERSARY PROCEEDINGS

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

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
12/7/20	Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [DI 2]	**Movant:** Highland	In December 2020, after Dondero interfered with the management of the estate and threatened certain employees, Highland commenced an adversary proceeding and sought [DI 2] and obtained a TRO [DI 10] and a Preliminary Injunction [DI 59] against Dondero prohibiting him from interfering with Highland's estate and enjoining him from engaging in other wrongful conduct.	**CONCLUDED:** Dondero appealed to this Court [Dist. Ct. Case No. 3:21-cv-01590-N] (which declined to hear the interlocutory appeal), and filed a petition for writ of mandamus from the Fifth Circuit. Ultimately, a consensual injunction was entered [DI 182] and the writ of mandamus was withdrawn.
1/7/21	Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [DI 48]	**Movant:** Highland	In late December 2020, Highland discovered Dondero had violated the TRO by, among other things, again interfering with the management of the estate and conspiring with Highland's then-general counsel and assistant general counsel to coordinate offensive litigation against Highland. An extensive evidentiary hearing was held in March 2021, and on June 7, 2021, the Bankruptcy Court entered an order finding Dondero in contempt of court [DI 190].	**APPEALS:** Dondero appealed [DI 212]. In August 2022, this Court affirmed in substantial part [Dist. Ct. Case No. 3:21-cv-01590-N, DI 42]. Dondero appealed to the Fifth Circuit [USCA Case Number 22-10889]. Oral argument held September 6, 2023, appeal *sub judice*.

Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., and CLO Holdco, Ltd., Adv. Proc. No. 21-03000-sgj (Bankr. N.D. Tex.)

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
1/6/21	Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Certain Entities Owned and/or Controlled by Mr. James Dondero [DI 2]	**Movant:** Highland	In late December 2020, Highland received threatening letters from the Funds, the Advisors, and CLOH regarding Highland's management of the CLOs. These letters reiterated the arguments made by these parties in their December motion that the Bankruptcy Court denied as "frivolous." Highland sought to prevent the Dondero Entities from improperly interfering in the management of the estate. In January 2021, the parties agreed to entry of a TRO [DI 20] and later a final disposition of the matter pursuant to Bankruptcy Rule 9019 [DI 2589].	**CONCLUDED:** In September 2021, the Court entered its order approving the settlement [DI 2829].

Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P., Adv. Proc. No. 21-03010-sgj (Bankr. N.D. Tex.)

Date	Motion / Complaint	Plaintiff	Summary of Proceeding	Status
2/17/21	Debtor's Emergency Motion for a Mandatory Injunction Requiring the Advisors to Adopt and Implement a Plan for the Transition of Services by February 28, 2021 [DI 2]	**Plaintiff:** Highland	Highland's Plan called for a substantial reduction in its work force. As a result, Highland terminated certain shared services agreements and attempted to negotiate a transition plan with the Advisors to enable them to continue providing services to their funds without interruption, but the Advisors would not say "yes." Concerned the Advisors would be unable to service its clients, Highland commenced this action to force the Advisors to adopt a transition plan.	**CONCLUDED:** During the hearing, the Advisors announced for the first time they had cobbled together their own transition plan. An order was entered in February 2021 [DI 25] making factual findings and ruling the injunction was moot.

CONSOLIDATED NOTES LITIGATION (Bankr. N.D. Tex.) MEMBER CASES: Adv. Proc. Nos. 21-03003-sgj, 21-03004-sgj, 21-03005-sgj, 21-03006-sgj, 21-03007-sgj, 21-03082-sgj				
MAIN NOTES LITIGATION 1. ***Highland Capital Management, L.P. v. James Dondero,*** Adv. Proc. No. 21-03003-sgj (Bankr. N.D. Tex.) 2. ***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.,*** Adv. Proc. No. 21-03004-sgj (Bankr. N.D. Tex.) 3. ***Highland Capital Management, L.P. v. NexPoint Advisors, L.P.,*** Adv. Proc. No. 21-03005-sgj (Bankr. N.D. Tex.) 4. ***Highland Capital Management, L.P. v. Highland Capital Management Services, Inc.,*** Adv. Proc. No. 21-03006-sgj (Bankr. N.D. Tex.) 5. ***Highland Capital Management, L.P. v. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC),*** Adv. Proc. No. 21-03007-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
1/22/21	Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [DI 1]	**Plaintiff:** Highland	After Dondero and four affiliates (HCMFA, NPA, HCMS, HCRE) refused to satisfy over $60 million on certain promissory notes, Highland filed collection actions against each Dondero Entity. *See* AP Nos. 21-03003-sgj; 21-03004-sgj; 21-03005-sgj; 21-03006-sgj; 21-03007-sgj. Three months after the complaint was filed, the Dondero Entities moved to withdraw the reference. Following a hearing in May 2021, the Bankruptcy Court recommended the Bankruptcy Court adjudicate pre-trial matters, including consideration (but not determination) of dispositive motions. This Court adopted the R&Rs and the actions were later consolidated. Dondero amended his answer to assert, among other things, that he and his sister, Nancy Dondero, entered an undisclosed oral agreement claiming the notes would be forgiven upon fulfillment of certain conditions subsequent (the "Alleged Agreement Defense"). All Dondero Entities (except, initially, HCMFA) adopted the Alleged Agreement Defense. Dondero, NPA, and HCRE also asserted Highland "negligently" caused their defaults under the term notes by not effectuating the payments on their behalf. In support of this "negligence" defense, the Dondero Entities moved to extend expert discovery to litigate the legal issue of whether Highland had an affirmative "duty" to effectuate payments on their behalf. The Bankruptcy Court denied the motion, finding, in pertinent part, that expert testimony on legal issues was improper. The Dondero Entities sought improperly sought reconsideration in this Court. HCMFA contended the HCMFA notes were "void" or "unenforceable" due to "mutual mistake," and specifically, that Waterhouse, HCMFA's treasurer and Highland's former CFO, lacked authority to execute the notes and signed them by "mistake" ("HCMFA's Mistake Defense"). HCMFA subsequently sought leave to assert that Waterhouse did not sign the HCMFA notes at all. After a hearing on HCMFA's motion for leave, the Bankruptcy Court denied the motion on the ground that the proposed additional defense (that Waterhouse did not sign the notes) was futile. HCMFA again improperly sought reconsideration in this Court. In December 2021, Highland moved for Partial Summary Judgment. Following a hearing in April 2022, the Bankruptcy Court issued its Report & Recommendation (the "R&R"), recommending Partial Summary Judgment in favor of Highland. In the R&R, the Bankruptcy Court found no reasonable trier of fact could find the Alleged Agreement existed, the Alleged Agreement Defense did not pass the "straight-face test," and "there was a complete lack of evidence" supporting the Alleged Agreement Defense. The Bankruptcy Court also found no reasonable trier of fact could believe HCMFA's Mistake Defense ("the 'Mutual Mistake' defense—like the 'oral agreement' defense asserted by the other Note Maker Defendants—is farfetched, to say the least, especially in the context of a multi-billion company with perhaps the world's most iconic and well-known public accounting firm serving as its auditors."). In August 2022, Highland filed a notice of attorneys' fees and backup documentation in support of the proposed judgments. The Dondero Entities objected. Highland responded in September 2022. The Dondero Entities then filed an unauthorized reply in support of their objection. Highland moved to strike on the grounds it was not permitted under Fed. R. Bankr. P. 9033 or the parties' Stipulation. Highland then moved to supplement its backup documentation to include two invoices inadvertently omitted. The Dondero Entities filed a meritless objection which was overruled. In November 2022, the Bankruptcy Court issued a supplemental R&R overruling the Dondero Entities' objections to the Proposed Judgment. The Dondero Entities objected and Highland responded.	**APPEALS:** On July 6, 2 023, the District Court entered an order adopting the Bankruptcy Court's R&R, granting partial summary judgment on breach of the notes and entering judgment [Case No. 3:21-cv-00881-X, DI 128]. The Court also entered orders finding moot (a) Highland's motion to Strike Defendants' Unauthorized Reply and (b) NPA/HCMS/HCRE's objection to the Bankruptcy Court's order denying the motion to extend expert discovery [DI 135]. Defendants appealed this Court's orders to the Fifth Circuit [USCA No. 23-10911], and briefing is in process.

HCMFA NOTES LITIGATION II *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Proc. No. 21-03082-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
11/9/21	Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [DI 1]	**Plaintiff:** Highland	In November 2021, Highland commenced another collection action against HCMFA for breach of two additional promissory notes (the "Pre-2019 Notes") that were subject to a prepetition standstill agreement that Dondero entered into with himself. This action was consolidated with the main litigations. HCMFA adopted the Alleged Agreement Defense asserted in the main litigation. During discovery, Dondero was forced to change story his story yet again, stating he, not his sister, entered into the Alleged Agreement. Highland moved for summary judgment. After a hearing, the Bankruptcy Court issued its Report & Recommendation recommending summary judgment be entered against HCMFA, finding, "[t]he Alleged Oral Agreement Defense appears to be a 'cut-and-paste' of the same alleged 'oral agreement' defense that was ultimately asserted in the Five Earlier-Filed Note Actions by four of the five Note Maker Defendants (all but HCMFA)" and the defense "morphed" as the five earlier-filed Main Note Litigation progressed, "The only summary judgment evidence submitted by HCMFA in support of its Alleged Oral Agreement Defense is the conclusory, self-serving, unsubstantiated declarations of Dondero and his sister regarding the existence of the Alleged Oral Agreements." HCMFA objected to the R&R in this Court and to Highland's proposed judgment in Bankruptcy Court. The Bankruptcy Court issued its supplemental R&R recommending this Court overrule HCMFA"s objections to the proposed judgment. HCMFA filed the same objection to the supplemental R&R in this Court, and Highland responded.	**APPEALS:** On July 6, 2 023, the District Court entered an order adopting the Bankruptcy Court's R&R, granting summary judgment on breach of the notes and entering judgment [Case No. 3:21-cv-00881-X, DI 133]. Defendant appealed this Court's orders to the Fifth Circuit [USCA No. 23-10911], and briefing is in process.

UBS Securities LLC and UBS AG London Branch vs. Highland Capital Management L.P., Adv. Pro. No. 21-03020-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
3/31/21	Original Complaint for Injunctive Relief [DI 3]	**Plaintiff:** UBS	In early 2021, Highland discovered certain former employees under Dondero's direction caused certain entities to transfer $300 million in face amount of cash and securities to Sentinel to avoid the judgment in favor of UBS. UBS then sought to enjoin Highland from allowing funds under its management to make transfers to Sentinel, its affiliates, or transferees pending decision as to whether assets were fraudulently transferred. On June 8, 2022, Highland filed motion to withdraw its answer and consent to judgment [DI 169]	**CONCLUDED:** On August 23, 2022, the Court granted Highland's motion to withdraw the answer, and a permanent injunction was issued [DI 185]. At the hearing, the Court said it would assess the evidence to determine whether a criminal referral was warranted.

Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd., **Adv. Proc. No. 21-03067-sgj (Bankr. N.D. Tex.)**				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
4/12/21	Original Complaint	**Plaintiffs:** DAF CLOH	The Dondero Entities filed their original complaint in April 2021 in this Court alleging Highland and Seery violated SEC rules, breached fiduciary duties, engaged in self-dealing, and violated RICO in connection with its settlement with HarbourVest [Dist. Ct. Case No. 21-cv-00842-B]. The Dondero Entities brought this complaint even though CLOH previously withdrew its objection to the HarbourVest settlement. Highland believes the complaint is frivolous and represents a collateral attack on the order approving the HarbourVest settlement. On May 19, 2021, Highland filed a motion to enforce the reference and have the case referred to the Bankruptcy Court [DI 22]. Highland also filed a motion to dismiss the complaint (the "Original MTD") [DI 26]. After the motions were briefed, the Dondero Entities moved to stay the proceeding pending resolution of the confirmation appeal [DI 55] (the "First Stay Motion"). Highland opposed the First Stay Motion. In September 2021, the Court entered an order enforcing the reference [DI 64], and this matter was sent to the Bankruptcy Court under Adv. Proc. No. 21-3067. On November 18, 2021, five days prior to the hearing on the Original MTD, the Dondero Entities filed an amended motion to stay the proceedings pending resolution of the appeal of the confirmation order [DI 69] (the "Second Stay Motion"), in which they reiterated the arguments in the First Stay Motion, and attached a motion to withdraw the reference [*id*. at Exhibit A], which reiterated the same arguments in the Dondero Entities' opposition to Highland's motion to enforce the order of reference. In March 2022, the Court dismissed the action on collateral and judicial estoppel grounds [DI 100]. The Dondero Entities appealed and that appeal was consolidated with their appeal of the order denying their motion for a stay [3:21-cv-03129-B]. On September 2, 2022 [DI 28], this Court reversed the Bankruptcy Court's finding that Plaintiffs' claims were barred by collateral estoppel. On judicial estoppel, this Court affirmed the Bankruptcy Court's finding that the first two elements were satisfied but remanded to determine if CLOH's inconsistent position was "inadvertent." Highland filed its renewed Motion to Dismiss on October 14, 2022 [DI 122, 123]. On November 18, 2022, Plaintiffs filed a renewed motion to withdraw the reference [DI 128].	**APPEALS:** A hearing on both motions was held on January 25, 2023. On February 6, 2023, the Bankruptcy Court issued its R&R, recommending denial of Plaintiffs' renewed motion to withdraw the reference [DI 158], and, on February 21, 2023, the Dondero Entities objected to the R&R [Dist. Ct. Case No. 3:22-cv-02802-S, DI 3]. The R&R is pending final decision of the District Court. On June 25, 2023, the Bankruptcy Court issued its order granting Highland's renewed motion to dismiss [AP No. 21-03067-sgj, DI 167]. On June 27, 2023, DAF/CLOH appealed the order dismissing the action [DI 168]. The appeal is docketed to Dist. Ct. Case No. 3:23-cv-01503-G. Briefing is complete, appeal *sub judice*.

The Charitable DAF Fund, LP v. Highland Capital Management, L.P., Adv. Proc. No. 22-03052-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
7/22/21	Original Complaint	**Plaintiff:** DAF	DAF filed its original complaint in July 2021 in this Court alleging Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets [Dist. Ct. Case No. 3:21-cv-01710-N, DI 1]. DAF's allegations duplicated allegations Dugaboy made in proofs of claim filed in the Bankruptcy Court and in its complaint filed in this Court. DAF never served the Complaint but filed a motion to stay (which was also not served) pending appeal of the confirmation order [DI 6]. In September 2021, the Court stayed the proceeding [DI 7]. Highland then voluntarily appeared, and moved for reconsideration of the stay order [DI 8] and to dismiss [DI 11]. In May 2022, the Court lifted the stay and referred the case to the Bankruptcy Court. Highland filed its amended motion to dismiss in May 2022 [DI 19, 20] arguing the complaint asserted time-barred administrative expense claims. In September 2022, following a hearing, the Court dismissed the complaint as time-barred [DI 42, 43].	**CONCLUDED:** DAF filed a notice of appeal on October 5, 2022 [Case No. 3:22-cv-02280-S] but on February 21, 2023 (the day its opening brief was due) notified counsel it no longer intended to pursue it. A joint stipulation dismissing the appeal with prejudice was filed on February 22, 2023 [DI 9].

PCMG Trading Partners XXIII, L.P. v. Highland Capital Management, L.P., Adv. Proc. No. 22-03062-sgj (Bankr. N.D. Tex.)				
Date	**Motion / Complaint**	**Plaintiff**	**Summary of Proceeding**	**Status**
5/21/21	Original Complaint	**Plaintiff:** PCMG Trading Partners XXIII, L.P.	PCMG filed its original complaint in April 2021 in this Court alleging Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets [Dist. Ct. Case No. 3:21-cv-01169-N, DI 1]. PCMG is owned and controlled by Dondero, and held less than a 0.05% interest in the investment vehicle. Highland believed the complaint was frivolous. PCMG never served the Complaint but filed a motion to stay (which was also not served) pending appeal of the confirmation order [DI 6]. In September 2021, the Court stayed the proceeding [DI 7]. Highland then voluntarily appeared, and moved for reconsideration of the stay order [DI 8] and to dismiss [DI 11]. In May 2022, the Court lifted the stay and referred the case to the Bankruptcy Court. Highland filed its amended motion to dismiss on June 16, 2022 [DI 20, 21] arguing the complaint asserted time-barred administrative expense claims. PCMG withdrew the complaint in July 2022 after forcing Highland to incur substantial expense litigating the matter.	**CONCLUDED:** An amended Stipulation of Dismissal of Adversary Proceeding (with prejudice) [DI 27] was filed on August 1, 2022.

DISTRICT COURT ACTIONS				
***Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd.*, Case No. 21-cv-00842-B (N.D. Tex. April 12, 2021)**				
Date	**Motion**	**Movant / Objector**	**Summary of Motion**	**Status**
4/19/21	Plaintiff's Motion for Leave to File First Amended Complaint in the District Court	**Plaintiffs:** DAF CLOH	Plaintiffs filed a motion seeking leave from this Court to add Seery as a defendant and to seek, in this Court, a reconsideration of two final Bankruptcy Court orders [DI 6].	**CONCLUDED:** This Court denied the motion but with leave to refile. This matter was referred to the Bankruptcy Court on September 20, 2021. *See* Adv. Proc. No. 21-03067-sgj (Bankr. N.D. Tex.)
***The Dugaboy Investment Trust v. Highland Capital Management, L.P.*, Case No. 21-cv-01479-S (N.D. Tex. June 23, 2021)**				
Date	**Motion/Complaint**	**Movant / Objector**	**Summary of Motion**	**Status**
6/23/21	Original Complaint	**Plaintiff:** Dugaboy	Dugaboy alleges Highland violated SEC rules and breached fiduciary duties by causing one of its investment vehicles to sell assets. Dugaboy is Dondero's family trust holding less than a 2% interest in the vehicle. Dugaboy's allegations duplicated allegations it made in proofs of claim filed in the Bankruptcy Court.	**CONCLUDED:** Dugaboy withdrew the Complaint after Highland informed the Bankruptcy Court of the filing.

OTHER DONDERO-RELATED LITIGATION			
Date	**Parties**	**Summary of Litigation**	**Status**
2009	UBS, Highland, Multiple Highland Entities	In 2008, two funds managed by Highland breached their contractual obligations to UBS by failing to meet a margin call. UBS filed suit in New York Supreme Court in 2009. After a decade of litigation, UBS secured a $1 billion plus judgment against the two funds and sought to hold Highland, among others, liable as an alter ego. *Judgment*, Index No. 650097/2009, Docket No. 646 (N.Y. Sup. Feb. 10, 2020). UBS and the Dondero Entities continue to litigate. UBS filed a turnover motion in February 2023 seeking to hold Dondero and Scott Ellington, his long-time general counsel, liable for the full $1 billion plus judgment. *Special Turnover Petition*, Index No. UNASSIGNED, Docket No. 142 (N.Y. Sup. Feb. 8, 2023).	This matter is currently being litigated.
2018	Joshua Terry, Acis, Highland, Neutra, Ltd., HCLOF	After Joshua Terry secured an $8 million arbitration award against Acis, Dondero caused the stripping of Acis's assets to make it judgment proof. Terry subsequently filed an involuntary bankruptcy petition. Case No. 18-30264-sgj11 (Bankr. N.D. Tex.). Through Acis's confirmed plan of reorganization, Terry became Acis's sole owner. The Acis bankruptcy was marked by extremely acrimonious litigation and multiple adverse credibility findings regarding Dondero and other Highland employees (acting at Dondero's direction). In the Acis bankruptcy, the Bankruptcy Court issued: *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* [DI 827] *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 LP and Acis Capital Management GP LLC, as Modified* [DI 829] *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 LP and Acis Capital Management GP LLC, as Modified* [DI 830] Highland and its proxies appealed to this Court and the Fifth Circuit but their appeals were denied: Civ. Case No. 3:19-cv-00291-D; USCA Case No. 19-10847. As soon as the injunction in Acis's plan expired, Dondero (through NSOF) immediately filed suit against Acis and Terry, among others, in the U.S. District Court for the Southern District of New York (Civ. Case No. 1:21-cv-04384). The court dismissed Dondero's federal claims and NSOF appealed to the Second Circuit (USCA Case No. 22-1912). The appeal is pending. Stymied in federal court, Dondero, again through NSOF, filed a substantially similar action against Acis and Terry, among others, in New York state court. Index No. 653654/2022 (N.Y. Sup. 2022). Motions to dismiss NSOF's state law action are *sub judice*. Immediately after the expiration of the injunction in Acis' plan, Dondero—through NSOF—filed suit against Acis, Terry, and others in the Southern District of New York alleging they violated their fiduciary duties to NSOF as an investor in a CLO managed by Acis (and which had been managed by Dondero prior to the Acis bankruptcy). Civ. Case No. 21-cv-04384-GHW (S.D.N.Y. May 14, 2021). Dondero's litigation caused Acis to halt distributions from its managed CLOs thus depriving HCMLP of approximately $20 million in proceeds. The Southern District of New York dismissed Dondero's litigation. *NexPoint Diversified Real Estate Trust v. Acis Cap. Mgmt., L.P.*, 620 F.Supp. 3d 36 (S.D.N.Y. 2022). Undeterred, Dondero appealed to the Second Circuit (Case No. 22-1912 (2d Cir.)), re-filed his breach of fiduciary duty claims in New York state court (Index No. 653654/2022 (N.Y. Sup. 2022)), asserted duplicative counterclaims in another pending litigation involving Acis (Case No. 23-cv-11059-GHW (S.D.N.Y. Dec. 24, 2021)), and filed a lawsuit against HCLOF in the Royal Court of Guernsey alleging HCLOF unfairly prejudiced CLOH by settling with Acis, rather than suing it (No. 106-25786898 (Royal Court of Guernsey))	**CONCLUDED:** On July 9, 2021, the Fifth Circuit affirmed the bankruptcy court's order confirming the Chapter 11 plan, concluding the appeal of plan injunction was moot [USCA Case No. 19-10847, Doc. No. 00515931634]. In a lengthy opinion, the Royal Court of Guernsey criticized CLOH (and Murphy, its co-director), dismissed the Guernsey action, and required CLOH to pay HCLOF's legal fees and costs. The Dondero Entities asserted claims against HCLOF in New York that largely duplicated the claims in the Guernsey action. Case No. 1:21-cv-11059-GHW, D.I. 77 (S.D.N.Y. Mar. 30, 2023). The New York action was dismissed with prejudice.

STATE COURT ACTIONS				
***James Dondero, Petitioner v. Alvarez Marsal, et al.,* Cause No. DC-21-09534 (95th Civil District Court, Tex. July 22, 2021)**				
Date	**Motion**	**Movant / Objector**	**Summary of Motion**	**Status**
7/22/21	Verified Petition to Take Deposition Before Suit and Seek Documents	**Movant:** Dondero	Dondero sought pre-suit discovery from Farallon, a purchaser of certain claims in the Bankruptcy Case, and Alvarez. Dondero alleged Farallon breached certain U.S. Trustee requirements when it purchased claims. Dondero also alleged Farallon purchased those claims because of its relationship to Seery and Seery was leveraging his relationship with Farallon to ensure he remained in control of Highland. Farallon and Alvarez removed the action to the Bankruptcy Court [DI 1]. Dondero moved to remand [DI 4]. On January 4, 2022, the Court remanded the case [DI 22, 23].	**CONCLUDED:** The state court dismissed the matter as without merit
***Ellington v. Daugherty,* Cause No. DC-22-00304 (101st Jud. Dist. Tex. 2022)**				
Date	**Motion**	**Plaintiff / Defendant**	**Summary of Motion**	**Status**
1/11/22	Plaintiff's Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction	**Plaintiff:** Scott Ellington **Defendant:** Patrick Daugherty	Scott Ellington, Highland's former general counsel, sued Daugherty, a former Highland employee, for stalking; Ellington subpoenaed Highland's independent directors, Highland's bankruptcy counsel, and other parties to the bankruptcy case requiring a motion for a protective order in New Jersey; Ellington moved to hold an independent director in contempt, in violation of the gatekeeper order; Ellington subpoenaed deposition of another independent director. Farallon and Alvarez removed the action to the Bankruptcy Court [DI 1]. Dondero moved to remand [DI 4]. On January 4, 2022, the Court remanded the case [DI 22, 23].	Dondero's long-time legal counsel was using the pretext of a "stalking" lawsuit to seek to discovery from Highland that they have improperly used in the Highland bankruptcy. Highland asked plaintiff if he would agree not to use discovery in connection with the stalking action to bring claims against Highland, but he refused. Highland then filed a contempt motion against plaintiff for violating the gatekeeper order. During trial, the parties settled, and the contempt motion with dismissed as moot. [DI 3991].
***In re Hunter Mountain Investment Trust,* Cause No. DC-23-01004 (191st Civil District Court, Tex. Jan. 20, 2023)**				
Date	**Motion**	**Movant / Objector**	**Summary of Motion**	**Status**
1/20/23	Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition	**Movant:** Hunter Mountain Investment Trust	Hunter Mountain Investment Trust sought pre-suit discovery from Farallon and Stonehill as purchasers of certain claims. Hunter Mountain's petition is substantially similar to the petition for pre-suit discovery filed by Dondero in Texas state court in July 2021.	**CONCLUDED:** The state court dismissed the matter as without merit.
Date	**Motion**	**Movant / Plaintiff**	**Summary of Motion**	**Status**
5/5/23	Verified Complaint for Specific Performance to inspect and Copy Books and Records	**Plaintiff:** Highland	Highland filed complaint seeking specific performance of the SE Multifamily operating agreement, *First Amended and Restated Limited Liability Company Agreement,* dated March 15, 2019, effective as of August 23, 2018, to allow Highland to inspect books and records after defendants SE Multifamily Holdings LLC and HCRE refused to make available for inspection and copying SE Multifamily's books and records as is required by Agreement.	Highland was forced to bring an action for specific performance when Dondero failed to comply with his unambiguous contractual obligation to provide Highland with access to SEM's books and records.

OTHER

US TRUSTEE LETTERS

Date	Summary of Matter	Status
2021; 2022	Dugaboy, NPA, and HCMFA sent three baseless and factually inaccurate letters to the Office of General Counsel, Executive Office for U.S. Trustees in November 2021 and May 2022. The letters, totaling roughly 200 pages, allege a litany of wrongdoing by Highland, Seery, and others, arising from their administration of the bankruptcy estate. [DI 3662-1]	N/A

TEXAS STATE SECURITIES BOARD

Date	Summary of Matter	Status
May 2023	Mark Patrick, as the DAF's trustee, admitted that the DAF or "one of its entities" filed a complaint against HCMLP with the Texas State Securities Board (the "TSSB") during the Bankruptcy Case.	In May 2023, the TSSB, after "full consideration," closed its investigation of HCMLP without finding any wrongdoing.

In re Highland Select Equity Master Fund, L.P., Case No. 23-31037-swe7 and *In re Highland Select Equity Fund GP, L.P.*, Case No. 23-31039-mvl7 (not jointly administered)

Date	Summary of Proceeding	Status
5/25/23	Select Equity Master Fund and Select Equity Fund filed for bankruptcy in May 2023. These entities only filed because Dugaboy initiated litigation in SDNY. *See The Dugaboy Investment Trust v. Highland Select Equity Master Fund, L.P. et al.,* Case No. 1:23-cv-01636-MKV.	Dugaboy and PCMG both tried to sue Highland for mismanagement of Select fund during the Highland bankruptcy, but were stymied. Highland made an offer to give Dugaboy everything in Select Fund to avoid costs being incurred, but Dugaboy has not responded. Dugaboy filed objection to reassign the case to Judge Jernigan, arguing she is biased. Motion to reassign was later withdrawn.

EXHIBIT 2

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Jim Dondero <JDondero@HighlandCapital.com>
Subject: Re: List for joint meeting
Date: Wed, 16 Dec 2020 13:42:51 -0600
Importance: Normal

On it.

Sent from my iPhone

On Dec 16, 2020, at 1:33 PM, Jim Dondero wrote:

I'm going to need you to provide leadership here.

Sent from my iPhone

Begin forwarded message:

From: Michael Lynn
Date: December 16, 2020 at 1:07:50 PM CST
To: Douglas Draper , Jim Dondero
Subject: Re: List for joint meeting

I can't think of any others tassuming Zorada is with K&L Gates). I would contact the lawyers I have no opinion on additional contacts.

I had thought you would be representing more entities than the two trusts.

Sent from my BlackBerry 10 smartphone.
Original Message
From: Douglas Draper
Sent: Wednesday, December 16, 2020 11:13 AM
To: Michael Lynn; Jim Dondero
Subject: List for joint meeting

1) Daf john Kane attny 2) highland capital management fund advisors George Zorada 3) nexpoint advisors Laureen Drawhorn 4) highland clo funding Mark Maloney 5) employees David Neier
Do we want to add or delete anybody from the list. Is the best route to have me call the lawyer or have a someone contact the client contact for the lawyer. Please advise
On another matter I think it would be a good idea to have a second client contact for my two clients. Give me your thoughts

Sent from my iPhone
Due to the current health crisis, the staff of Heller Draper & Horn . LLC will be working remotely and there may be some delay in responding to your email.
CONFIDENTIALITY NOTICE:

INFORMATION IN THIS MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT(S) NAMED ABOVE. This message is sent by or on behalf of an attorney of the law firm Heller, Draper & Horn, L.L.C. and is intended only for the use of the individual or entity to whom it is addressed. This message contains information and/or attachments that are privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or is not the employee or agent responsible for delivering this message to the intended recipient, please do not read, copy, use or disclose this communication to anyone. If you have received this communication in error, please notify us immediately by reply e-mail or by telephone at 504-299-3300 and immediately delete this message and all of its attachments.

Circular 230:
Pursuant to federal tax regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any advice contained in this communication regarding federal taxes is not written or intended to be used, and cannot be used by any person as the basis for avoiding federal tax penalties under the Internal Revenue Code nor can such advice be used or referred to for the purpose of promoting marketing or recommending any entity, investment plan or arrangement. Thank You.

PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

EXHIBIT 3

UNANIMOUS CONSENT
OF
THE BOARD OF DIRECTORS
OF
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.
IN LIEU OF AN ORGANIZATIONAL MEETING

Pursuant to the provisions of General Corporation Law of Delaware, the undersigned, being the directors of Highland Capital Management Services, Inc., a Delaware corporation (the "Corporation"), sign this instrument in lieu of holding an organizational meeting of the board of directors, to evidence their consent to the resolutions set forth below, with the same force and effect as if said resolutions were adopted by unanimous vote at a duly called meeting of the board of directors.

CERTIFICATE OF INCORPORATION

WHEREAS, the Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on December 19, 2000, and a duplicate original of the Articles of Incorporation have been returned to the Corporation by the Secretary of State; now, therefore, be it

RESOLVED, that the Certificate of Incorporation and the duplicate original of the Articles of Incorporation be inserted into the minute book of the Corporation.

CORPORATE RECORDS

RESOLVED, that the Corporation shall maintain, as part of its corporate records, a minute book that shall include, but that shall not be limited to, records of the Corporation's Articles of Incorporation and amendments thereto, its Bylaws and amendments thereto, minutes of all meetings of its directors, minutes of all meetings of its shareholders, the time and the place of each such meeting, whether the meeting was regular or special, the manner in which the meeting was authorized, the notice given, the names of those present or represented at the meeting and the proceedings of each meeting.

RESOLVED FURTHER, that the Secretary of the Corporation is directed to procure such a minute book and such other books and records as may be required by the Corporation.

ADOPTION OF BYLAWS

RESOLVED, that the form of Bylaws presented to the board of directors for review and attached hereto as Exhibit "A" be, and it hereby is, approved and adopted as the Bylaws of the Corporation;

RESOLVED FURTHER, that the Secretary of the Corporation is directed to certify a copy of these Bylaws and insert it in the minute book of the Corporation, and is further ordered to certify a copy of these Bylaws and maintain it in the principal office of the Corporation, open for inspection by the shareholders at all reasonable times during office hours.

ELECTION OF OFFICERS

RESOLVED, that the following named persons be, and they hereby are, elected to the offices set opposite their respective names, to serve until their successors are duly elected and qualified:

President: James D. Dondero
Secretary and Treasurer: Mark Okada

RESOLVED FURTHER, that the officers are empowered to carry out the day-to-day business of the Corporation, subject to the direction and control of the board of directors.

ADOPTION OF CORPORATE SEAL

RESOLVED, that the seal, an impression of which is shown below, be, and it hereby is, adopted as the corporate seal of the Corporation.

ADOPTION OF SHARE CERTIFICATES

RESOLVED, that the form of share certificate attached hereto as Exhibit "B" be, and it hereby is, approved and adopted as the form of share certificate representing the common stock (par value $.01 per share) of the Corporation;

RESOLVED FURTHER, that the certificates shall be consecutively numbered, beginning with the number 001; that the certificates shall bear all legends required by law to be placed on the Corporation's share certificates; and that the certificates shall only be issued in the manner and upon the conditions set forth in the Bylaws.

LICENSES AND TAX PERMITS

RESOLVED, that the officers of the Corporation be, and they hereby are, authorized and directed to obtain, in the name of the Corporation, such licenses and tax permits as may be required by any applicable federal, state, county or municipal governmental statute, ordinance or

regulation of the conduct of the business of the Corporation within any jurisdiction in which the Corporation shall have qualified to do business.

PAYMENT OF ORGANIZATION FEE

RESOLVED, that any officer is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the Corporation.

AUTHORITY TO ISSUE SHARES OF COMMON STOCK

RESOLVED, that the President and Secretary of the Corporation be, and they hereby are, directed to prepare or cause to be prepared, and to execute, seal and issue certificates representing shares of the Corporation's common stock to the persons named below in the amount set forth opposite these names, in consideration of an aggregate of $1,000.

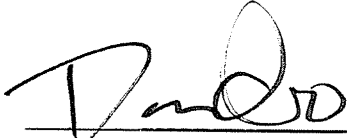
Shareholder	Shares	Consideration
James D. Dondero	750	$750
Mark Okada	250	$250

RESOLVED FURTHER, that the board of directors acknowledges receipt of an aggregate of $1,000 from such persons listed above as consideration for the issuance of the Corporation's shares of common stock.

GENERAL AUTHORITY

RESOLVED, that the officers and directors of the Corporation be, and they hereby are, authorized to do any and all acts and things and to execute any and all agreements, consents and documents as in their opinion, or in the opinion of counsel to the Corporation, may be necessary or appropriate in order to carry out the purposes and intent of any of the foregoing resolutions.

EXECUTED by the board of directors of the Corporation effective as of the _______ day of December 2000.



James D. Dondero, Director

Mark Okada, Director

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF OCTOBER, A.D. 2010, AT 10:54 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF OCTOBER, A.D. 2010, AT 5 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3332816 8100

AUTHENTICATION: 8265814

100959645

DATE: 10-04-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:59 AM 10/01/2010
FILED 10:54 AM 10/01/2010
SRV 100959645 - 3332816 FILE

CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF INCORPORATION
OF
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify that:

1. The name of the corporation (hereinafter called the "***Corporation***") is Highland Capital Management Services, Inc.

2. The date of filing of the Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was December 19, 2000.

3. The Certificate of Incorporation of the Corporation is hereby amended as follows:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (a) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment to (i) combine each 3,436 shares of the Corporation's Common Stock, $0.01 par value per share ("***Common Stock***"), issued and outstanding or held in the treasury of the Corporation into one (1) share of Common Stock (the "***Reverse Stock Split***") and (ii) decrease the number of authorized shares of Common Stock to 5,000, and (b) declaring this Certificate of Amendment to be advisable and recommended for approval by the Shareholders of the Corporation.

SECOND: That this Certificate of Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of Delaware by the Board of Directors and Shareholders of the Corporation.

THIRD: That upon the effectiveness of this Certificate of Amendment (the "***Effective Time***"), Article FOURTH of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

> "FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 5,000 shares, par value of $0.01 per share.
>
> Upon effectiveness of this Certificate of Amendment to the Certificate of Incorporation (the "***Effective Time***") filed with the Secretary of State of the State of Delaware, each 3,436 shares of Common Stock issued and outstanding or held in the treasury of the Corporation at such time shall be combined into one (1) share of Common Stock (the "***Reverse Stock Split***"). All shares of Common Stock (including fractions thereof) issuable upon the Reverse Stock Split to a given holder shall be aggregated for purposes of determining whether the Reverse Stock Split would result in the issuance of any fractional share. Any fractional shares that would otherwise be outstanding after the aforementioned aggregation shall be rounded to the nearest whole share. Each certificate representing shares of Common Stock outstanding immediately prior to the Effective Time shall automatically, and without the necessity of presenting the same for exchange, represent after the Effective Time, only the applicable number of shares of Common Stock as provided above with respect to the Reverse Stock Split. Upon surrender by a holder of a certificate or certificates for Common Stock, duly endorsed, at the office of the Corporation, the Corporation shall, as soon as practicable thereafter, issue and

BY-LAWS
OF

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.
A DELAWARE CORPORATION

ARTICLE 1

STOCKHOLDERS

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 1.2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, or by a committee of the Board of Directors which has been duly designated by the Board of Directors and whose powers and authority, as expressly provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these by-laws, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

Section 1.4. Quorum. Except as otherwise provided by law, the certificate of incorporation or these by-laws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner provided in Section 1.4 of these by-laws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation to vote stock, including, but not limited to, its own stock, held by it in a fiduciary capacity.

Section 1.5. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in his absence by the Vice Chairman of the Board, if any, or in his absence, by the President, or in his absence by a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 1.6. Voting: Proxies. Except as otherwise provided by the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by him which has voting; power upon the matter in questions. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. At all meetings of stockholders for the election of directors, a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law, the certificate of incorporation or these by-laws, be decided by the vote of the holders of shares of stock having a majority of the votes which could be cast by the holders of all shares of stock entitled to vote thereon which are present in person or represented by proxy at the meeting.

Section 1.7. Fixing Date for Determination of Stockholders of Record. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business

on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to vote of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.8. **List of Stockholders Entitled to Vote.** The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 1.9. **Action by Consent of Stockholders.** Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action shall be given to those stockholders who have not consented in writing.

ARTICLE II
BOARD OF DIRECTORS

Section 2.1. **Number; Qualifications.** The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders.

Section 2.2. Election; Resignation; Removal; Vacancies. The Board of Directors shall initially consist of the persons named as directors in the certificate of incorporation, and each director so elected shall hold office until the first annual meeting of stockholders or until his successor is elected and qualified. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his successor is selected and qualified. Any director may resign at any time upon written notice to the corporation. Any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he has replaced or until his successor is elected and qualified.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined notices thereof need not be given.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, any Vice President, the Secretary, or by any member of the Board of Directors. Notice of special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four hours before the special meeting.

Section 2.5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or similar communications equipment by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. At all meetings of the Board of Directors, a majority of the whole Board of Directors shall. constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation or these by-laws otherwise provide, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in his absence by the Vice Chairman of the Board, if any, or in his absence by the President, or in their absence by a chairman chosen at the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Informal Action by Directors. Unless otherwise restricted by the certificate of incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all

members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

ARTICLE III
COMMITTEES

Section 3.1. Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these by-laws.

ARTICLE IV
OFFICERS

Section 4.1. Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairman of the Board and a Vice Chairman of the Board from among its members. The Board of Directors may also choose one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his election, and until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2. Powers and Duties of Executive Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his duties.

ARTICLE V
STOCK

Section 5.1. Certificates. Every holder of stock shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or the President or a vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation, certifying the number of shares owned by him in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The corporation may issue a new certificate of stock in the place of any certificate therefore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI
INDEMNIFICATION

Section 6.1. Right to Indemnification. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The corporation shall be required to indemnify a person in connection with a proceeding was authorized by the Board of Directors of the corporation.

Section 6.2. Prepayment of Expenses. The corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a director or officer in advance of the final disposition of the

proceeding shall be made only upon receipt of an undertaking by ultimately determining that the director or officer is not entitled to be indemnified under this Article or otherwise.

Section 6.3. Claims. If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty days after a written claim therefor has been received by the corporation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 6.4. Non-Exclusivity of Rights. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these by-laws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. Other Indemnification. The corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VII
MISCELLANEOUS

Section 7.1. Fiscal Year. The Fiscal year of the corporation shall be determined by resolution of the Board of Directors.

Section 7.2. Seal. The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice.

Section 7.4. Interested Directors; Quorum. No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if: (1) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.5. Form of Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 7.6. Amendment of By-Laws. These by-laws may be altered or repealed, and new by-laws made, by the Board of Directors, but the stockholders may make additional by-laws and may alter and repeal any by-laws whether adopted by them or otherwise.

APPOINTMENT OF INITIAL DIRECTORS BY INCORPORATOR

The undersigned, Landra Dee Blackwell, Incorporator of **Highland Capital Management Services, Inc.** a Delaware corporation, hereby appoints the following persons as the initial directors of the corporation:

James D. Dondero
Mark Okada

EXECUTED this 20 day of December 2000.

Landra Dee Blackwell
Landra Dee Blackwell, Incorporator

10. **The names and respective addresses of its directors are:**

NAME	ADDRESS
James D. Dondero	13455 Noel Rd., Ste. 1300, Two Galleria Towers, Dallas, TX 75240
Mark Okada	13455 Noel Rd., Ste. 1300, Two Galleria Towers, Dallas, TX 75240

11. **The names and respective addresses of its officers are:**

NAME	ADDRESS (city and state)	OFFICE
James D. Dondero	Dallas, Texas	President
Mark Okada	Dallas, Texas	Secretary and Treasurer

12. **The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:**

NUMBER OF SHARES	CLASS	SERIES	PAR VALUE PER SHARE OR STATEMENT THAT SHARES ARE WITHOUT PAR VALUE
10,000,000	Common		$ .01

13. **The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:**

NUMBER OF SHARES	CLASS	SERIES	PAR VALUE PER SHARE OR STATEMENT THAT SHARES ARE WITHOUT PAR VALUE
750	Common		$ .01
250	Common		$. 01

141008

14. **The amount of its stated capital is $1,000 ____. (See instructions for definition of stated capital.)**

15. **Consideration of the value of at least One Thousand Dollars ($1,000.00) has been paid for the issuance of its shares.**

16. **The application is accompanied by a certificate issued by the secretary of state or other authorized officer of the jurisdiction of incorporation evidencing the corporate existence and dated within 90 days of the date of receipt of the application.**

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.
Name of Corporation

By: [signature]

Its President
Authorized Officer

Form No. 301
Revised 8/99

141008

UNANIMOUS CONSENT
OF
THE BOARD OF DIRECTORS
OF
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.
IN LIEU OF AN ORGANIZATIONAL MEETING

Pursuant to the provisions of General Corporation Law of Delaware, the undersigned, being the directors of Highland Capital Management Services, Inc., a Delaware corporation (the "Corporation"), sign this instrument in lieu of holding an organizational meeting of the board of directors, to evidence their consent to the resolutions set forth below, with the same force and effect as if said resolutions were adopted by unanimous vote at a duly called meeting of the board of directors.

CERTIFICATE OF INCORPORATION

WHEREAS, the Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on December 19, 2000, and a duplicate original of the Articles of Incorporation have been returned to the Corporation by the Secretary of State; now, therefore, be it

RESOLVED, that the Certificate of Incorporation and the duplicate original of the Articles of Incorporation be inserted into the minute book of the Corporation.

CORPORATE RECORDS

RESOLVED, that the Corporation shall maintain, as part of its corporate records, a minute book that shall include, but that shall not be limited to, records of the Corporation's Articles of Incorporation and amendments thereto, its Bylaws and amendments thereto, minutes of all meetings of its directors, minutes of all meetings of its shareholders, the time and the place of each such meeting, whether the meeting was regular or special, the manner in which the meeting was authorized, the notice given, the names of those present or represented at the meeting and the proceedings of each meeting.

RESOLVED FURTHER, that the Secretary of the Corporation is directed to procure such a minute book and such other books and records as may be required by the Corporation.

ADOPTION OF BYLAWS

RESOLVED, that the form of Bylaws presented to the board of directors for review and attached hereto as Exhibit "A" be, and it hereby is, approved and adopted as the Bylaws of the Corporation;

RESOLVED FURTHER, that the Secretary of the Corporation is directed to certify a copy of these Bylaws and insert it in the minute book of the Corporation, and is further ordered to certify a copy of these Bylaws and maintain it in the principal office of the Corporation, open for inspection by the shareholders at all reasonable times during office hours.

ELECTION OF OFFICERS

RESOLVED, that the following named persons be, and they hereby are, elected to the offices set opposite their respective names, to serve until their successors are duly elected and qualified:

President: James D. Dondero
Secretary and Treasurer: Mark Okada

RESOLVED FURTHER, that the officers are empowered to carry out the day-to-day business of the Corporation, subject to the direction and control of the board of directors.

ADOPTION OF CORPORATE SEAL

RESOLVED, that the seal, an impression of which is shown below, be, and it hereby is, adopted as the corporate seal of the Corporation.

ADOPTION OF SHARE CERTIFICATES

RESOLVED, that the form of share certificate attached hereto as Exhibit "B" be, and it hereby is, approved and adopted as the form of share certificate representing the common stock (par value $.01 per share) of the Corporation;

RESOLVED FURTHER, that the certificates shall be consecutively numbered, beginning with the number 001; that the certificates shall bear all legends required by law to be placed on the Corporation's share certificates; and that the certificates shall only be issued in the manner and upon the conditions set forth in the Bylaws.

LICENSES AND TAX PERMITS

RESOLVED, that the officers of the Corporation be, and they hereby are, authorized and directed to obtain, in the name of the Corporation, such licenses and tax permits as may be required by any applicable federal, state, county or municipal governmental statute, ordinance or

regulation of the conduct of the business of the Corporation within any jurisdiction in which the Corporation shall have qualified to do business.

PAYMENT OF ORGANIZATION FEE

RESOLVED, that any officer is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the Corporation.

AUTHORITY TO ISSUE SHARES OF COMMON STOCK

RESOLVED, that the President and Secretary of the Corporation be, and they hereby are, directed to prepare or cause to be prepared, and to execute, seal and issue certificates representing shares of the Corporation's common stock to the persons named below in the amount set forth opposite these names, in consideration of an aggregate of $1,000.

Shareholder	Shares	Consideration
James D. Dondero	750	$750
Mark Okada	250	$250

RESOLVED FURTHER, that the board of directors acknowledges receipt of an aggregate of $1,000 from such persons listed above as consideration for the issuance of the Corporation's shares of common stock.

GENERAL AUTHORITY

RESOLVED, that the officers and directors of the Corporation be, and they hereby are, authorized to do any and all acts and things and to execute any and all agreements, consents and documents as in their opinion, or in the opinion of counsel to the Corporation, may be necessary or appropriate in order to carry out the purposes and intent of any of the foregoing resolutions.

EXECUTED by the board of directors of the Corporation effective as of the _______ day of December 2000.

James D. Dondero, Director

Mark Okada, Director

CERTIFICATE OF SECRETARY

I, Mark Okada, the Secretary of Highland Capital Management Services, Inc. (the "Corporation") hereby certify that attached hereto are the Bylaws of the Corporation duly adopted by the Board of Directors of the Corporation on December __, 2000.

Mark Okada, Secretary

deliver to such holder, or to the nominee or assignee of such holder, a new certificate or certificates for the number of shares of Common Stock that such holder shall be entitled to following the Reserve Stock Split."

FOURTH: That pursuant to Section 103(d) of the General Corporation Law of Delaware, the Effective Time of this Certificate of Amendment shall be October 1, 2010, at 5:00 p.m. Eastern Daylight Time.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 1st day of October, 2010.

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

James D. Dondero, President

EXHIBIT 4

Case 3:21-cv-00881-X Document 190-4 Filed 02/09/24 Page 2 of 70 PageID 68117
N-CSR 1 d540929dncsr.htm HIGHLAND GLOBAL ALLOCATION FUND

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM N-CSR

CERTIFIED SHAREHOLDER REPORT OF REGISTERED MANAGEMENT INVESTMENT COMPANIES

Investment Company Act file number: 811-23369

HIGHLAND GLOBAL ALLOCATION FUND

(Exact name of registrant as specified in charter)

300 Crescent Court
Suite 700
Dallas, Texas 75201
(Address of principal executive offices)(Zip code)

NexPoint Asset Management, L.P.
300 Crescent Court
Suite 700
Dallas, Texas 75201
(Name and Address of Agent for Service)

Registrant's telephone number, including area code: (877) 665-1287

Date of fiscal year end: September 30

Date of reporting period: September 30, 2023

Appx. 000045

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Item 1. Reports to Stockholders.

A copy of the Annual Report transmitted to shareholders pursuant to Rule 30e-1 under the Investment Company Act of 1940, as amended (the "1940 Act"), is attached herewith.

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NEXPOINT
ADVISORS

Highland Global Allocation Fund

Annual Report
September 30, 2023

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Highland Global Allocation Fund

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Economic and market conditions change frequently.
There is no assurance that the trends described in this report will continue or commence.

Privacy Policy

We recognize and respect your privacy expectations, whether you are a visitor to our web site, a potential shareholder, a current shareholder or even a former shareholder.

Collection of Information. We may collect nonpublic personal information about you from the following sources:

- ***Account applications and other forms,* which may include your name, address and social security number, written and electronic correspondence and telephone contacts;**
- ***Web site information,* including any information captured through the use of "cookies"; and**
- ***Account history,* including information about the transactions and balances in your accounts with us or our affiliates.**

Disclosure of Information. We may share the information we collect with our affiliates. We may also disclose this information as otherwise permitted by law. We do not sell your personal information to third parties for their independent use.

Confidentiality and Security of Information. We restrict access to nonpublic personal information about you to our employees and agents who need to know such information to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal standards to guard your nonpublic personal information, although you should be aware that data protection cannot be guaranteed.

A prospectus must precede or accompany this report. Please read the prospectus carefully before you invest.

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PORTFOLIO MANAGER COMMENTARY (unaudited)

September 30, 2023 **Highland Global Allocation Fund**

Performance Overview

For the twelve months ended September 30, 2023, the Highland Global Allocation Fund (the "Fund") experienced a total market price return of +2.49% and a total NAV return of +6.30%. The Fund's benchmark, the FTSE All World Index returned 21.49%.

Manager Discussion

The Fund's largest investment themes during the year included real estate, Telecom, and Energy. Energy and public REITs were among the largest contributors to the Fund's performance. The Fund's largest detractors included private real estate and single name shorts.

MidWave Wireless, previously known as TerreStar, the Fund's largest position, was a positive contributor to performance during the year. MidWave Wireless is a privately held, nationwide licensee of wireless spectrum, an asset that most people use every day. Spectrum is the radio frequency that carries all wireless communication signals. The Federal Communications Commission (the "FCC"), which has regulatory oversight in the space, administers spectrum for non-federal use. The FCC typically sells or assigns initial wireless spectrum licenses to market participants using an auction process. Access to spectrum may also be attained through the secondary market, which allows licensees like MidWave Wireless to transfer, sell, or lease spectrum, in whole or in part.

MidWave Wireless's value is derived from two spectrum assets: a license for 1.7 GHz band spectrum covering 11 of the top 30 U.S. markets and approximately 19% of the population; and a license for 8 MHz of flexible use spectrum in the 1.4 GHz band covering the entire nation which currently enables wireless medical telemetry ("WMTS"). Flexible use for the 1.4 GHz band became effective on August 29, 2023, allowing the company to deploy its spectrum for use in a variety of additional services and technologies. On September 21, 2023, TerreStar changed its name to MidWave Wireless to reflect its status more accurately as one of the largest independent mid-band holders in the United States.

The Fund continues to maintain an allocation to energy MLPs, which positively contributed to performance during the year. MLPs (as measured by the Alerian MLP Index, "AMZ") returned 32.40% while the Alerian Midstream Energy Index ("AMNA", a proxy for broader midstream performance including C-Corps) returned 15.98%. We remain constructive on the long-term outlook for midstream energy.

The Fund uses shorts to protect from and/or to take advantage of quantifiable systematic and issuer-related risks. Shorts had a negative impact on performance during the period.

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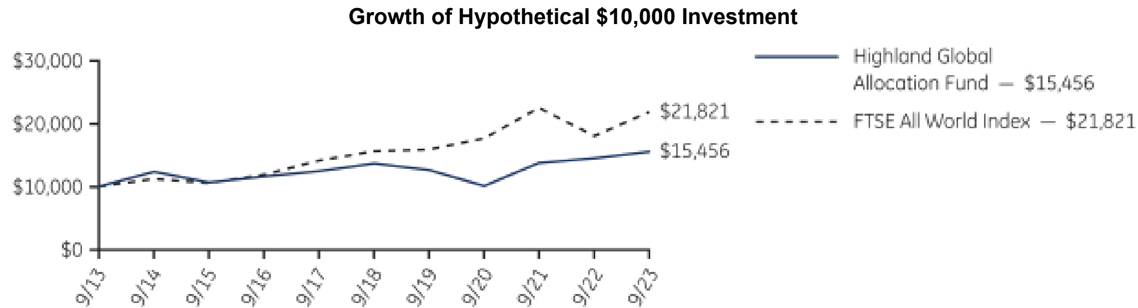
PORTFOLIO MANAGER COMMENTARY (unaudited) (concluded)

September 30, 2023 **Highland Global Allocation Fund**

Growth of Hypothetical $10,000 Investment



	Average Annual Total Returns			
	1 Year	5 Year	10 Year	Since Inception
Highland Global Allocation Fund	6.30%	2.38%	4.37%	5.37%
FTSE All World Index	21.49%	6.97%	8.12%	6.83%

Returns shown in the chart and table do not reflect taxes that a shareholder would pay on Fund distributions or on the sale of the Fund shares.

Performance results reflect the contractual waivers and/or reimbursements of fund expenses by the Advisor. Absent this limitation, performance results would have been lower. The Expense Cap expired on January 31, 2019.

Effective on February 13, 2019, the Highland Global Allocation Fund converted from an open-end fund to a closed-end fund, and began trading on the NYSE under the symbol HGLB on February 19, 2019. The performance data presented above reflects that of Class Z shares of the Fund when it was an open-end fund, HCOYX. Month-end returns since March 2019 reflect market prices. The closed-end Fund pursues the same investment objective and strategy as it did before its conversion.

The performance data quoted here represents past performance and is no guarantee of future results. Investment returns and principal value will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data quoted. For performance data current to the most recent month-end, please visit our website at www.nexpointassetmgmt.com.

Stock prices may fall or fail to rise over time for several reasons, including general financial market conditions and factors related to a specific issuer or industry. The Fund invests in growth stocks that may be more volatile because they are more sensitive to market conditions. The Fund invests in mid-cap companies which may entail greater risks and less liquidity due to narrower product lines and more limited resources than larger companies. The Fund may invest in foreign securities which may cause more volatility and less liquidity due to currency changes, political instability and accounting differences. The Fund's investments in derivatives may involve more volatility and less liquidity because of the risk that an investment may not correlate to the performance of the underlying securities.

Mutual fund investing involves risk including the possible loss of principal.

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FUND PROFILE (unaudited)

Highland Global Allocation Fund

Objective

Highland Global Allocation Fund seeks to provide long-term growth of capital and future income (future income means the ability to pay dividends in the future.)

Net Assets as of September 30, 2023

$254.0 million

Portfolio Data as of September 30, 2023

The information below provides a snapshot of Highland Global Allocation Fund at the end of the reporting period. Highland Global Allocation Fund is actively managed and the composition of its portfolio will change over time. Current and future holdings are subject to risk.

Industry Classifications as of 09/30/2023[1]	%
U.S. Equity	46.4
U.S. Senior Loans	13.9
U.S. LLC Interest	9.1
U.S. Master Limited Partnerships	7.7
U.S. Warrants	7.7
Non-U.S. Equity	6.5
U.S. Registered Investment Companies	5.9
U.S. Asset-Backed Securities	4.7
U.S. Preferred Stock	4.1
U.S. Rights	3.8
Non-U.S. Sovereign Bonds	3.0
U.S. Cash Equivalent	2.3
U.S. Exchange-Traded Funds	1.9
Non-U.S. Registered Investment Company	1.4
Other (each less than 1.0%)	1.1
Other Assets & Liabilities, Net	(19.5)
	100.0

Top 10 Holdings as of 09/30/2023(%)[2]	%
MidWave Wireless, Inc. (fka Terrestar Corp.) (U.S. Equity)	23.5
MidWave Wireless, Inc. (fka Terrestar Corp.) Term Loan A 11.00%, 2/25/2022 (U.S. Senior Loans)	8.8
Energy Transfer L.P. (U.S. Master Limited Partnerships)	6.2
NexPoint Real Estate Finance, REIT (U.S. Equity)	5.8
GAF REIT (U.S. Equity)	5.0
NexPoint Event Driven Fund (U.S. Registered Investment Companies)	4.4
GAF REIT Sub III, LLC (U.S. LLC Interest)	4.4
Quarternorth Energy Holding Inc. Tranche 3 (U.S. Warrants)	4.1
Texas Competitive Electric Holdings Co., LLC (U.S. Rights)	3.8
GAF REIT Sub II, LLC (U.S. LLC Interest)	3.4

(1) Industry classifications are calculated as a percentage of total net assets and net of long and short positions.

(2) Top 10 holdings are calculated as a percentage of total net assets.

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FINANCIAL STATEMENTS (unaudited)

September 30, 2023 **Highland Global Allocation Fund**

A guide to understanding the Fund's financial statements

Investment Portfolio The Investment Portfolio details the Fund's holdings and its market value as of the last day of the reporting period. Portfolio holdings are organized by type of asset and industry to demonstrate areas of concentration and diversification.

Statement of Assets and Liabilities This statement details the Fund's assets, liabilities, net assets and share price for each share class as of the last day of the reporting period. Net assets are calculated by subtracting all of the Fund's liabilities (including any unpaid expenses) from the total of the Fund's investment and non-investment assets. The net asset value per share for each class is calculated by dividing net assets allocated to that share class by the number of shares outstanding in that class as of the last day of the reporting period.

Statement of Operations This statement reports income earned by the Fund and the expenses incurred by each Fund during the reporting period. The Statement of Operations also shows any net gain or loss the Fund realized on the sales of its holdings during the period as well as any unrealized gains or losses recognized over the period. The total of these results represents the Fund's net increase or decrease in net assets from operations.

Statements of Changes in Net Assets This statement details how the Fund's net assets were affected by its operating results, distributions to shareholders and shareholder transactions (e.g., subscriptions, redemptions and distribution reinvestments) during the reporting period. The Statement of Changes in Net Assets also details changes in the number of shares outstanding.

Statement of Cash Flows This statement reports net cash and foreign currency provided or used by operating, investing and financing activities and the net effect of those flows on cash and foreign currency during the period.

Financial Highlights The Financial Highlights demonstrate how the Fund's net asset value per share was affected by the Fund's operating results. The Financial Highlights also disclose the classes' performance and certain key ratios (e.g., net expenses and net investment income as a percentage of average net assets).

Notes to Financial Statements These notes disclose the organizational background of the Fund, certain of their significant accounting policies (including those surrounding security valuation, income recognition and distributions to shareholders), federal tax information, fees and compensation paid to affiliates and significant risks and contingencies.

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INVESTMENT PORTFOLIO

As of September 30, 2023 **Highland Global Allocation Fund**

Shares		Value ($)
U.S. Equity - 48.2%		
COMMUNICATION SERVICES - 24.6%		
169,531	MidWave Wireless, Inc. (fka Terrestar Corp.) (b)(c)(d)(e)(f)	59,727,467
189,945	Telesat (a)(b)	2,716,214
		62,443,681
HEALTHCARE - 0.3%		
232,800	Heron Therapeutics, Inc. (a)(b)	239,784
17,200	Patterson (a)	509,808
		749,592
MATERIALS - 1.4%		
730,484	MPM Holdings, Inc. (b)(c)(d)(f)	3,652,420
REAL ESTATE - 21.9%		
56,000	Alexandria Real Estate Equities, REIT (a)	5,605,600
8,055	City Office, REIT (a)	34,233
1,147,062	GAF REIT (a)(b)(c)(d)(e)	12,786,700
556,218	NexPoint Diversified Real Estate Trust, REIT (a)(e)	4,844,659
901,385	NexPoint Real Estate Finance, REIT (a)(e)	14,746,664
175,885	NexPoint Residential Trust, Inc., REIT (a)(e)	5,659,979
417,500	Seritage Growth Properties (a)(b)	3,231,450
280,000	United Development Funding IV, REIT (a) (b)(c)(d)	196,980
875,255	Whitestone, REIT, Class B (a)	8,428,706
		55,534,971
	Total U.S. Equity (Cost $123,684,376)	122,380,664
Principal Amount ($)		
U.S. Senior Loans (h) - 13.9%		
COMMUNICATION SERVICES - 8.8%		
22,383,167	MidWave Wireless, Inc. (fka Terrestar Corp.) Term Loan A, 1st Lien, 11.00% PIK 02/27/28 (c)(d)(e)	22,289,158
REAL ESTATE - 5.1%		
5,000,000	NexPoint SFR Operating Partnership, LP, 05/24/27 (c)(d)(e)	4,957,500
8,500,000	NHT Operating Partnership LLC Convertible Promissory Note, 02/22/27 (c)(d)(e)	8,168,500
		13,126,000
	Total U.S. Senior Loans (Cost $35,874,093)	35,415,158
U.S. LLC Interest - 9.1%		
REAL ESTATE - 9.1%		
349	GAF REIT Sub II, LLC (a)(b)(c)(d)(e)	8,561,604
156,528	GAF REIT Sub III, LLC (c)(d)(e)	11,047,064
3,789,008	SFR WLIF III, LLC (c)(d)(e)	3,517,435
	Total U.S. LLC Interest (Cost $24,175,570)	23,126,103

Shares		Value ($)
U.S. Master Limited Partnerships - 7.7%		
Energy - 7.7%		
1,127,440	Energy Transfer L.P. (a)	15,817,983
139,050	Western Midstream Partners L.P. (a)	3,786,331
	Total U.S. Master Limited Partnerships (Cost $21,741,958)	19,604,314
Units		
U.S. Warrants - 7.7%		
Energy - 7.7%		
28,562	Quarternorth Energy Holding Inc. (b)	3,798,746
127,592	Quarternorth Energy Holding Inc. Tranche 1, Expires 08/27/2029 (b)	2,838,922
245,732	Quarternorth Energy Holding Inc. Tranche 2, Expires 08/27/2029 (b)	2,334,454
79,147	Quarternorth Energy Holding Inc. Tranche 3, Expires 08/27/2029 (b)	10,526,551
	Total U.S. Warrants (Cost $12,952,253)	19,498,673
Shares		
Non-U.S. Equity - 6.5%		
COMMUNICATION SERVICES - 0.0%		
77,866	Grupo Clarin, Class B (a)(b)(g)	58,838
CONSUMER DISCRETIONARY - 1.5%		
3,000	MercadoLibre, Inc. (a)(b)(g)	3,803,640
718	Toys ‘R’ Us (b)(c)(d)(g)	7,113
		3,810,753
ENERGY - 2.2%		
65,800	Targa Resources (a)(g)	5,640,376
121	Transocean (a)(b)(g)	993
		5,641,369
FINANCIALS - 0.1%		
24,300	Grupo Supervielle SA ADR (a)(b)(g)	53,946
3,995	StoneCo, Class A (a)(b)(g)	42,627
		96,573
HEALTHCARE - 0.0%		
10,445	HLS Therapeutics Inc. (g)	38,542
INDUSTRIALS - 0.4%		
60,593	GL Events (g)	1,046,975
UTILITIES - 2.3%		
202,250	Central Puerto ADR (a)(g)	1,177,095
67,700	Pampa Energia ADR (a)(b)(g)	2,529,272
66,500	Vistra Corp. (a)(g)	2,206,470
		5,912,837
	Total Non-U.S. Equity (Cost $14,986,511)	16,605,887

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INVESTMENT PORTFOLIO (continued)

As of September 30, 2023 | **Highland Global Allocation Fund**

Principal Amount ($)		Value ($)
U.S. Asset-Backed Securities - 4.7%		
250,000	CFCRE Commercial Mortgage Trust, Series 2017-C8, Class D 3.00%, 6/15/2050	170,120
5,746,955	FREMF Mortgage Trust, Series 2018-KF44, Class C SOFR30A + 8.614%, 13.93%, 2/25/2025	5,737,078
5,889,595	FREMF Mortgage Trust, Series 2021-KF103, Class CS SOFR30A + 6.250%, 11.56%, 1/25/2031	5,904,319
	Total U.S. Asset-Backed Securities (Cost $11,862,888)	11,811,517
Shares		
U.S. Preferred Stock - 4.1%		
FINANCIALS - 1.5%		
104,500	First Horizon (a)(i)	2,413,020
89,000	Western Alliance Bancorp (a)(i)	1,457,820
		3,870,840
HEALTHCARE - 1.4%		
202,684	Apnimed, Series C-1 (a)(b)(c)(d)(i)	2,201,148
108,098	Apnimed, Series C-3 (a)(b)(c)(d)(i)	1,245,289
		3,446,437
REAL ESTATE - 1.2%		
239,774	Braemar Hotels & Resorts, Inc. (a)(b)(i)	2,865,300
13,831	NexPoint Diversified Real Estate Trust (a)(e)(i)	198,613
		3,063,913
	Total U.S. Preferred Stock (Cost $9,711,320)	10,381,190
Units		
U.S. Rights - 3.8%		
HEALTHCARE -0.1%		
2,156,000	Paratek Pharmaceuticals (b)	172,480
UTILITIES -3.7%		
7,905,143	Texas Competitive Electric Holdings Co., LLC (b)	9,545,460
	Total U.S. Rights (Cost $22,029,102)	9,717,940
Principal Amount ($)		
Non-U.S. Sovereign Bonds -3.0%		
90,699	Argentine Republic Government International Bond 1.00%, 7/9/2029 (g)	25,353
29,000,000	3.50%, 7/9/2041(g)(j)	7,484,987
	Total Non-U.S. Sovereign Bonds (Cost $16,706,551)	7,510,340

Shares		Value ($)
Non-U.S. Master Limited Partnership - 0.8%		
ENERGY - 0.8%		
78,631	Enterprise Products Partners (a)(g)	2,152,130
	Total Non-U.S. Master Limited Partnership (Cost $2,151,846)	2,152,130
Principal Amount ($)		
U.S. Corporate Bonds & Notes - 0.3%		
COMMUNICATION SERVICES - 0.3%		
320,615	iHeartCommunications, Inc. 6.38%, 05/01/26 (a)	276,773
584,493	8.38%, 05/01/27 (a)	421,596
	Total U.S. Corporate Bonds & Notes (Cost $1,463,676)	698,369
Units		
Non-U.S. Warrants - 0.0%		
COMMUNICATION SERVICES - 0.0%		
1,109	iHeartCommunications, Inc., Expires 05/01/2039 (b)(g)	3,743
Industrials - 0.0%		
1,260,362	American Airlines Group, Inc. (b)(c)(d)(g)	—
	Total Non-U.S. Warrants (Cost $23,084)	3,743
Non-U.S. Asset-Backed Security - 0.0%		
246,196	Pamco Cayman, Ltd., Series 1997-1A, Class B 7.91%, 8/6/2013 (c)(d)(g)	10
	Total Non-U.S. Asset-Backed Security (Cost $167,413)	10
Shares		
U.S. Exchange-Traded Funds - 1.9%		
206,850	Teucrium Corn Fund (a)	4,554,837
8,750	VelocityShares 3x Long Silver ETN (a)	273,787
	Total U.S. Exchange-Traded Funds (Cost $6,835,389)	4,828,624
Non-U.S. Registered Investment Company - 1.4%		
10,000	BB Votorantim Highland Infrastructure LLC (c)(d)(e)	3,607,189
	Total Non-U.S. Registered Investment Company (Cost $4,571,783)	3,607,189

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INVESTMENT PORTFOLIO (continued)

As of September 30, 2023 — Highland Global Allocation Fund

Shares		Value ($)
U.S. Registered Investment Companies - 5.9%		
334,005	Highland Opportunities and Income Fund (a)(e)	2,685,400
706,236	NexPoint Event Driven Fund, Class Z (e)	11,130,287
57,856	NexPoint Merger Arbitrage Fund, Class Z (e)	1,133,394
	Total U.S. Registered Investment Companies (Cost $15,479,709)	14,949,081
Principal Amount ($)		
U.S. Repurchase Agreement - 0.0%		
12	RBC Dominion Securities 5.300%, dated 09/29/2023 to be repurchased on 10/02/2023, repurchase price $12 (collateralized by U.S. Government and Treasury obligations, ranging in par value $0 - $3, 0.000% - 7.000%, 10/05/2023 –09/01/2053; with total market value $12)(k)(l)	12
	Total U.S. Repurchase Agreement (Cost $12)	12
U.S. Cash Equivalent - 2.3%		
Money Market Fund(m) - 2.3%		
5,781,167	Dreyfus Treasury Obligations Cash Management, Institutional Class 5.230%	5,781,167
	Total U.S. Cash Equivalent (Cost $5,781,167)	5,781,167
	Total Investments - 121.3% (Cost $330,198,701)	308,072,111
Securities Sold Short- (1.8)%		
U.S. Equity - (1.8)%		
COMMUNICATION SERVICES - (1.5)%		
(9,952)	Netflix, Inc. (n)	(3,757,875)
CONSUMER STAPLES - (0.3)%		
(4,000)	WD-40 Co.	(812,960)
	Total U.S. Equity (Proceeds $1,665,944)	(4,570,835)
	Total Securities Sold Short- (1.8)% (Proceeds $1,665,944)	(4,570,835)
Other Assets & Liabilities, Net - (19.5)%(o)		**(49,546,169)**
Net Assets - 100.0%		**253,955,107**

(a) All or part of this security is pledged as collateral for short sales. The fair value of the securities pledged as collateral was $153,782,434.
(b) Non-income producing security.
(c) Securities with a total aggregate value of $141,965,577, or 55.9% of net assets, were classified as Level 3 within the three-tier fair value hierarchy. Please see Notes to Financial Statements for an explanation of this hierarchy, as well as a list of unobservable inputs used in the valuation of these instruments.
(d) Represents fair value as determined by the Investment Adviser pursuant to the policies and procedures approved by the Board of Trustees (the "Board"). The Board has designated the Investment Adviser as "valuation designee" for the Fund pursuant to Rule 2a-5 of the Investment Company Act of 1940, as amended. The Investment Adviser considers fair valued securities to be securities for which market quotations are not readily available and these securities may be valued using a combination of observable and unobservable inputs. Securities with a total aggregate value of $141,965,577, or 55.9% of net assets, were fair valued under the Fund's valuation procedures as of September 30, 2023. Please see Notes to Financial Statements.
(e) Affiliated issuer. Assets with a total aggregate fair value of $175,061,613, or 68.9% of net assets, were affiliated with the Fund as of September 30, 2023.
(f) Restricted Securities. These securities are not registered and may not be sold to the public. There are legal and/or contractual restrictions on resale. The Fund does not have the right to demand that such securities be registered. The values of these securities are determined by valuations provided by pricing services, brokers, dealers, market makers, or in good faith under the policies and procedures established by the Board. Additional Information regarding such securities follows:

Restricted Security	Security Type	Acquisition Date	Cost of Security ($)	Fair Value at Year End ($)	Percent of Net Assets %
MidWave Wireless, Inc. (fka Terrestar Corp.)	U.S. Equity	11/14/2014	48,015,562	59,727,467	23.4%
MPM Holdings, Inc.	U.S. Equity	5/15/2019	—	3,652,420	1.4%

(g) As described in the Fund's prospectus, a company is considered to be a non-U.S. issuer if the company's securities principally trade on a market outside of the United States, the company derives a majority of its revenues or profits outside of the United States, the company is not organized in the United States, or the company is significantly exposed to the economic fortunes and risks of regions outside the United States.
(h) Senior loans (also called bank loans, leveraged loans, or floating rate loans) in which the Fund invests generally pay interest at rates which are periodically determined by reference to a base lending rate plus a spread (unless otherwise identified, all senior loans carry a variable rate of interest). These base lending rates are generally (i) the Prime Rate offered by one or more major United States banks, (ii) the lending rate offered by one or more European banks such as the Secured Overnight Financing Rate ("SOFR") or (iii) the Certificate of Deposit rate. As of September 30, 2023, the SOFR 1 Month and SOFR 3 Month rates were 5.43% and 5.66%, respectively. Senior loans, while exempt from registration under the Securities Act of 1933, as amended (the "1933 Act"), contain certain restrictions on resale and cannot be sold publicly. Senior secured floating rate loans often require prepayments from excess cash flow or permit the borrower to repay at its election. The degree to which borrowers repay, whether as a contractual requirement or at their election, cannot be predicted with accuracy. As a result, the actual remaining maturity maybe substantially less than the stated maturity shown.
(i) Perpetual security with no stated maturity date.
(j) Step Coupon Security. Coupon rate will either increase (step-up bond) or decrease (step-down bond) at regular intervals until maturity. Interest rate shown reflects the rate currently in effect.
(k) Tri-Party Repurchase Agreement.
(l) This security was purchased with cash collateral held from securities on loan. The total value of such securities as of September 30, 2023 was $12.
(m) Rate reported is 7 day effective yield.
(n) No dividend payable on security sold short.
(o) As of September 30, 2023, $4,559,655 in cash was segregated or on deposit with the brokers to cover investments sold short and is included in "Other Assets & Liabilities, Net".

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INVESTMENT PORTFOLIO (concluded)

As of September 30, 2023 **Highland Global Allocation Fund**

Reverse Repurchase Agreement outstanding as of September 30, 2023 was as follows:

Counterparty	Collateral Pledged	Interest Rate %	Trade Date	Repurchase Amount	Principal Amount	Value
Mizuho Securities	FREMF Mortgage Trust, Series 2018-KF44, Class C, 10/18/2023	7.12	09/18/2023	$ (3,581,000)	$(3,581,000)	$(3,581,000)
Total Reverse Repurchase Agreement					$(3,581,000)	$(3,581,000)

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GLOSSARY: (abbreviations that may be used in the preceding statements)

Other Abbreviations:

ADR	American Depositary Receipt
LLC	Limited Liability Company
L.P.	Limited Partnership
Ltd.	Limited
PIK	Payment-in-Kind
REIT	Real Estate Investment Trust
SOFR	Secured Overnight Financing Rate
SOFR30A	Secured Overnight Financing Rate 30-Day Average

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STATEMENT OF ASSETS AND LIABILITIES

As of September 30, 2023	Highland Global Allocation Fund ($)
Assets	
Investments, at value	127,229,319
Affiliated investments, at value (Note 9)	175,061,613
Total Investments, at value	302,290,932
Cash equivalent (Note 2)	5,781,167
Repurchase agreement, at value	12
Cash	1,438,381
Restricted Cash — Securities Sold Short (Note 2)	4,559,655
Foreign currency, at value (Note 2)	7,572
Foreign tax reclaim receivable	15,614
Receivable for:	
Dividends and interest	2,608,964
Reinvested distributions	229,672
Prepaid expenses and other assets	13,845
Total assets	316,945,814
Liabilities:	
Securities sold short, at value (Proceeds from securities sold short $1,665,944 (Notes 2 and 7))	4,570,835
Reverse repurchase agreement	3,581,000
Due to broker	54,349,443
Payable for:	
Investments purchased	87,190
Collateral from securities loaned (Note 4)	12
Investment advisory and administration fees (Note 6)	60,140
Accounting services fees	31,403
Trustees fees	520
Interest expense and commitment fee payable	9,207
Transfer agent fees	63,145
Legal fees	195,257
Accrued expenses and other liabilities	42,555
Total liabilities	62,990,707
Net Assets	**253,955,107**
Net Assets Consist of:	
Paid-in capital	702,128,559
Total accumulated loss	(448,173,452)
Net Assets	**253,955,107**
Investments, at cost	155,071,177
Affiliated investments, at cost (Note 9)	169,346,345
Cash equivalent, at cost (Note 2)	5,781,167
Repurchase agreement, at cost	12
Foreign currency, at cost (Note 2)	91,794
Common Shares	
Shares outstanding ($0.001 par value; unlimited shares authorized)	22,648,841
Net asset value, offering and redemption price per share	11.21

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STATEMENT OF OPERATIONS

For the Year Ended September 30, 2023	Highland Global Allocation Fund ($)
Investment Income:	
Income:	
Dividends from unaffiliated issuers	6,797,355
Dividends from affiliated issuers (Note 9)	2,250,380
Less: Foreign taxes withheld	(3,765)
Securities lending income (Note 4)	10,143
Interest from unaffiliated issuers	2,535,179
Interest from affiliated issuers (Note 9)	3,283,331
Total income	14,872,623
Expenses:	
Investment advisory (Note 6)	1,051,873
Accounting services fees	196,671
Transfer agent fees	165,250
Legal fees	337,687
Registration fees	2,608
Audit and tax compliance fees	166,000
Interest expense and commitment fees	3,116,885
Insurance	55,504
Trustees fees (Note 6)	83,399
Reports to shareholders	82,760
Custodian/wire agent fees	31,589
Dividends and fees on securities sold short (Note 2)	13,080
Other	132,752
Total expenses before waiver and reimbursement	5,436,058
Less: Expenses waived or borne by the adviser and administrator	(314,200)
Net expenses	5,121,858
Net investment income	9,750,765
Net Realized and Unrealized Gain (Loss) on Investments	
Net realized gain (loss) on:	
Investments from unaffiliated issuers	(6,150,197)
Investments from affiliated issuers	985,161
Foreign currency related transactions (Note 2)	(711)
Net realized loss	(5,165,747)
Net change in unrealized appreciation (depreciation) on:	
Investments in unaffiliated issuers	20,500,196
Investments in affiliated issuers (Note 9)	(6,618,213)
Securities sold short (Note 2)	(1,524,776)
Foreign currency related translations (Note 2)	(11,373)
Net change in unrealized appreciation (depreciation)	12,345,834
Net realized and unrealized gain (loss)	7,180,087
Total increase in net assets resulting from operations	16,930,852

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STATEMENTS OF CHANGES IN NET ASSETS

	Highland Global Allocation Fund	
	Year Ended September 30, 2023 ($)	Year Ended September 30, 2022 ($)
Increase (Decrease) in Net Assets Resulting from Operations:		
Net investment income	9,750,765	6,377,421
Net realized gain (loss)	(5,165,747)	(20,998,745)
Net change in unrealized appreciation (depreciation)	12,345,834	30,145,285
Net increase in net assets resulting from operations	16,930,852	15,523,961
Distributions	(10,001,548)	(7,285,771)
Return of capital	(12,474,020)	(13,622,562)
Decrease resulting from distributions	(22,475,568)	(20,908,333)
Decrease in net assets from operations and distributions	(5,544,716)	(5,384,372)
Share transactions:		
Value of distributions reinvested		
Shares of closed-end fund	2,752,205	2,660,047
Net increase from shares transactions	2,752,205	2,660,047
Total decrease in net assets	(2,792,511)	(2,724,325)
Net Assets		
Beginning of year	256,747,618	259,471,943
End of year	253,955,107	256,747,618
Capital Stock Activity - Shares		
Shares of closed-end fund:		
Issued for distribution reinvested	305,555	274,221
Net increase in fund shares	305,555	274,221

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STATEMENT OF CASH FLOWS

For the Year Ended September 30, 2023 **Highland Global Allocation Fund**

	($)
Cash Flows Used in Operating Activities:	
Net increase in net assets resulting from operations	16,930,852
Adjustments to Reconcile Net Increase in Net Assets to Net Cash Used in Operating Activities:	
Purchases of investment securities from unaffiliated issuers	(17,561,293)
Purchases of investment securities from affiliated issuers	(14,606,205)
Proceeds from disposition of investment securities from unaffiliated issuers	39,095,531
Proceeds from disposition of investment securities from affiliated issuers	9,172,687
Proceeds from return of capital of investment securities from unaffiliated issuers	147,450
Proceeds from return of capital of investment securities from affiliated issuers	660,710
Amortization of premiums from unaffiliated issuers	(78,175)
Amortization of premiums from affiliated issuers	(1,457)
Net realized (gain) loss on investments from unaffiliated issuers	6,150,197
Net realized (gain) loss on investments from affiliated issuers	(985,161)
Net realized (gain) loss on foreign currency related transactions	711
Net change in unrealized (appreciation)/depreciation on investments, affiliated investments, securities sold short, and translation on assets and liabilities denominated in foreign currency	(12,345,834)
(Increase) Decrease in receivable for dividends and interest	(559,008)
(Increase) Decrease in foreign tax reclaims receivable	(3,245)
(Increase) Decrease in due from broker	12
(Increase) Decrease in prepaid expenses and other assets	3,453
Increase (Decrease) in due to broker for short sale proceeds	(11,468,088)
Increase (Decrease) in payable from collateral from securities on loan	(96,105)
Increase (Decrease) in payable for investments purchased	23,605
Increase (Decrease) in payable for investment advisory and administration fees	9,833
Increase (Decrease) in payable for trustees fees	388
Increase (Decrease) in payable for reports to shareholders	(10,898)
Increase (Decrease) in payable for transfer agent fees	51,145
Increase (Decrease) in payable for legal fees and audit fees	50,537
Increase (Decrease) in payable for interest expense and commitment fees	9,207
Increase (Decrease) in payable for custody fees	(13,702)
Increase (Decrease) in accrued expenses and other liabilities	(10,433)
Net cash flow provided by operating activities	14,566,714
Cash Flows Used In Financing Activities:	
Repurchase agreement	96,105
Reverse repurchase agreement	3,581,000
Distributions paid in cash	(19,723,363)
Increase (Decrease) in receivable for reinvested distributions	(10,024)
Net cash flow used in financing activities	(16,056,282)
Effect of exchange rate changes on cash	(12,084)
Net decrease in cash	(1,501,652)
Cash, Cash Equivalent, Restricted Cash, and Foreign Currency:	
Beginning of year	13,288,427
End of year	11,786,775
End of Year Cash Balances:	
Cash equivalent	5,781,167
Cash	1,438,381
Restricted Cash	4,559,655
Foreign currency	7,572
End of year	11,786,775
Supplemental disclosure of cash flow information:	
Reinvestment of distributions	2,752,205
Paid in-kind interest income	3,283,331
Cash paid during the year for interest expense and commitment fees	3,107,678

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FINANCIAL HIGHLIGHTS

Highland Global Allocation Fund

Selected data for a share outstanding throughout each year is as follows:

	For the Years Ended September 30,				
	2023	2022	2021	2020	2019*‡
Net Asset Value, Beginning of Year	$ 11.49	$ 11.76	$ 9.45	$ 13.09	$ 14.63
Income from Investment Operations:					
Net investment income[(a)]	0.43	0.29	0.38	0.43	0.30
Net realized and unrealized gain (loss)	0.29	0.38	2.82	(3.00)	(1.10)
Total from Investment Operations	0.72	0.67	3.20	(2.57)	(0.80)
Less Distributions Declared to shareholders:					
From net investment income	(0.44)	(0.33)	(0.28)	(0.61)	(0.20)
From return of capital	(0.56)	(0.61)	(0.61)	(0.46)	(0.54)
Total distributions declared to shareholders	(1.00)	(0.94)	(0.89)	(1.07)	(0.74)
Net Asset Value, End of Year[(b)]	$ 11.21	$ 11.49	$ 11.76	$ 9.45	$ 13.09
Total Return[(b)(c)]	6.30%	5.31%	35.13%	(19.92)%	(4.40)%
Ratios to Average Net Assets:[(d)]					
Net Assets, End of Year (000's)	$253,955	$256,748	$259,472	$205,462	$296,164
Gross expenses[(e)(f)]	2.07%	1.16%	1.01%	1.92%	2.54%
Net investment income	3.71%	2.34%	3.48%	4.06%	2.11%
Portfolio turnover rate	10%	31%	17%	18%	28%

‡ Reflects the financial highlights of Class Z of the open-end fund prior to the conversion.
* Per share data prior to February 15, 2019 has been adjusted to give effect to an approximately 1 to 1.4217 reverse stock split as part of the conversion to a closed-end fund. (Note 1)
(a) Per share data was calculated using average shares outstanding during the period.
(b) The Net Asset Value per share and total return have been calculated based on net assets which include adjustments made in accordance with U.S. Generally Accepted Accounting Principles required at period end for financial reporting purposes. These figures do not necessarily reflect the Net Asset Value per share or total return experienced by the shareholder at period end.
(c) Total return is based on fair value per share for periods after February 15, 2019. Distributions are assumed for purposes of this calculation to be reinvested at prices obtained under the Fund's Dividend Reinvestment Plan. Prior to February 15, 2019, total return is at net asset value assuming all distributions are reinvested. For periods with waivers/reimbursements, had the Fund's Investment Adviser not waived or reimbursed a portion of expenses, total return would have been lower.
(d) All ratios for the period have been annualized, unless otherwise indicated.
(e) Supplemental expense ratios are shown below.
(f) Includes dividends and fees on securities sold short.

Supplemental Expense Ratios:

	For the Years Ended September 30,				
	2023	2022	2021	2020	2019
Net expenses (net of waiver/reimbursement, if applicable, but gross of all other expenses)[(g)]	1.95%	1.01%	0.88%	1.81%	2.45%
Interest expense and commitment fees	1.19%	0.28%	0.15%	0.82%	1.60%
Dividends and fees on securities sold short	—%[(h)]	0.01%	0.01%	0.07%	0.11%

(g) This includes the voluntary elected waiver by the Investment Adviser during the period, which resulted in a 0.12% impact to the net expenses ratio.
(h) Less than 0.005%.

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NOTES TO FINANCIAL STATEMENTS

Note 1. Organization

Highland Global Allocation Fund (the "Fund") is organized as an unincorporated business trust under the laws of The Commonwealth of Massachusetts. The Fund is registered under the Investment Company Act of 1940, as amended (the "1940 Act"), as a diversified, closed-end management investment company. This report covers information for the year ended September 30, 2023.

On November 8, 2018, shareholders of the Fund approved a proposal authorizing the Board of Trustees (the "Board") of the Fund to convert the Fund from an open-end fund to a closed-end fund at a special meeting of shareholders. The Board took action to convert the Fund to a closed-end fund effective shortly after 4:00 p.m. Eastern Time on February 14, 2019 (the "Conversion Date"). The Fund also effected an approximately 1-for-1.4217 reverse stock split of the Fund's issued and outstanding shares on February 14, 2019, thereby reducing the number of shares outstanding. Shareholders were paid cash for any fractional shares resulting from the reverse stock split. The Fund began listing its shares for trading on the New York Stock Exchange (the "NYSE") on February 19, 2019 under the ticker symbol "HGLB". The Fund may issue an unlimited number of common shares, par value $0.001 per share ("Common Shares"). Prior to the Conversion Date, the Fund issued Class A, Class C, and Class Y shares.

Note 2. Significant Accounting Policies

The following summarizes the significant accounting policies consistently followed by the Fund in the preparation of its financial statements.

Use of Estimates

The Fund is an investment company that follows the investment company accounting and reporting guidance of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 946 Financial Services— Investment Companies applicable to investment companies. The Fund's financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"), which require NexPoint Asset Management, L.P. (formerly Highland Capital Management Fund Advisors, L.P.) ("NexPoint" or the "Investment Adviser") to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of increases or decreases in net assets from operations during the reporting period. Changes in the economic environment, financial markets and any other parameters used in determining these estimates could cause actual results to differ materially.

Valuation of Investments

Pursuant to Rule 2a-5 under the 1940 Act, the Board has designated NexPoint as the Fund's valuation designee to perform the fair valuation determination for securities and other assets held by the Fund. NexPoint acting through its Valuation Committee, is responsible for determining the fair value of investments for which market quotations are not readily available. The Valuation Committee is comprised of officers of NexPoint and certain of NexPoint's affiliated companies and determines fair value and oversees the calculation of the NAV. The Valuation Committee is subject to Board oversight and certain reporting and other requirements intended to provide the Board the information it needs to oversee NexPoint's fair value determinations.

The Fund's investments are recorded at fair value. In computing the Fund's net assets attributable to shares, securities with readily available market quotations on the NYSE, National Association of Securities Dealers Automated Quotation ("NASDAQ") or other nationally recognized exchange, use the closing quotations on the respective exchange for valuation of those securities. Securities for which there are no readily available market quotations will be valued pursuant to policies adopted by NexPoint and approved by the Fund's Board. Typically, such securities will be valued at the mean between the most recently quoted bid and ask prices provided by the principal market makers. If there is more than one such principal market maker, the value shall be the average of such means. Securities without a sale price or quotations from principal market makers on the valuation day may be priced by an independent pricing service. Generally, the Fund's loan and bond positions are not traded on exchanges and consequently are valued based on a mean of the bid and ask price from the third-party pricing services or broker-dealer sources that the Investment Adviser has determined to have the capability to provide appropriate pricing services.

Securities for which market quotations are not readily avail- able, or for which the Fund has determined that the price received from a pricing service or broker-dealer is "stale" or otherwise does not represent fair value (such as when events materially affecting the value of securities occur between the time when market price is determined and calculation of the Fund's net asset value ("NAV"), will be valued by the Fund at fair value, as determined by the Valuation Committee in good faith in accordance with procedures established by NexPoint and approved by the Board, taking into account factors reasonably determined to be relevant, including, but not limited to: (i) the fundamental analytical data relating to the investment; (ii) the nature and duration of restrictions on disposition of the securities; and (iii) an evaluation of the forces that influence the market in which these securities are purchased and sold. In these cases, the Fund's NAV will reflect the affected portfolio securities' fair value as determined in the judgment of the Valuation Committee instead of being determined by the market. Using a fair value pricing methodology to value securities

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NOTES TO FINANCIAL STATEMENTS (continued)

may result in a value that is different from a security's most recent sale price and from the prices used by other investment companies to calculate their NAVs. Determination of fair value is uncertain because it involves subjective judgments and estimates.

There can be no assurance that the Fund's valuation of a security will not differ from the amount that it realizes upon the sale of such security. Those differences could have a material impact to the Fund. The NAV shown in the Fund's financial statements may vary from the NAV published by the Fund as of its period end because portfolio securities transactions are accounted for on the trade date (rather than the day following the trade date) for financial statement purposes.

Fair Value Measurements

The Fund has performed an analysis of all existing investments and derivative instruments to determine the significance and character of inputs to their fair value determination. The levels of fair value inputs used to measure the Fund's investments are characterized into a fair value hierarchy. Where inputs for an asset or liability fall into more than one level in the fair value hierarchy, the investment is classified in its entirety based on the lowest level input that is significant to that investment's valuation. The three levels of the fair value hierarchy are described below:

Level 1 — Quoted unadjusted prices for identical instruments in active markets to which the Fund has access at the date of measurement;

Level 2 — Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active, but are valued based on executed trades; broker quotations that constitute an executable price; and alternative pricing sources supported by observable inputs are classified within Level 2. Level 2 inputs are either directly or indirectly observable for the asset in connection with market data at the measurement date; and

Level 3 — Model derived valuations in which one or more significant inputs or significant value drivers are unobservable. In certain cases, investments classified within Level 3 may include securities for which the Fund has obtained indicative quotes from broker-dealers that do not necessarily represent prices the broker may be willing to trade on, as such quotes can be subject to material management judgment. Unobservable inputs are those inputs that reflect the Fund's own assumptions that market participants would use to price the asset or liability based on the best available information.

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

As of September 30, 2023, the Fund's investments consisted of senior loans, asset-backed securities, bonds and notes, common stocks, preferred stocks, LLC interests, master limited partnerships, registered investment companies, cash equivalents, repurchase agreements, exchange-traded funds, rights, warrants, reverse repurchase agreements, and securities sold short. The fair value of the Fund's loans, bonds and asset-backed securities are generally based on quotes received from brokers or independent pricing services. Loans, bonds and asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the measurement date are classified as Level 2 assets. Senior loans, bonds and asset-backed securities that are priced using quotes derived from implied values, indicative bids, or a limited number of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The fair value of the Fund's common stocks, registered investment companies, rights and warrants that are not actively traded on national exchanges are generally priced using quotes derived from implied values, indicative bids, or a limited amount of actual trades and are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable. Exchange-traded options are valued based on the last trade price on the primary exchange on which they trade. If an option does not trade, the mid-price, which is the mean of the bid and ask price, is utilized to value the option. At the end of each calendar quarter, the Investment Adviser evaluates the Level 2 and 3 assets and liabilities for changes in liquidity, including but not limited to: whether a broker is willing to execute at the quoted price, the depth and consistency of prices from third party services, and the existence of contemporaneous, observable trades in the market. Additionally, the Investment Adviser evaluates the Level 1 and 2 assets and liabilities on a quarterly basis for changes in listings or delistings on national exchanges.

Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market value, the fair value of the Fund's investments may fluctuate from period to period. Additionally, the fair value of investments may differ significantly from the values that would have been used had a ready market existed for such investments and may differ materially from the values the Fund

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NOTES TO FINANCIAL STATEMENTS (continued)

may ultimately realize. Further, such investments may be subject to legal and other restrictions on resale or otherwise be less liquid than publicly traded securities.

The inputs or methodology used for valuing securities are not necessarily an indication of the risk associated with investing in those securities. A summary of the inputs used to value the Fund's assets and liabilities as of September 30, 2023, is as follows:

	Total value at September 30, 2023 ($)	Level 1 Quoted Price ($)	Level 2 Significant Observable Inputs ($)	Level 3 Significant Unobservable Inputs ($)
Highland Global Allocation Fund				
Assets				
U.S. Equity				
Communication Services	62,443,681	2,716,214	—	59,727,467
Healthcare	749,592	749,592	—	—
Materials	3,652,420	—	—	3,652,420
Real Estate	55,534,971	42,551,291	—	12,983,680
U.S. Senior Loans				
Communication Services	22,289,158	—	—	22,289,158
Real Estate	13,126,000	—	—	13,126,000
U.S. LLC Interest				
Real Estate	23,126,103	—	—	23,126,103
U.S. Master Limited Partnerships				
Energy	19,604,314	19,604,314	—	—
U.S. Warrants				
Energy	19,498,673	—	19,498,673	—
Non-U.S. Equity				
Communication Services	58,838	58,838	—	—
Consumer Discretionary	3,810,753	3,803,640	—	7,113
Energy	5,641,369	5,641,369	—	—
Financials	96,573	96,573	—	—
Healthcare	38,542	38,542	—	—
Industrials	1,046,975	1,046,975	—	—
Utilities	5,912,837	5,912,837	—	—
U.S. Asset-Backed Securities	11,811,517	—	11,811,517	—
U.S. Preferred Stock				
Financials	3,870,840	—	3,870,840	—
Healthcare	3,446,437	—	—	3,446,437
Real Estate	3,063,913	3,063,913	—	—
U.S. Rights				
Healthcare	172,480	—	172,480	—
Utilities	9,545,460	—	9,545,460	—
Non-U.S. Sovereign Bonds	7,510,340	—	7,510,340	—
Non-U.S. Master Limited Partnership				
Energy	2,152,130	2,152,130	—	—
U.S. Corporate Bonds & Notes				
Communication Services	698,369	—	698,369	—
Non-U.S. Warrants				
Communication Services	3,743	—	3,743	—
Industrials	— (1)	—	—	— (1)
Non-U.S. Asset-Backed Security	10	—	—	10
U.S. Exchange-Traded Funds	4,828,624	4,828,624	—	—
Non-U.S. Registered Investment Company	3,607,189	—	—	3,607,189
U.S. Registered Investment Companies	14,949,081	14,949,081	—	—
U.S. Repurchase Agreement	12	—	12	—
U.S. Cash Equivalent	5,781,167	5,781,167	—	—
Total Assets	308,072,111	112,995,100	53,111,434	141,965,577

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NOTES TO FINANCIAL STATEMENTS (continued)

September 30, 2023 **Highland Global Allocation Fund**

	Total value at September 30, 2023 ($)	Level 1 Quoted Price ($)	Level 2 Significant Observable Inputs ($)	Level 3 Significant Unobservable Inputs ($)
Liabilities				
Securities Sold Short				
U.S. Equity				
Communication Services	(3,757,875)	(3,757,875)	—	—
Consumer Staples	(812,960)	(812,960)	—	—
Reverse Repurchase Agreement	(3,581,000)	—	(3,581,000)	—
Total Liabilities	(8,151,835)	(4,570,835)	(3,581,000)	—
Total	299,920,276	108,424,265	49,530,434	141,965,577

(1) This category includes securities with a value of zero.

The table below sets forth a summary of changes in the Fund's assets measured at fair value using significant unobservable inputs (Level 3) for the year ended September 30, 2023.

	Balance as of September 30, 2022 $	Transfers Into Level 3 $	Transfers Out of Level 3 $	Accrued Discounts (Premiums) $	Distribution to Return Capital $	Realized Gain (Loss) $	Net Change in Unrealized Appreciation (Depreciation) $	Purchases $	Sales $	Balance as of September 30, 2023 $	Change in Unrealized Appreciation (Depreciation) from Investments held at September 30, 2023 $
U.S. Equity											
Communication Services	61,209,167	—	—	—	—	—	(1,481,700)	—	—	59,727,467	(1,481,700)
Materials	—	3,652,420	—	—	—	—	—	—	—	3,652,420	—
Real Estate	16,289,296	—	—	—	(54,600)	—	(3,261,016)	10,000	—	12,983,680	(3,261,016)
U.S. Senior Loans											
Communication Services	19,854,675	—	—	1,457	—	—	46,511	2,386,515	—	22,289,158	46,511
Real Estate	12,871,000	—	—	—	—	—	255,000	—	—	13,126,000	255,000
U.S. LLC Interest											
Real Estate	13,280,450	—	—	—	—	—	(1,741,873)	11,587,526	—	23,126,103	(1,741,873)
Non - U.S. Equity											
Consumer Discretionary	16,293	—	—	—	—	—	(9,180)	—	—	7,113	(9,180)
U.S. Preferred Stock											
Healthcare	2,191,014	—	—	—	—	—	55,427	1,199,996	—	3,446,437	55,427
Non - U.S. Asset - Backed Security	19,005	—	—	—	—	—	(18,995)	—	—	10	(18,995)
Non - U.S. Registered Investment Company	3,395,347	—	—	—	—	—	211,842	—	—	3,607,189	211,842
Total	129,126,247	3,652,420	—	1,457	(54,600)	—	(5,943,984)	15,184,037	—	141,965,577	(5,943,984)

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NOTES TO FINANCIAL STATEMENTS (continued)

September 30, 2023 **Highland Global Allocation Fund**

Investments designated as Level 3 may include assets valued using quotes or indications furnished by brokers which are based on models or estimates without observable inputs and may not be executable prices. In light of the developing market conditions, the Investment Adviser continues to search for observable data points and evaluate broker quotes and indications received for portfolio investments.

For the year ended September 30, 2023, there was one Common Stock position that transferred into Level 3. Determination of fair value is uncertain because it involves subjective judgments and estimates that are unobservable. The cost price methodology was updated for one investment to more relevant methodology given the passage of time since the original acquisition date. Additionally, the Option price methodology for another investment was updated to account for a recent transaction that occurred.

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

Category	Fair Value at 9/30/2023 $	Valuation Technique	Unobservable Inputs	Input Value(s) (Arithmetic Mean)
U.S. Equity/Non-U.S. Equity	76,370,680	Multiples Analysis	Unadjusted Price/MHz-PoP	$0.10 - $0.90 ($0.48)
		Discounted Cash Flow	Discount Rate	11.0% - 13.0% (12.0%)
		Transaction Indication of Value	Enterprise Value ($ mm)	$841
			Offer Price per Share	$1.10
		Liquidation Analysis	Recovery Rate	40% - 100.0% (70.0%)
			N/A	$5.00
U.S. Senior Loans	35,415,158	Discounted Cash Flow	Discount Rate	8.0% - 12.8% (10.18%)
		Option Pricing Model	Volatilty	25.0% - 35.0% (30.0%)
U.S. LLC Interest	23,126,103	Discounted Cash Flow	Discount Rate	5.73% - 9.93% (8.49%)
		Direct Capitalization Method	Capitalization Rates	5.125% - 5.625% (5.375%)
		Transaction Indication of Value	Cost ($ mm)	$3.65
		Net Asset Value	N/A	N/A
U.S. Preferred Stock	3,446,437	Transaction Indication of Value	Enterprise Value ($ mm)	$281.4 - $366.1 ($323.8)
		Option Pricing Model	Volatilty	70.0% - 90.0% (80.0%)
Non-U.S. Asset-Backed Security	10	Net Asset Value	N/A	N/A
Non-U.S. Registered Investment Company	3,607,189	Net Asset Value	NAV	N/A
	141,965,577			

The significant unobservable inputs used in the fair value measurement of the Fund's bank loan and asset-backed securities are: discount rate and volatility. Significant increases (decreases) in any of those inputs in isolation could result in a significantly lower (higher) fair value measurement.

The significant unobservable inputs used in the fair value measurement of the Fund's LLC interests are: discount rate, capitalization rate and cost price. A significant increase (decrease) in any of those inputs in isolation could result in a significantly higher (lower) fair value measurement.

The significant unobservable inputs used in the fair value measurement of the Fund's common equity securities are: unadjusted price/MHz-PoP multiple, discount rate, enterprise value, tender offer per share, and recovery rate. Significant increases (decreases) in any of those inputs in isolation could result in a significantly lower (higher) fair value measurement.

The significant unobservable inputs used in the fair value measurement of the Fund's preferred equity securities are: enterprise value and volatility. Significant increases (decreases) in any of those inputs in isolation could result in a significantly lower (higher) fair value measurement.

In addition to the unobservable inputs utilized for various valuation methodologies, the Investment Adviser frequently uses a combination of two or more valuation methodologies to determine fair value for a single holding. In such instances, the Investment Adviser assesses the methodologies and ascribes weightings to each methodology. The weightings ascribed to any individual methodology ranged from as low as 25% to as high as 100% as of September 30, 2023. The selection of weightings is an inherently subjective process, dependent on professional judgement. These selections may have a material impact to the concluded fair value for such holdings.

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NOTES TO FINANCIAL STATEMENTS (continued)

Certain Illiquid Positions Classified as Level 3

As of September 30, 2023, the Fund held an investment in the common shares of MidWave Wireless ("MidWave") valued at

$59,727,467, or 23.2% of net assets, and U.S. Senior Loans valued at $22,289,158 or 8.7% of net assets. MidWave does not currently generate revenue and primarily derives its value from holding licenses of two wireless spectrum assets. The license with respect to one such spectrum asset was previously terminated by the FCC and subsequently restored on April 30, 2020 on a limited conditional basis. The restoration of such license, in current form, requires MidWave to meet certain deployment milestones for wireless medical telemetry service ("WMTS") during a 39-month period. Upon satisfaction of the deployment milestones, MidWave, as it stands today, will be able use such spectrum for other services besides WMTS as long as those services do not interfere with WMTS and MidWave continues to provide WMTS.

As of now, if MidWave is unsuccessful in satisfying such deployment milestones, or if other services cannot be implemented in a manner that does not interfere with WMTS, the value of the MidWave equity would likely be materially negatively impacted. In determining the fair value of MidWave, the Investment Adviser has assigned a high probability of success on both conditions based on consultation with the company and its consultants.

The Fund may hold other illiquid positions that are classified as Level 3 that are not described here. Please see Note 7 for additional disclosure of risks from investments in illiquid securities.

Security Transactions

Security transactions are accounted for on the trade date. Realized gains (losses) on investments sold are recorded on the basis of the specific identification method for both financial statement and U.S. federal income tax purposes taking into account any foreign taxes withheld.

Income Recognition

Corporate actions (including cash dividends) are recorded on the ex-dividend date, net of applicable withholding taxes, except for certain foreign corporate actions, which are recorded as soon after ex-dividend date as such information becomes available and is verified. Interest income is recorded on the accrual basis.

Accretion of discount on taxable bonds and loans is computed to the maturity date, while amortization of premium on taxable bonds and loans is computed to the earliest call date, both using the effective yield method. Withholding taxes on foreign dividends have been provided for in accordance with the Fund's understanding of the applicable country's tax rules and rates.

Return of Capital Reclassification

Adjustment to income associated with return of capital from income received in prior period. Information related to these adjustments was not received until after the finalization of the prior period financial statements.

U.S. Federal Income Tax Status

The Fund is treated as a separate taxpayer for U.S. federal income tax purposes. The Fund intends to qualify each year as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended, and will distribute substantially all of their taxable income and gains, if any, for the tax year, and as such will not be subject to U.S. federal income taxes. In addition, the Fund intends to distribute, in each calendar year, all of their net investment income, capital gains and certain other amounts, if any, such that the Fund should not be subject to U.S. federal excise tax. Therefore, no U.S. federal income or excise tax provisions are recorded. The Fund recognizes interest and penalties, if any, related to unrecognized tax benefits as income tax expense in the Statement of Operations.

The Investment Adviser has analyzed the Fund's tax positions taken on U.S. federal income tax returns for all open tax years (current and prior three tax years), and has concluded that no provision for U.S. federal income tax is required in the Fund's financial statements. The Fund's U.S. federal and state income and U.S. federal excise tax returns for tax years for which the applicable statutes of limitations have not expired are subject to examination by the Internal Revenue Service and state departments of revenue. Furthermore, the Investment Adviser of the Fund is also not aware of any tax positions for which it is reasonably possible that the total amounts of unrecognized tax benefits will significantly change in the next 12 months.

Distributions to Shareholders

The Fund declares and pays investment income distributions quarterly. The Fund typically declares and pays distributions from net realized capital gains in excess of capital loss carryforwards annually.

Statement of Cash Flows

Information on financial transactions which have been settled through the receipt or disbursement of cash is presented in the Statement of Cash Flows. The cash amount shown in the Statement of Cash Flows is the amount included within the Fund's Statement of Assets and Liabilities and includes cash on hand at its custodian bank and/or sub-custodian bank(s), cash equivalents, foreign currency and restricted cash held at broker(s).

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NOTES TO FINANCIAL STATEMENTS (continued)

Cash & Cash Equivalents

The Fund considers liquid assets deposited with a bank and certain short-term debt instruments of sufficient credit quality with original maturities of three months or less to be cash equivalents. The Fund also considers money market instruments that invest in cash equivalents to be cash equivalents. These investments represent amounts held with financial institutions that are readily accessible to pay Fund expenses or purchase investments. Cash and cash equivalents are valued at cost plus accrued interest, which approximates fair value. The value of cash equivalents denominated in foreign currencies is determined by converting to U.S. dollars on the date of this financial report. These balances may exceed the federally insured limits under the Federal Deposit Insurance Corporation ("FDIC").

Foreign Currency

Accounting records of the Fund are maintained in U.S. dollars. Foreign currencies, investments and other assets and liabilities denominated in foreign currencies are translated into U.S. dollars at exchange rates using the current 4:00 PM London Time Spot Rate. Fluctuations in the value of the foreign currencies and other assets and liabilities resulting from changes in exchange rates, between trade and settlement dates on securities transactions and between the accrual and payment dates on dividends, interest income and foreign withholding taxes, are recorded as unrealized foreign currency gains (losses). Realized gains (losses) and unrealized appreciation (depreciation) on investment securities and income and expenses are translated on the respective dates of such transactions. The effects of changes in foreign currency exchange rates on investments in securities are not segregated in the Statement of Operations from the effects of changes in market prices of those securities, but are included with the net realized and unrealized gain or loss on investment securities.

Securities Sold Short

The Fund may sell securities short. A security sold short is a transaction in which the Fund sells a security it does not own in anticipation that the market price of that security will decline. When the Fund sells a security short, it must borrow the security sold short from a broker-dealer and deliver it to the buyer upon conclusion of the transaction. A Fund may have to pay a fee to borrow particular securities and is often obligated to pay over any dividends or other payments received on such borrowed securities. In some circumstances, a Fund may be allowed by its prime broker to utilize proceeds from securities sold short to purchase additional investments, resulting in leverage. Securities and cash held as collateral for securities sold short are shown on the Investment Portfolio. Cash held as collateral for securities sold short is classified as restricted cash on the Statement of Assets and Liabilities, as applicable. Restricted cash in the amount of $4,559,655 was held with the broker for the Fund. Additionally, securities valued at $84,963,162 were posted in the Fund's segregated account for collateral for short sales. The Fund's loss on a short sale could be unlimited in cases where the Fund is unable, for whatever reason, to close out its short position.

Other Fee Income

Fee income may consist of origination/closing fees, amendment fees, administrative agent fees, transaction break-up fees and other miscellaneous fees. Origination fees, amendment fees, and other similar fees are nonrecurring fee sources. Such fees are received on a transaction by transaction basis and do not constitute a regular stream of income and are recognized when incurred.

Note 3. Derivative Transactions

The Fund is subject to equity securities risk, interest rate risk and currency risk in the normal course of pursuing its investment objective. The Fund enters into derivative transactions for the purpose of hedging against the effects of changes in the value of portfolio securities due to anticipated changes in market conditions, to gain market exposure for residual and accumulating cash positions and for managing the duration of fixed income investments.

Options

The Fund may utilize options on securities or indices to varying degrees as part of its principal investment strategy. An option on a security is a contract that gives the holder of the option, in return for a premium, the right to buy from (in the case of a call) or sell to (in the case of a put) the writer of the option the security underlying the option at a specified exercise or "strike" price. The writer of an option on a security has the obligation upon exercise of the option to deliver the underlying security upon payment of the exercise price or to pay the exercise price upon delivery of the underlying security. The Fund may hold options, write option contracts, or both.

If an option written by a Fund expires unexercised, a Fund realizes on the expiration date a capital gain equal to the premium received by a Fund at the time the option was written. If an option purchased by a Fund expires unexercised, a Fund realizes a capital loss equal to the premium paid. Prior to the earlier of exercise or expiration, an exchange-traded option may be closed out by an offsetting purchase or sale of an option of the same series (type, underlying security, exercise price and expiration). There can be no assurance, however, that a closing purchase or sale transaction can be effected when a Fund desires. A Fund will realize a capital gain from a closing purchase transaction if the cost of the

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NOTES TO FINANCIAL STATEMENTS (continued)

closing option is less than the premium received from writing the option, or, if the cost of the closing option is more than the premium received from writing the option, a capital loss. A Fund will realize a capital gain from a closing sale transaction if the premium received from the sale is more than the original premium paid when the option position was opened, or a capital loss, if the premium received from a sale is less than the original premium paid.

During the year ended September 30, 2023, the Fund did not enter into options transactions. The Fund may invest in written options to provide leveraged short exposure, and purchased options to provide leveraged long exposure, to the underlying equity, which is consistent with the investment strategies of the Fund.

Swap Contracts

The Fund may use swaps as part of its investment strategy or to manage their exposure to interest, commodity, and currency rates as well as adverse movements in the debt and equity markets. Swap agreements are privately negotiated in the over-the-counter ("OTC") market or may be executed in a multilateral or other trade facility platform, such as a registered exchange ("centrally cleared swaps"). For OTC swaps, any upfront premiums paid and any upfront fees received are shown as swap premiums paid and swap premiums received in the Statements of Assets and Liabilities, respectively, and amortized over the life of the swap. The daily fluctuation in market value is recorded as unrealized appreciation (depreciation) on OTC Swaps in the Statement of Assets and Liabilities. Premiums paid or received are recognized as realized gain or loss in the Statement of Operations. Total return swaps are agreements to exchange the return generated by one instrument for the return generated by another instrument; for example, the agreement to pay interest in exchange for a market or commodity-linked return based on a notional amount. To the extent the total return of the market or commodity-linked index exceeds the offsetting interest obligation, the Fund will receive a payment from the counterparty. To the extent it is less, the Fund will make a payment to the counterparty. Periodic payments received or made by the Fund are recorded in "Net realized gain (loss) on swap contracts" on the accompanying Statements of Operations and Changes in Net Assets as realized gains or losses, respectively. As of September 30, 2023, the Fund held no open swap contracts.

Reverse Repurchase Agreements

The Fund may engage in reverse repurchase agreement transactions with respect to instruments that are consistent with the Fund's investment objective or policies. This creates leverage for the Fund because the cash received can be used to purchase other securities.

A reverse repurchase transaction is a repurchase transaction in which the Fund is the seller of securities or other assets and agrees to repurchase them at a date certain or on demand. Pursuant to the Repurchase Agreement, the Fund may agree to sell securities or other assets to Mizuho Securities for an agreed upon price (the "Purchase Price"), with a simultaneous agreement to repurchase such securities or other assets from Mizuho Securities for the Purchase Price plus a price differential that is economically similar to interest. The price differential is negotiated for each transaction. This creates leverage for the Fund because the cash received can be used to purchase other securities.

At September 30, 2023, the Fund had investments in a reverse repurchase agreement with a gross value of $3,581,000, which is reflected as reverse repurchase agreements on the Statement of Assets and Liabilities. The value of the related collateral exceeded the value of the reverse repurchase agreements at September 30, 2023. The collateral pledged for the reverse repurchase agreements includes Agency Collateralized Mortgage Obligations and cash, both of which are reflected on the Statement of Assets and Liabilities. The Fund's average daily balance was $3,553,110 at a weighted average interest rate of 7.67% for the days outstanding.

Additional Derivative Information

The Fund is required to disclose; a) how and why an entity uses derivative instruments; b) how derivative instruments and related hedged items are accounted for; c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows; and d) how the netting of derivatives subject to master netting arrangements (if applicable) affects the net exposure of the Fund related to the derivatives.

To reduce counterparty credit risk with respect to over-the-counter ("OTC") transactions, the Fund has entered into master netting arrangements, established within the Fund's International Swap and Derivatives Association, Inc. ("ISDA") master agreements, which allows the Fund to make (or to have an entitlement to receive) a single net payment in the event of default (close-out netting) for outstanding payables and receivables with respect to certain OTC derivative positions in forward currency exchange contracts for each individual counterparty. In addition, the Fund may require that certain counterparties post cash and/or securities in collateral accounts to cover its net payment obligations for those derivative contracts subject to ISDA master agreements. If the counterparty fails to perform under these contracts and agreements, the cash and/or securities will be made available to the Fund.

Certain ISDA master agreements include credit related contingent features which allow counterparties to OTC

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NOTES TO FINANCIAL STATEMENTS (continued)

derivatives to terminate derivative contracts prior to maturity in the event the Fund's net assets decline by a stated percentage or the Fund fails to meet the terms of its ISDA master agreements, which would cause the Fund to accelerate payment of any net liability owed to the counterparty.

For financial reporting purposes, the Fund does not offset derivative assets and derivative liabilities that are subject to netting arrangements in the Statement of Assets and Liabilities.

Bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against the right of offset in bankruptcy, insolvency or other events.

Collateral terms are contract specific for OTC derivatives. For derivatives traded under an ISDA master agreement, the collateral requirements are typically calculated by netting the mark to market amount for each transaction under such agreement and comparing that to the value of any collateral currently pledged by the Fund or the counterparty.

For financial reporting purposes, cash collateral that has been pledged to cover obligations of the Fund, if any, is reported in restricted cash on the Statement of Assets and Liabilities. Generally, the amount of collateral due from or to a party must exceed a minimum transfer amount threshold before a transfer has to be made. To the extent amounts due to the Fund from its counterparties are not fully collateralized, contractually or otherwise, the Fund bears the risk of loss from counterparty non-performance.

There were no derivative instruments held as of September 30, 2023.

Note 4. Securities Lending

The Fund has a securities lending agreement with The Bank of New York Mellon ("BNY" or the "Lending Agent").

Securities lending transactions are entered into by the Fund under the Securities Lending Agreement, ("SLA") which permits the Fund, under certain circumstances such as an event of default, to offset amounts payable by the Fund to the same counterparty against amounts receivable from the counterparty to create a net payment due to or from the Fund.

The following is a summary of securities lending agreements held by the Fund, with cash collateral of overnight maturities and non-cash collateral which would be subject to offset as of September 30, 2023:

Gross Amount of Recognized Assets (Value of Securities on Loan)	Value of Cash Collateral Received[1]	Value of Non-Cash Collateral Received[1]	Net Amount
$—	$ 12	$ —	$ —

[1] Collateral received in excess of fair value of securities on loan is not presented in this table. The total cash collateral received by the Fund is disclosed in the Statement of Assets and Liabilities.

The value of loaned securities and related collateral outstanding at September 30, 2023 are shown in the Investment Portfolio. The value of the collateral held may be temporarily less than that required under the lending contract. As of September 30, 2023, the cash collateral was invested in repurchase agreements and the non-cash collateral consisted of U.S. Treasury Bills, Notes, Bonds and U.S. Treasury Inflation Indexed Bonds with the following maturities:

Remaining Contractual Maturity of the Underlying Collateral, as of September 30, 2023

	Overnight and Continuous	<30 Days	Between 30 & 90 Days	>90 Days	Total
Repurchase Agreements	$ 12	$ —	$ —	$ —	$ 12
U.S. Government Securities	$ —	$ —	$ —	$ —	$ —
Total	$ 12	$ —	$ —	$ —	$ 12

The Fund could seek additional income by making secured loans of its portfolio securities through its custodian. Such loans would be in an amount not greater than one-third of the value of the Fund's total assets. BNY would charge a fund fees based on a percentage of the securities lending income.

The market value of the loaned securities is determined at the close of each business day of the Fund and any additional required collateral is delivered to the Fund, or excess collateral is returned by the Fund, on the next business day.

The Fund would receive collateral consisting of cash (U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, sovereign debt, convertible bonds, irrevocable bank letters of credit or such other collateral as may be agreed on by the parties to a securities lending arrangement, initially with a value of 102% or 105% of the market value of the loaned securities and thereafter maintained at a value of 100% of

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NOTES TO FINANCIAL STATEMENTS (continued)

the market value of the loaned securities. If the collateral consists of non-cash collateral, the borrower would pay the Fund a loan premium fee. If the collateral consists of cash, BNY would reinvest the cash. Although voting rights, or rights to consent, with respect to the loaned securities pass to the borrower, the Fund would recall the loaned securities upon reasonable notice in order that the securities could be voted by the Fund if the holders of such securities are asked to vote upon or consent to matters materially affecting the investment. The Fund also could call such loans in order to sell the securities involved.

Securities lending transactions were entered into pursuant to SLAs, which would provide the right, in the event of default (including bankruptcy or insolvency) for the non-defaulting party to liquidate the collateral and calculate a net exposure to the defaulting party or request additional collateral. In the event that a borrower defaulted, the Fund, as lender, would offset the market value of the collateral received against the market value of the securities loaned. The value of the collateral is typically greater than that of the market value of the securities loaned, leaving the lender with a net amount payable to the defaulting party. However, bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against such a right of offset in the event of an SLA counterparty's bankruptcy or insolvency. Under the SLA, the Fund can reinvest cash collateral, or, upon an event of default, resell or repledge the collateral, and the borrower can resell or repledge the loaned securities. The risks of securities lending also include the risk that the borrower may not provide additional collateral when required or may not return the securities when due. To mitigate this risk, each Fund benefits from a borrower default indemnity provided by BNY. BNY's indemnity generally provides for replacement of securities lent or the approximate value thereof.

Note 5. U.S. Federal Income Tax Information

The character of income and gains to be distributed is determined in accordance with income tax regulations which may differ from GAAP. These differences include (but are not limited to) investments organized as partnerships for tax purposes, foreign taxes, investments in futures, losses deferred to off-setting positions, tax treatment of organizational start-up costs, losses deferred due to wash sale transactions, tax treatment of net investment loss and distributions in excess of net investment income, dividends deemed paid upon shareholder redemption of Fund shares and tax attributes from Fund reorganizations. Reclassifications are made to the Fund's capital accounts to reflect income and gains available for distribution (or available capital loss carryovers) under income tax regulations. These reclassifications have no impact on net investment income, realized gains or losses, or NAV of the Fund. The calculation of net investment income per share in the Financial Highlights table excludes these adjustments.

As of September 30, 2023, the most recent tax year-end, permanent differences chiefly resulting from non-deductible expenses from partnerships and return of capital were identified and reclassified among the components of the Fund's net assets as follows:

Distributable Earnings (Accumulated Loss)	Paid-in-Capital
$671,177	$ (671,177)

At September 30, 2023, the most recent tax year-end, components of distributable earnings on a tax basis is as follows:

Undistributed Income	Undistributed Long-Term Capital Gains	Other Temporary Differences	Accumulated Capital and Other Losses	Net Tax Appreciation (Depreciation)
$—	$ —	$ (4)	$(419,630,570)	$ (28,542,878)

As of September 30, 2023, the Fund has capital loss carryovers as indicated below. The capital loss carryovers are available to offset future realized capital gains.

No Expiration Short-Term	No Expiration Long-Term	Total
$124,381,884	$295,248,686	$419,630,570

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The tax character of distributions paid during the years ended September 30, 2023 and September 30, 2022 were as follows:

	Distributions Paid From:		
	Ordinary Income[(1)]	Long-Term Capital Gains	Return of Capital[(2)]
2023	$10,001,548	$ —	$12,474,020
2022	7,285,771	—	13,622,562

(1) For tax purposes, short-term capital gains distributions, if any, are considered ordinary income distributions.
(2) Additional Information will be distributed on Form 1099 at the end of the calendar year.

The Federal tax cost and gross unrealized appreciation and depreciation on investments (including foreign currency and derivatives, if applicable) held by the Fund at September 30, 2023 were as follows:

Gross Appreciation	Gross Depreciation	Net Appreciation/ (Depreciation)	Federal Tax Cost
$33,732,130	$(62,275,008)	$ (28,542,878)	$333,639,180

For Federal income tax purposes, the cost of investments owned at September 30, 2023 were different from amounts reported for financial reporting purposes primarily due to investments in partnerships, defaulted bonds, other securities and deferred wash sale losses.

Note 6. Advisory, Administration, Service and Distribution, Trustee, and Other Fees

Investment Advisory Fees and Administration Fees

For its investment advisory services, the Fund pays the Investment Adviser a monthly fee, computed and accrued daily, based on an annual rate of the Fund's Average Daily Managed Assets. Average Daily Managed Assets of the Fund means the average daily value of the total assets of the Fund less all accrued liabilities of a Fund (other than the aggregate amount of any outstanding borrowings constituting financial leverage). The Fund's contractual advisory fee with NexPoint for the year ended September 30, 2023 was 0.40%.

The Fund has entered into an administration agreement with SEI Investments Global Funds Services ("SEI"), a wholly owned subsidiary of SEI Investments Company, and pays SEI a fee for administration services. The Investment Adviser generally assists in all aspects of the Fund's administration and operations and furnishes offices, necessary facilities, equipment and personnel.

Additionally, the Fund may invest in securities issued by other investment companies, including investment companies that are advised by the Investment Adviser or its affiliates, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC, and exchange-traded funds ("ETFs"). Fees and expenses of such investments will be borne by shareholders of the investing Fund, and the Investment Adviser voluntarily waives the higher of the two fees for the portion of the Fund's investment advisory fee attributable to its investment in the affiliated investment company. Voluntary amounts waived are reflected in the statement of operations.

Fees Paid to Officers and Trustees

Each Trustee, who oversees all of the funds in the NexPoint Fund Complex, receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the NexPoint Fund Complex based on relative net assets. The annual retainer for a Trustee who does not oversee all of the funds in the NexPoint Fund Complex is prorated based on the portion of the $150,000 annual retainer allocable to the funds overseen by such Trustee. The Chairman of the Audit Committee and the Chairman of the Board each receive an additional annual payment of $10,000 payable in quarterly installments and allocated among each portfolio in the NexPoint Fund Complex based on relative net assets. Trustees are reimbursed for actual out-of-pocket expenses relating to attendance at meetings. The "NexPoint Fund Complex" consists of all of the registered investment companies advised by the Investment Adviser or its affiliated advisers as of the date of this report and NexPoint Capital, Inc., a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

The Fund pays no compensation to its officers.

The Trustees do not receive any separate compensation in connection with service on Committees or for attending Board or Committee Meetings. The Trustees do not have any pension or retirement plan.

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Other Matters

NexPoint has entered into a Services Agreement (the "Services Agreement") with Skyview Group ("Skyview"), effective February 25, 2021, pursuant to which NexPoint will receive administrative and operational support services to enable it to provide the required advisory services to the Fund. The Investment Adviser, and not the Fund, will compensate all Investment Adviser and Skyview personnel who provide services to the Fund.

Effective July 12, 2022, certain Skyview personnel became dual-employees of NexPoint Services, Inc., a wholly-owned subsidiary of the Investment Adviser. The same services are being performed by the dual-employees. The Investment Adviser, and not the Fund, will compensate all Investment Adviser, Skyview, and dual-employee personnel who provide services to the Fund.

Note 7. Disclosure of Significant Risks and Contingencies

The Fund's risks include, but are not limited to, some or all of the risks discussed below. For further information on the Fund's risks, please refer to the Fund's Prospectus and Statement of Additional Information.

Asset-Backed Securities Risk

The risk of investing in asset-backed securities, and includes interest rate risk, prepayment risk and the risk that the Fund could lose money if there are defaults on the loans underlying these securities. Investments in asset-backed securities may also be subject to valuation risk.

Credit Risk

The value of debt securities owned by the Fund may be affected by the ability of issuers to make principal and interest payments and by the issuer's or counterparty's credit quality. If an issuer cannot meet its payment obligations or if its credit rating is lowered, the value of its debt securities may decline. Lower quality bonds are generally more sensitive to these changes than higher quality bonds. Nonpayment would result in a reduction of income to the Fund, a reduction in the value of the obligation experiencing nonpayment and a potential decrease in the Fund's net asset value and the market price of the Fund's shares.

Derivatives Risk

Derivatives Risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Fund seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Fund, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately.

Effective August 19, 2022 (the "Compliance Date"), Rule 18f-4 under the 1940 Act (the "Derivatives Rule") replaced the asset segregation regime of Investment Company Act Release No. 10666 (Release 10666) with a new framework for the use of derivatives by registered funds. As of the Compliance Date, the SEC rescinded Release 10666 and withdrew no-action letters and similar guidance addressing a fund's use of derivatives and began requiring funds to satisfy the requirements of the Derivatives Rule. As a result, on or after the Compliance Date, the Fund will no longer engage in "segregation" or "coverage" techniques with respect to derivatives transactions and will instead comply with the applicable requirements of the Derivatives Rule.

The Derivatives Rule mandates that a fund adopt and/or implement: (i) value-at-risk limitations (VaR); (ii) a written derivatives risk management program; (iii) new Board oversight responsibilities; and (iv) new reporting and recordkeeping requirements. In the event that a fund's derivative exposure is 10% or less of its net assets, excluding certain currency and interest rate hedging transactions, it can elect to be classified as a limited derivatives user (Limited Derivatives User) under the Derivatives Rule, in which case the fund is not subject to the full requirements of the Derivatives Rule. Limited Derivatives Users are excepted from VaR testing, implementing a derivatives risk management program, and certain Board oversight and reporting requirements mandated by the Derivatives Rule. However, a Limited Derivatives User is still required to implement written compliance policies and procedures reasonably designed to manage its derivatives risks.

Equity Securities Risk

The risk that stock prices will fall over short or long periods of time. In addition, common stocks represent a share of ownership in a company, and rank after bonds and preferred stock in their claim on the company's assets in the event of bankruptcy. In addition to these risks, preferred stock and convertible securities are also subject to the risk that issuers will not make payments on securities held by the Fund, which could result in losses to the Fund. The credit quality of preferred stock and convertible securities held by the Fund may be lowered if an issuer's financial condition changes, leading to greater volatility in the price of the security.

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High Yield Debt Securities Risk

The risk that below investment grade securities or unrated securities of similar credit quality (commonly known as “high yield securities” or “junk securities”) are more likely to default than higher rated securities. The Fund’s ability to invest in high-yield debt securities generally subjects the Fund to greater risk than securities with higher ratings. Such securities are regarded by the rating organizations as predominantly speculative with respect to capacity to pay interest and repay principal in accordance with the terms of the obligation. The market value of these securities is generally more sensitive to corporate developments and economic conditions and can be volatile. Market conditions can diminish liquidity and make accurate valuations difficult to obtain.

Illiquid and Restricted Securities Risk

The investments made by the Fund may be illiquid, and consequently the Fund may not be able to sell such investments at prices that reflect the Investment Adviser’s assessment of their value or the amount originally paid for such investments by the Fund. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale and other factors. Furthermore, the nature of the Fund’s investments, especially those in financially distressed companies, may require a long holding period prior to profitability. Restricted securities (*i.e.*, securities acquired in private placement transactions) and illiquid securities may offer higher yields than comparable publicly traded securities. The Fund, however, may not be able to sell these securities when the Investment Adviser considers it desirable to do so or, to the extent they are sold privately, may have to sell them at less than the price of otherwise comparable securities. Restricted securities are subject to limitations on resale which can have an adverse effect on the price obtainable for such securities. Also, if in order to permit resale the securities are registered under the Securities Act at the Fund’s expense, the Fund’s expenses would be increased.

Industry Focus Risk

As the Fund may invest a significant portion of its assets in particular sectors or industries, the performance of the Fund may be closely tied to the performance of companies in a limited number of sectors or industries. Currently, the Fund focuses its investments in the energy, telecommunications and utilities sectors and, in certain instances, in a limited number of issuers within each of those sectors. Companies in a single sector often share common characteristics, are faced with the same obstacles, issues and regulatory burdens and their securities may react similarly to adverse market conditions. To the extent a Fund focuses its investments in particular issuers, countries, geographic regions, industries or sectors, the Fund may be subject to greater risks of adverse developments in such areas of focus than a fund that invests in a wider variety of issuers, countries, geographic regions, industries, sectors or investments. The price movements of investments in a particular sector or industry may be more volatile than the price movements of more broadly diversified investments.

Interest Rate Risk

The risk that fixed income securities will decline in value because of changes in interest rates. When interest rates decline, the value of fixed rate securities already held by the Fund can be expected to rise. Conversely, when interest rates rise, the value of existing fixed rate portfolio securities can be expected to decline. A fund with a longer average portfolio duration will be more sensitive to changes in interest rates than a fund with a shorter average portfolio duration.

Leverage Risk

The Fund may use leverage in its investment program, including the use of borrowed funds and investments in certain types of options, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent the Fund purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. If the interest expense on borrowings were to exceed the net return on the portfolio securities purchased with borrowed funds, the Fund’s use of leverage would result in a lower rate of return than if the Fund was not leveraged.

LIBOR Discontinuation Risk

Certain debt securities, derivatives and other financial instruments have traditionally utilized LIBOR as the reference or benchmark rate for interest rate calculations. However, following allegations of manipulation and concerns regarding liquidity, in July 2017 the U.K. Financial Conduct Authority, which regulates LIBOR, announced that it would cease its active encouragement of banks to provide the quotations needed to sustain LIBOR. The ICE Benchmark Administration Limited, the administrator of LIBOR, ceased publishing most liquid U.S. LIBOR maturities on June 30, 2023. It is possible that a subset of U.S. dollar LIBOR settings will continue to be published on a “synthetic” basis. It is expected that market participants transitioned to the use of alternative reference or benchmark rates prior to the applicable LIBOR publication cessation date. Additionally, although regulators have encouraged the development and adoption of alternative rates such as the Secured Overnight Financing Rate (“SOFR”),

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the future utilization of LIBOR or of any particular replacement rate remains uncertain.

Although the transition process away from LIBOR became increasingly well-defined in advance of the discontinuation dates, the impact on certain debt securities, derivatives and other financial instruments remains uncertain. Market participants have adopted alternative rates such as SOFR or otherwise amended financial instruments referencing LIBOR to include fallback provisions and other measures that contemplated the discontinuation of LIBOR or other similar market disruption events, but neither the effect of the transition process nor the viability of such measures is known. Further, uncertainty and risk remain regarding the willingness and ability of issuers and lenders to include alternative rates and revised provisions in new and existing contracts or instruments. To facilitate the transition of legacy derivatives contracts referencing LIBOR, the International Swaps and Derivatives Association, Inc. launched a protocol to incorporate fallback provisions. However, there are obstacles to converting certain longer term securities and transactions to a new benchmark or benchmarks and the effectiveness of one alternative reference rate versus multiple alternative reference rates in new or existing financial instruments and products has not been determined. Certain proposed replacement rates to LIBOR, such as SOFR, which is a broad measure of secured overnight U.S. Treasury repo rates, are materially different from LIBOR, and changes in the applicable spread for financial instruments transitioning away from LIBOR will need to be made to accommodate the differences. Furthermore, the risks associated with the expected discontinuation of LIBOR and transition to replacement rates may be exacerbated if an orderly transition to an alternative reference rate is not completed in a timely manner.

The utilization of an alternative reference rate, or the transition process to an alternative reference rate, may adversely affect the Fund's performance.

Alteration of the terms of a debt instrument or a modification of the terms of other types of contracts to replace LIBOR or another interbank offered rate ("IBOR") with a new reference rate could result in a taxable exchange and the realization of income and gain/loss for U.S. federal income tax purposes. The Internal Revenue Service (the "IRS") has issued final regulations regarding the tax consequences of the transition from IBOR to a new reference rate in debt instruments and non-debt contracts. Under the final regulations, alteration or modification of the terms of a debt instrument to replace an operative rate that uses a discontinued IBOR with a qualified rate (as defined in the final regulations) including true up payments equalizing the fair market value of contracts before and after such IBOR transition, to add a qualified rate as a fallback rate to a contract whose operative rate uses a discontinued IBOR or to replace a fallback rate that uses a discontinued IBOR with a qualified rate would not be taxable.

The IRS may provide additional guidance, with potential retroactive effect.

Management Risk

The risk associated with the fact that the Fund relies on the Investment Adviser's ability to achieve its investment objective. The Investment Adviser may be incorrect in its assessment of the intrinsic value of the companies whose securities the Fund holds, which may result in a decline in the value of fund shares and failure to achieve its investment objective.

Mid-Cap Company Risk

The risk that investing in securities of mid-cap companies may entail greater risks than investments in larger, more established companies. Mid-cap companies tend to have more narrow product lines, more limited financial resources and a more limited trading market for their stocks, as compared with larger companies. As a result, their stock prices may decline significantly as market conditions change.

MLP Risk

The risk that the MLPs in which the Fund invests will fail to be treated as partnerships for U.S. federal income tax purposes. If an MLP does not meet current legal requirements to maintain its partnership status, or if it is unable to do so because of tax or other law changes, it would be treated as a corporation for U.S. federal income tax purposes. The classification of an MLP as a corporation for U.S. federal income tax purposes could have the effect of reducing the amount of cash available for distribution by the MLP and the value of the Fund's investment in any such MLP. As a result, the value of the Fund's shares and the cash available for distribution to Fund shareholders could be materially reduced.

MLP Tax Risk

The risk that the MLPs in which the Fund invests will fail to be treated as partnerships for U.S. federal income tax purposes. If an MLP does not meet current legal requirements to maintain its partnership status, or if it is unable to do so because of tax or other law changes, it would be treated as a corporation for U.S. federal income tax purposes. In that case, the MLP would be obligated to pay U.S. federal income tax (as well as state and local taxes) at the entity level on its taxable income and distributions received by the Fund would be characterized as dividend income to the extent of the MLP's current and accumulated earnings and profits for federal tax purposes. The classification of an MLP as a corporation for U.S. federal income tax purposes could have the

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effect of reducing the amount of cash available for distribution by the MLP and the value of the Fund's investment in any such MLP. As a result, the value of the Fund's shares and the cash available for distribution to Fund shareholders could be reduced.

Non-U.S. Securities Risk

The risk associated with investing in non-U.S. issuers. Investments in securities of non-U.S. issuers involve certain risks not involved in domestic investments (for example, fluctuations in foreign exchange rates (for non-U.S. securities not denominated in U.S. dollars); future foreign economic, financial, political and social developments; nationalization; exploration or confiscatory taxation; smaller markets; different trading and settlement practices; less governmental supervision; and different accounting, auditing and financial recordkeeping standards and requirements) that may result in the Fund experiencing more rapid and extreme changes in value than a fund that invests exclusively in securities of U.S. companies. These risks are magnified for investments in issuers tied economically to emerging markets, the economies of which tend to be more volatile than the economies of developed markets. In addition, certain investments in non-U.S. securities may be subject to foreign withholding and other taxes on interest, dividends, capital gains or other income or proceeds. Those taxes will reduce the Fund's yield on any such securities.

Non-Payment Risk

Debt instruments are subject to the risk of non-payment of scheduled interest and/or principal. Non-payment would result in a reduction of income to the Fund, a reduction in the value of the security experiencing non-payment and a potential decrease in the NAV of the Fund. There can be no assurance that the liquidation of any collateral would satisfy the borrower's obligation in the event of non-payment of scheduled interest or principal payments, or that such collateral could be readily liquidated. Moreover, as a practical matter, most borrowers cannot satisfy their debts by selling their assets. Borrowers pay their debts from the cash flow they generate.

Pandemics and Associated Economic Disruption

An outbreak of respiratory disease caused by a novel coronavirus ("COVID-19") was first detected in China in late 2019 and subsequently spread globally. This coronavirus has resulted in, and may continue to result in, closed borders, enhanced health screenings, disruptions to healthcare service preparation and delivery, quarantines, cancellations, and disruptions to supply chains, workflow operations and consumer activity, as well as general concern and uncertainty. The impact of this coronavirus has resulted in substantial economic volatility. Health crises caused by outbreaks, such as the coronavirus outbreak, may exacerbate other pre-existing political, social and economic risks. The impact of this outbreak, and other epidemics and pandemics that may arise in the future, could continue to negatively affect the worldwide economy, as well as the economies of individual countries, individual companies, including certain Fund service providers and issuers of the Fund's investments, and the markets in general in significant and unforeseen ways. In addition, governments, their regulatory agencies, or self-regulatory organizations may take actions in response to the pandemic, including significant fiscal and monetary policy changes, that may affect the instruments in which the Fund invests or the issuers of such instruments. Any such impact could adversely affect the Fund's performance.

Real Estate Securities Risk

The securities of issuers that own, construct, manage or sell residential, commercial or industrial real estate are subject to risks in addition to those of other issuers. Such risks include: changes in real estate values and property taxes, overbuilding, variations in rental income, interest rates and changes in tax and regulatory requirements, such as those relating to the environment. Performance of a particular real estate security depends on the structure, cash flow and management skill of the particular company.

Regulatory Risk

The risk that to the extent that legislation or state or federal regulators impose additional requirements or restrictions with respect to the ability of financial institutions to make loans in connection with highly leveraged transactions, the availability of loan interests for investment by the Fund may be adversely affected.

REIT-Specific Risk

Equity REITs may be affected by changes in the value of the underlying property owned by the trusts, while mortgage REITs may be affected by the quality of any credit extended. Further, equity and mortgage REITs are dependent upon management skill and are not diversified. Such trusts are also subject to heavy cash flow dependency, defaults by borrowers, self-liquidation, and the possibility of failing to qualify for special tax treatment under Subchapter M of the Code and to maintain an exemption under the 1940 Act. Any rental income or income from the disposition of such real estate could adversely affect its ability to retain its tax status, which would have adverse tax consequences on its shareholders. Finally, certain REITs may be self-liquidating at the end of a specified term, and run the risk of liquidating at an economically inopportune time.

REIT Tax Risk for REIT Subsidiaries

In addition to the REIT Subsidiary, the Fund may form one or more subsidiaries that will elect to be taxed as REITs begin-

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NOTES TO FINANCIAL STATEMENTS (continued)

ning with the first year in which they commence material operations. In order for each subsidiary to qualify and maintain its qualification as a REIT, it must satisfy certain requirements set forth in the Code and Treasury Regulations that depend on various factual matters and circumstances. The Fund and the Investment Adviser intend to structure each REIT subsidiary and its activities in a manner designed to satisfy all of these requirements. However, the application of such requirements is not entirely clear, and it is possible that the IRS may interpret or apply those requirements in a manner that jeopardizes the ability of such REIT subsidiary to satisfy all of the requirements for qualification as a REIT.

Restrictions on Resale Risk

Senior Loans may not be readily marketable and may be subject to restrictions on resale. Interests in Senior Loans generally are not listed on any national securities exchange or automated quotation system and no active market may exist for many of the Senior Loans in which the Fund may invest. To the extent that a secondary market may exist for certain of the Senior Loans in which the Fund invests, such market may be subject to irregular trading activity, wide bid/ask spreads and extended trade settlement periods.

Securities Lending Risk

The Fund will continue to receive interest on any securities loaned while simultaneously earning interest on the investment of the cash collateral in short-term money market instruments. However, the Fund will normally pay lending fees to broker-dealers and related expenses from the interest earned on such invested collateral. Any decline in the value of a portfolio security that occurs while the security is out on loan is borne by the Fund, and will adversely affect performance. There may be risks of delay in receiving additional collateral or risks of delay in recovery of the securities, loss of rights in the collateral should the borrower of the securities fail financially and possible investment losses in the investment of collateral. Any loan may be terminated by either party upon reasonable notice to the other party.

Senior Loans Risk

The risk that the issuer of a senior may fail to pay interest or principal when due, and changes in market interest rates may reduce the value of the senior loan or reduce the Fund's returns. The risks associated with senior loans are similar to the risks of high yield debt securities. Senior loans and other debt securities are also subject to the risk of price declines and to increases in interest rates, particularly long-term rates. Senior loans are also subject to the risk that, as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long- term interest rates can vary dramatically from short-term interest rates. Therefore, senior loans may not mitigate price declines in a long-term interest rate environment. The Fund's investments in senior loans are typically below investment grade and are considered speculative because of the credit risk of their issuers.

Short Sales Risk

The risk of loss associated with any appreciation on the price of a security borrowed in connection with a short sale. The Fund may engage in short sales that are not made "against-the-box," which means that the Fund may sell short securities even when they are not actually owned or otherwise covered at all times during the period the short position is open. Short sales that are not made "against-the-box" involve unlimited loss potential since the market price of securities sold short may continuously increase.

Small-Cap Company Risk

The risk that investing in the securities of small-cap companies either directly or indirectly through investments in ETFs, closed-end funds or mutual funds ("Underlying Funds") may pose greater market and liquidity risks than larger, more established companies, because of limited product lines and/or operating history, limited financial resources, limited trading markets, and the potential lack of management depth. In addition, the securities of such companies are typically more volatile than securities of larger capitalization companies.

Underlying Funds Risk

The risk associated with investing in Underlying Funds. The Fund may invest in Underlying Funds subject to the limitations set forth in the 1940 Act. Underlying Funds typically incur fees that are separate from those fees incurred directly by the Fund; therefore, the Fund's purchase of Underlying Funds' securities results in the layering of expenses. The Fund's shareholders indirectly bear a proportionate share of the operating expenses of Underlying Funds (including advisory fees) in addition to bearing the Fund's expenses.

Value Investing Risk

The risk of investing in undervalued stocks that may not realize their perceived value for extended periods of time or may never realize their perceived value. Value stocks may respond differently to market and other developments than other types of stocks. Value-oriented funds will typically underperform when growth investing is in favor.

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NOTES TO FINANCIAL STATEMENTS (continued)

Note 8. Investment Transactions

Purchases & Sales of Securities

The cost of purchases and the proceeds from sales of investments, other than short-term securities and short-term options, for the year ended September 30, 2023, were as follows:

U.S. Government Securities[1]		Other Securities	
Purchases	Sales	Purchases	Sales
$—	$—	$ 32,153,226	$47,090,657

(1) The Fund did not have any purchases or sales of U.S. Government Securities for the year ended September 30, 2023.

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NOTES TO FINANCIAL STATEMENTS (continued)

September 30, 2023 **Highland Global Allocation Fund**

Note 9. Affiliated Issuers

Under Section 2 (a)(3) of the 1940 Act, as amended, a portfolio company is defined as "affiliated" if a fund owns five percent or more of its outstanding voting securities or if the portfolio company is under common control. The table below shows affiliated issuers of the Fund as of September 30, 2023:

Issuer	Shares/ Principal Amount ($) September 30, 2022	Beginning Value as of September 30, 2022 $	Purchases at Cost $	Proceeds from Sales $	Distribution to Return of Capital $	Net Amortization (Accretion) of Premium/ (Discount) $	Net Realized Gain (Loss) on Sales of Affiliated Issuers $	Change in Unrealized Appreciation (Depreciation) $	Ending Value as of September 30, 2023	Shares/ Principal Amount ($) September 30, 2023	Affiliated Income $
Majority Owned, Not Consolidated											
None											
Other Affiliates											
MidWave Wireless, Inc. (fka Terrestar Corp.) (U.S. Equity)	169,531	61,209,167	—	—	—	—	—	(1,481,700)	59,727,467	169,531	—
GAF REIT (U.S. Equity)	1,146,313	16,028,896	10,000	—	—	—	—	(3,252,196)	12,786,700	1,147,062	—
NexPoint Diversified Real Estate Trust (U.S. Equity)	549,863	6,900,781	57,103	—	(329,918)	—	—	(1,783,307)	4,844,659	556,218	—
NexPoint Real Estate Finance (U.S. Equity)	1,322,385	19,809,333	—	(9,086,111)		—	898,585	3,124,857	14,746,664	901,385	1,614,955
NexPoint Residential Trust, Inc. (U.S. Equity)	168,760	7,798,400	288,891	(86,576)	(197,724)	—	86,576	(2,229,588)	5,659,979	175,885	(12,187) †
MidWave Wireless, Inc. (fka Terrestar Corp.) (U.S. Senior Loan)	19,996,652	19,854,675	2,386,515	—	—	1,457	—	46,511	22,289,158	22,383,167	2,426,568
NexPoint SFR Operating Partnership, LP (U.S. Senior Loan)	5,000,000	5,000,000	—	—	—	—	—	(42,500)	4,957,500	5,000,000	375,000
NHT Operating Partnership LLC Secured Promissory Note (U.S. Senior Loan)	8,500,000	7,871,000	—	—	—	—	—	297,500	8,168,500	8,500,000	467,500
GAF REIT Sub II, LLC (U.S. LLC Interest)	349	9,715,224	—	—	—	—	—	(1,153,620)	8,561,604	349	—
GAF REIT Sub III, LLC (U.S. LLC Interest)	—	—	11,587,526	—	—	—	—	(540,462)	11,047,064	156,528	—
SFR WLIF III, LLC (U.S. LLC Interest)	3,789,008	3,565,226	—	—	—	—	—	(47,791)	3,517,435	3,789,008	416,285
NexPoint Diversified Real Estate Trust (U.S. Preferred Stock)	—	—	220,395	—	—	—	—	(21,782)	198,613	13,831	14,263
BB Votorantim Highland Infrastructure LLC (Non-U.S. Registered Investment Company)	10,000	3,395,347	—	—	—	—	—	211,842	3,607,189	10,000	—

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Highland Opportunities and Income Fund (U.S. Registered Investment Company)	334,005	3,246,529	—	—	(133,068)	—	—	(428,061)	2,685,400	334,005	175,553
NexPoint Event Driven Fund (U.S. Registered Investment Company)	706,236	10,445,237	—	—	—	—	—	685,050	11,130,287	706,236	—
NexPoint Merger Arbitrage Fund (U.S. Registered Investment Company)	54,992	1,080,585	55,775	—	—	—	—	(2,966)	1,133,394	57,856	55,774
Other Controlled											
None											
Total	41,748,094	175,920,400	14,606,205	(9,172,687)	(660,710)	1,457	985,161	(6,618,213)	175,061,613	43,901,061	5,533,711

† The Fund's reported affiliated income from NexPoint Residential Trust, Inc. includes a REIT adjustment of $(16,840), resulting in the Fund reporting a negative value for income received from NexPoint Residential Trust, Inc.. Excluding the REIT adjustment, the Fund received $4,653 in dividend income from NexPoint Residential Trust, Inc..

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NOTES TO FINANCIAL STATEMENTS (concluded)

Note 10. Legal Matters

The Fund received a shareholder demand letter dated March 1, 2018, from an individual purporting to be a shareholder of the Fund (the "Demand Letter"). The Demand Letter alleged that the current and former Board breached their fiduciary duties, and the Investment Adviser breached its advisory agreement, in relation to the Fund's investment in shares of an affiliated mutual fund, the Highland Energy MLP Fund (previously a series of the Trust). The Fund held $15.5 million (or 61.5%) of the Highland Energy MLP Fund, which has now been liquidated. Upon receipt of the Demand Letter, the Board formed a Demand Review Committee ("DRC") comprised entirely of independent trustees to investigate these claims and to make a recommendation to the Board regarding whether pursuit of these claims is in the best interests of the Fund. Aided by independent counsel to the committee, the DRC engaged in a thorough and detailed review of the allegations contained in the Demand Letter. Upon completion of its evaluation, the DRC recommended that the Fund's independent trustees, who represent a majority of the Board, reject the demand specified in the shareholder Demand Letter.

After considering the report of the DRC, the independent trustees unanimously agreed and rejected the demand, noting that the Demand Letter contained material factual errors and incorrect assumptions, and the proposed suit was meritless and should not be pursued. A copy of the report was provided to the purported shareholder and her counsel.

Notwithstanding the foregoing, the purported shareholder (the "Plaintiff") filed a shareholder derivative and class action lawsuit against certain members of the Board and the Investment Adviser on September 5, 2018 (the "Shareholder Litigation"). The Fund is a nominal defendant in the litigation, which is brought on behalf of the Fund. On May 26, 2020, the Court granted a motion to dismiss for all defendants on all claims. The Court concluded that the contract and fiduciary duty claims are barred by the Board's independent and good-faith investigation of those claims, and that the purported class action claims can only be filed derivatively. The case is Lanotte v. Highland Global Allocation Fund et al, 3:18-cv-02360 (N.D. Tex.). The shareholder appealed the dismissal to the United States Court of Appeals for the Fifth Circuit. Oral argument was heard on March 2, 2021. On March 28, 2023, the United States Court of Appeals for the Fifth Circuit affirmed the decision to dismiss the Plaintiff's case. The case has gone final and been administratively closed for all purposes.

Note 11. Asset Coverage

The Fund is required to maintain 300% asset coverage with respect to amounts outstanding (excluding short-term borrowings). Asset coverage is calculated by subtracting the Fund's total liabilities, not including any amount representing bank loans and senior securities, from the Fund's total assets and dividing the result by the principal amount of the borrowings outstanding. As of the dates indicated below, the Fund's debt outstanding and asset coverage was as follows:

Date	Total Amount Outstanding ($)	% of Asset Coverage of Indebtedness
9/30/2023	3,581,000	7,286.6
9/30/2022	—	—
9/30/2021	—	—
9/30/2020	—	—
9/30/2019	120,295,348	346.2
9/30/2018	138,725,439	395.2
9/30/2017	—	—
9/30/2016	40,000,000	2,414.9
9/30/2015	—	—
9/30/2014	—	—

Note 12. Indemnification

Under the Fund's organizational documents, the officers and Trustees have been granted certain indemnification rights against certain liabilities that may arise out of performance of their duties to the Fund. Additionally, in the normal course of business, the Fund may enter into contracts with service providers that contain a variety of indemnification clauses. The Fund's maximum exposure under these arrangements is dependent on future claims that may be made against the Fund and, therefore, cannot be estimated.

Note 13. Subsequent Events

Management has evaluated the impact of all subsequent events on the Fund through the date the financial statements were issued, and has determined that there were no subsequent events to report which have not already been recorded or disclosed in these financial statements and accompanying notes.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Trustees of
Highland Global Allocation Fund

Opinion on the Financial Statements

We have audited the accompanying statement of assets and liabilities, including the investment portfolio, of Highland Global Allocation Fund (the "Fund") as of September 30, 2023, the related statements of operations and cash flows for the year then ended, the statements of changes in net assets for each of the two years in the period then ended, the related notes, and the financial highlights for each of the four years in the period then ended (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Fund as of September 30, 2023, the results of its operations and its cash flows for the year then ended, the changes in net assets for each of the two years in the period then ended, and the financial highlights for each of the four years in the period then ended, in conformity with accounting principles generally accepted in the United States of America.

The Fund's financial highlights for the year ended September 30, 2019 were audited by other auditors whose report dated November 27, 2019, expressed an unqualified opinion on those financial highlights.

Basis for Opinion

These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on the Fund's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Fund in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our procedures included confirmation of securities owned as of September 30, 2023, by correspondence with the custodian, transfer agent, issuers, agent banks, and brokers; when replies were not received, we performed other auditing procedures. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Fund's auditor since 2020.

COHEN & COMPANY, LTD.
Cleveland, Ohio
November 29, 2023

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ADDITIONAL INFORMATION (unaudited)

Investment Objective and Strategy Overview

The Fund's investment objective is to seek long-term growth of capital and future income (future income means the ability to pay dividends in the future). Please refer to Note 7 for a discussion of the Fund's current investment risks.

The Fund seeks to achieve its investment objectives by investing in a portfolio of U.S. and foreign equity, debt and money market securities. Under normal market conditions, the Fund intends to invest at least 50% of its net assets in equity securities and at least 40% (plus any borrowings for investment purposes) of its net assets in securities of non-U.S. issuers. The Fund intends to invest approximately 40% or more of its net assets in securities of non-U.S. issuers at all times, however, in the event of unfavorable market conditions the Fund may invest less than 40% (but not less than 30%) of its assets in securities of non-U.S. issuers. For purposes of determining whether securities held by the Fund are securities of a non-U.S. issuer, a company is considered to be a non-U.S. issuer if the company's securities principally trade on a market outside of the United States, the company derives a majority of its revenues or profits outside of the United States, the company is not organized in the United States, or the company is significantly exposed to the economic fortunes and risks of regions outside the United States.

Equity securities in which the Fund may invest include common stock, preferred stock, securities convertible into common stock, rights and warrants or securities or other instruments whose price is linked to the value of common stock. The equity securities in which the Fund invests may be of any capitalization, may be denominated in any currency and may be located in emerging markets.

The Fund may also invest in debt securities of any kind, including debt securities of varying maturities, debt securities paying a fixed or fluctuating rate of interest, inflation-indexed bonds, structured notes, loan assignments, loan participations, asset-backed securities, debt securities convertible into equity securities, and securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, by foreign governments or international agencies or supranational entities or by domestic or foreign private issuers. The Fund may invest in debt securities of any credit quality, including below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("NRSRO") or are unrated but deemed by the Investment Adviser to be of comparable quality. The Fund may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

The Fund may also invest in senior loans to domestic or foreign corporations, partnerships and other entities that operate in a variety of industries and geographic regions ("Borrowers") ("Senior Loans"). Senior Loans are business loans that have a right to payment senior to most other debts of the Borrower.

The Fund invests primarily in companies that the portfolio manager believes have solid growth prospectus and/or attractive valuations. The portfolio manager's value management style employs a relative approach to identify companies across all economic sectors and geographic regions that are undervalued relative to the market, their peers, their historical valuation or their growth rate. In addition, the Fund's portfolio manager may employ event-driven investment strategies that analyze transactions in order to predict a likely outcome and invest the Fund's assets in a way that seeks to benefit from that outcome.

When choosing investment markets, Fund management considers various factors, including economic and political conditions, potential for economic growth and possible changes in currency exchange rates. In addition to investing in securities of non-U.S. issuers, the Fund actively manages its exposure to foreign currencies through the use of forward currency contracts and other currency derivatives. The Fund may own foreign cash equivalents or foreign bank deposits as part of the Fund's investment strategy. The Fund may also invest in non-U.S. currencies for hedging and speculative purposes.

The Fund's portfolio may include pooled investment vehicles, including exchange-traded funds ("ETFs"), that provide exposure to foreign equity securities and that invest in both developed and emerging markets, including ETFs that seek to track the performance of securities of a single country. The Fund may invest up to 5% of its net assets in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, commodities and/or currencies, as substitutes for direct investments the Fund can make and, to the extent permitted by the 1940 Act, to hedge various investments for risk management and speculative purposes.

The Fund will limit its investments in pooled investment vehicles that are excluded from the definition of "investment company" under the 1940 Act by Section 3(c)(1) or Section 3(c)(7) of the 1940 Act, such as private equity funds and hedge funds, to no more than 15% of its net assets. This limitation does not apply to any collateralized loan obligations, collateralized debt obligations and/or collateralized mortgage obligations, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

The Fund seeks to provide exposure to the investment returns of real assets that trade in the commodity markets, including through investment in certain commodity-linked

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ADDITIONAL INFORMATION (unaudited) (continued)

instruments and pooled investment vehicles, such as master limited partnership ("MLP") investments that are principally engaged in one or more aspects of the exploration, production, processing, transmission, marketing, storage or delivery of energy-related commodities, such as natural gas, natural gas liquids, coal, crude oil or refined petroleum products, in addition to exchange-traded notes and ETFs that generate returns tied to a particular commodity or commodity market index.

Except as otherwise expressly noted in the Statement of Additional Information ("SAI"), all percentage limitations and ratings criteria apply at the time of purchase of securities, except that the limit on borrowing described herein is applied on a continual basis.

The Fund may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed). The Fund may borrow for investment purposes and for temporary, extraordinary or emergency purposes. To the extent the Fund borrows more money than it has cash or short-term cash equivalents and invests the proceeds, the Fund will create financial leverage. The use of borrowing for investment purposes increases both investment opportunity and investment risk.

The Fund's portfolio manager may sell a security for a variety of reasons, such as to invest in a company offering or superior investment opportunities.

The portfolio manager may sell short securities of a company that it believes: (i) is overvalued relative to normalized business and industry fundamentals or to the expected growth that the portfolio manager believes the company will achieve; (ii) has a weak competitive position relative to peers; (iii) engages in questionable accounting practices;

(iv) shows declining cash flow and/or liquidity; (v) has distribution estimates that the portfolio manager believes are too high; (vi) has weak competitive barriers to entry; (vii) suffers from deteriorating industry and/or business fundamentals; (viii) has a weak management team; (ix) will see multiple contraction; (x) is not adapting to changes in technological, regulatory or competitive environments; or (xi) provides a hedge against the Fund's long exposure, such as a broad based market ETF. Technical analysis may be used to help in the decision making process. The Fund may engage in short sales that are not made "against-the-box," which means that the Fund may sell short securities even when they are not actually owned or offset at all times during the period the short position is open and could result in unlimited loss.

Tax Information

For shareholders that do not have a September 30, 2023 tax year end, this notice is for informational purposes only. For shareholders with a September 30, 2023 tax year end, please consult your tax adviser as to the pertinence of this notice. For the fiscal year ended September 30, 2023, the Fund is designating the following items with regard to earnings for the year.

Return of Capital	Long-Term Capital Gain Distribution	Ordinary Income Distribution	Total Distribution
55.50%	0.00%	44.50%	100.00%

Dividends Received Deduction[1]	Qualified Dividend Income[2]	Interest Related Dividends[3]	Short-Term Capital Gain Dividends[4]	Qualifying Business Income[5]
32.54%	32.52%	22.38%	0.00%	18.68%

(1) Qualifying dividends represent dividends which qualify for the corporate dividends received deduction and is reflected as a percentage of ordinary income distributions (the total of short-term capital gain and net investment income distributions).
(2) The percentage in this column represents the amount of "Qualifying Dividend Income" as created by the Jobs and Growth Tax Relief Reconciliation Act of 2003 and is reflected as a percentage of ordinary income distributions (the total of short-term capital gain and net investment income distributions). It is the intention of the Fund to designate the maximum amount permitted by law.
(3) The percentage in this column represents the amount of "Interest Related Dividends" as created by the American Jobs Creation Act of 2004 and is reflected as a percentage of net investment distributions that is exempt from U.S. withholding tax when paid to foreign investors.
(4) The percentage in this column represents the amount of "Short-Term Capital Gain Dividend" as created by the American Jobs Creation Act of 2004 and is reflected as a percentage of short-term capital gain distributions that is exempt from U.S. withholding tax when paid to foreign investors.
(5) The percentage of this column represents that amount of ordinary dividend income that qualified for 20% Business Income Deduction.

Additional Portfolio Information

The Investment Adviser and its affiliates manage other accounts, including registered and private funds and individual accounts. Although investment decisions for the Fund are made independently from those of such other accounts, the Investment Adviser may, consistent with applicable law, make investment recommendations to other clients or accounts that may be the same or different from those made to the Fund, including investments in different levels of the capital structure of a company, such as equity versus senior loans, or that involve taking contradictory positions in multiple levels of the capital structure. The Investment Adviser has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, this may create situations where a client could be disadvantaged because of the investment activities conducted by the Investment Adviser for other client accounts. When the Fund and one or more of such other accounts is prepared to invest in, or desire to dispose of, the same security, available investments or

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ADDITIONAL INFORMATION (unaudited) (continued)

opportunities for each will be allocated in a manner believed by the Investment Adviser to be equitable to the Fund and such other accounts. The Investment Adviser also may aggregate orders to purchase and sell securities for the Fund and such other accounts. Although the Investment Adviser believes that, over time, the potential benefits of participating in volume transactions and negotiating lower transaction costs should benefit all accounts including the Fund, in some cases these activities may adversely affect the price paid or received by the Fund or the size of the position obtained or disposed of by the Fund.

Disclosure of Fund Expenses

As a shareholder of a Fund, you incur two types of costs: (1) transaction costs, including sales charges (loads) on purchases and redemption fees; and (2) ongoing costs, including management fees; distribution (12b-1) and service fees; and other Fund expenses. This example is intended to help you understand the ongoing costs (in dollars) of investing in your Fund and to compare these costs with the ongoing costs of investing in other mutual funds. The example is based on an investment of $1,000 invested at the beginning of the period and held for the six-month period October 1, 2022 through March 31, 2023, unless otherwise indicated. This table illustrates your Fund's costs in two ways:

Actual Expenses: The first part of the table provides information about actual account values and actual expenses. You may use the information in this line, together with the amount you invested, to estimate the expenses that you paid over the period. Simply divide your account value by $1,000 (for example, an $8,600 account value divided by $1,000 = 8.6), then multiply the result by the number in the first line under the heading entitled "Expenses Paid During Period" to estimate the expenses you paid on your account during this period.

Hypothetical Example for Comparison Purposes: The second part of the table provides information about hypothetical account values and hypothetical expenses based on your Fund's actual expense ratio and an assumed rate of return of 5% per year before expenses, which is not your Fund's actual return. The actual expense ratio includes voluntary fee waivers or expense reimbursements by the Fund's investment adviser. The expense ratio would be higher had the fee waivers or expense reimbursements not been in effect. The hypothetical account values and expenses may not be used to estimate the actual ending account balance or expenses you paid for the period. You may use this information to compare the ongoing costs of investing in your Fund and other funds. To do so, compare this 5% hypothetical example with the 5% hypothetical examples that appear in the shareholder reports of the other funds. Please note that the expenses shown in the table are meant to highlight your ongoing costs only and do not reflect any transactional costs, such as sales charges (loads) or redemption fees. Therefore, the second part of the table is useful in comparing ongoing costs only, and will not help you determine the relative total costs of owning different funds. In addition, if these transactional costs were included, your costs would have been higher.

	Beginning Account Value 4/1/23 ($)	Ending Account Value 9/30/23 ($)	Annualized Expense Ratios	Expenses Paid During Period[(1)] ($)
Actual Fund Return				
	1,000.00	1,004.90	2.05%	10.30
Hypothetical 5% Return (before expenses)				
	1,000.00	1,014.79	2.05%	10.35

(1) Expenses are equal to the Fund's annualized expense ratio multiplied by the average account value over the period, multiplied by the number of days in the most recent fiscal half-year, divided by the number of days in the full fiscal year (183/365).

Approval of Investment Advisory Agreement

The Fund has retained NexPoint Asset Management, L.P. (the "Investment Adviser") to manage the assets of the Fund pursuant to an investment advisory agreement between the Investment Adviser and the Fund (the "Agreement"). The Agreement has been approved by the Fund's Board of Trustees, including a majority of the Independent Trustees. The Agreement continues in effect from year- to-year, provided that such continuance is specifically approved at least annually by the vote of holders of at least a majority of the outstanding shares of the Fund or by the Board of Trustees and, in either event, by a majority of the Independent Trustees of the Fund casting votes at a meeting called for such purpose.

During a meeting with the Investment Adviser held on August 10, 2023, and separately with independent trustee counsel on August 18, 2023, the Board of Trustees considered information bearing on the continuation of the Agreement for an additional one-year period. The Board of Trustees further discussed and considered information with respect to the continuation of the Agreement at a Board meeting held on September 14-15, 2023.

Following review and discussion of the Agreement and information provided by the Investment Adviser discussed below, at the meeting held on September 14-15, 2023, the Board of Trustees, including the Independent Trustees, approved the continuance of the Agreement for a one-year period commencing on November 1, 2023. As part of its review process, the Board of Trustees requested, through Fund counsel and independent legal counsel, and received from the Investment Adviser, various information and written materials, including: (1) information regarding the financial soundness of the Investment Adviser and the profitability of the Agreement to the Investment Adviser; (2) information on

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ADDITIONAL INFORMATION (unaudited) (continued)

the advisory, legal and compliance personnel of the Investment Adviser, including ongoing updates regarding the Highland Capital Management L.P. ("HCMLP") bankruptcy; (3) information regarding the role of Skyview Group ("Skyview") as a service provider to the Investment Adviser pursuant to the services agreement between Skyview and the Investment Adviser (the "Skyview Services Agreement") to assist the Investment Adviser in providing certain services to the Fund pursuant to the Agreement, as well as information regarding the Investment Adviser's oversight role over Skyview; (4) information on the internal compliance procedures of the Investment Adviser, including policies and procedures for personal securities transactions, conflicts of interest and with respect to cybersecurity, business continuity and disaster recovery; (5) comparative information showing how the Fund's fees and operating expenses compare to those of other accounts of the Investment Adviser, if any, with investment strategies similar to those of the Fund; (6) information on the investment performance of the Fund, including comparisons of the Fund's performance against that of other registered investment companies and comparable funds managed by the Investment Adviser that follow investment strategies similar to those of the Fund; (7) information regarding brokerage and portfolio transactions; and (8) information on any legal proceedings or regulatory audits or investigations affecting the Investment Adviser, including potential claims in the HCMLP bankruptcy. Throughout the annual contract renewal process, the Board of Trustees requested that the Investment Adviser provide additional information and responses regarding various matters in connection with the Board of Trustee's review and consideration of the Agreement. It was further noted that throughout the process, the Board of Trustees, including separately the Independent Trustees, had also met in executive sessions to further discuss the materials and information provided.

In addition, the Board of Trustees received an independent report from FUSE Research Network ("FUSE"), an independent third-party provider of investment company data, relating to the Fund's performance and expenses compared to the performance and expenses of a group of funds deemed by FUSE to be comparable to the Fund (the "peer group"), and to a larger group of comparable funds (the "peer universe"). The Board of Trustees also received data relating to the Fund's leverage and distribution rates as compared to its peer group.

The Board of Trustees discussed the materials and information provided by the Investment Adviser in detail over the course of multiple meetings, including the Investment Adviser's responses to the Board of Trustees' specific written questions, comparative fee and performance information and information concerning the Investment Adviser's business and financial condition. The factors considered and the determinations made by the Board of Trustees in connection with the approval of the renewal of the Agreement with the Investment Adviser are set forth below but are not exhaustive of all matters that were discussed by the Board of Trustees.

The Board of Trustees' evaluation process with respect to the Investment Adviser is an ongoing one. In this regard, the Board of Trustees also took into account discussions with management and information provided to the Board of Trustees at meetings of the Board of Trustees over the course of the year and in past years with respect to the services provided by the Investment Adviser to the Fund, including quarterly performance reports prepared by management containing reviews of investment results and prior presentations from the Investment Adviser with respect to the Fund. The information received and considered by the Board of Trustees in connection with the Board's determination to approve the continuance of the Agreement was both written and oral.

The Board of Trustees reviewed various factors that were discussed in a legal memorandum provided by independent counsel regarding trustee responsibilities in considering the Agreement, the detailed information provided by the Investment Adviser and other relevant information. The Board of Trustees also considered other factors (including conditions and trends prevailing generally in the economy, the securities markets, and the effect of the COVID-19 pandemic on the Fund and the industry). Some of the factors that figured particularly in the Board of Trustees' deliberations are described below, although individual Trustees may have evaluated the information presented differently from one another, giving different weights to various factors. In addition, the Board of Trustees' conclusions may be based in part on its consideration of the advisory arrangements in prior years and on the Board of Trustees' ongoing regular review of fund performance and operations throughout the year. The Board of Trustees' conclusions as to the approval of the Agreement were based on a comprehensive consideration of all information provided to the Board of Trustees without any single factor being dispositive in and of itself.

Throughout the process, the Board of Trustees had the opportunity to ask questions of and request additional information from the Investment Adviser. The Board of Trustees was assisted by legal counsel for the Trust and the Independent Trustees were also separately assisted by independent legal counsel throughout the process. The Board of Trustees also met separately without representatives of the Investment Adviser present. The Independent Trustees were advised by and met in executive sessions with

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ADDITIONAL INFORMATION (unaudited) (continued)

their independent legal counsel at which no representatives of management were present to discuss the proposed continuation of the Agreement.

The nature, extent, and quality of the services to be provided by the Investment Adviser.

The Board of Trustees considered the Investment Adviser's services as investment manager to the Fund.

The Board of Trustees considered the portfolio management services to be provided by the Investment Adviser under the Agreement and the activities related to portfolio management, including use of technology, research capabilities and investment management staff. The Board of Trustees also considered the relevant experience and qualifications of the personnel providing advisory services, including the background and experience of the members of the Fund's portfolio management team. The Board of Trustees reviewed the management structure, assets under management and investment philosophies and processes of the Investment Adviser. The Board of Trustees also reviewed and discussed information regarding the Investment Adviser's compliance policies, procedures and personnel, including compensation arrangements, and with respect to valuation, cybersecurity, business continuity and disaster recovery. The Board of Trustees also considered the Investment Adviser's risk management and monitoring processes. The Board of Trustees took into account the terms of the Agreement and considered that, the Investment Adviser, subject to the direction of the Board of Trustees, is responsible for providing advice and guidance with respect to the Fund and for managing the investment of the assets of the Fund. The Board of Trustees also took into account that the scope of services provided to the Fund and the undertakings required of the Investment Adviser in connection with those services, including with respect to its own and the Fund's compliance programs, had expanded over time as a result of regulatory, market and other developments. The Board of Trustees also considered any operational, staffing and organizational changes with respect to the Investment Adviser over the prior year, and the fact that there were no material operational or compliance issues with respect to the Fund or decrease in the level and quality of services provided to the Fund as a result. The Board of Trustees also considered the Investment Adviser's legal and regulatory history. The Board of Trustees also considered the Investment Adviser's current litigation matters related to the HCMLP bankruptcy and took into account the Investment Adviser's representation that such matters have not impacted the quality and level of services the Investment Adviser provides to the Fund under the Agreement.

The Investment Adviser's services in coordinating and overseeing the activities of the Fund's other service providers, as well of the services provided by Skyview to the Investment Adviser under the Skyview Services Agreement, were also considered. The Board of Trustees also evaluated the expertise and performance of the personnel of the Investment Adviser who performed services for the Fund throughout the year. They also considered the quality of the Investment Adviser's compliance oversight program with respect to the Fund's service providers. The Board of Trustees also considered both the investment advisory services and the nature, quality and extent of any administrative and other non-advisory services, including shareholder servicing and distribution support services, that are provided to the Fund and its shareholders by the Investment Adviser and its affiliates, as well as considered the services provided by Skyview to the Investment Adviser under the Skyview Services Agreement. The Board of Trustees noted that the level and quality of services to the Fund by the Investment Adviser and its affiliates had not been materially impacted by the HCMLP bankruptcy and took into account the Investment Adviser's representations that the level and quality of the services provided by the Investment Adviser and their affiliates, as well as of those services provided by Skyview to the Investment Adviser under the Skyview Services Agreement, would continue to be provided to the Fund at the same or higher level and quality.

The Board of Trustees also considered the significant risks assumed by the Investment Adviser in connection with the services provided to the Fund, including entrepreneurial risk and ongoing risks including investment, operational, enterprise, litigation, regulatory and compliance risks with respect to the Fund. The Board of Trustees also noted various cost savings initiatives that had been implemented by the Investment Adviser with respect to the Fund and the other funds in the Highland complex over the years. The Board of Trustees considered the Investment Adviser's financial condition and financial wherewithal. The Board of Trustees also considered the financial condition and operations of the Investment Adviser during the COVID-19 pandemic and noted that there had been no material disruption of the Investment Adviser's services to the Fund and that the Investment Adviser had continued to provide the same level, quality and extent of services to the Fund.

The Board of Trustees also noted that on a regular basis it receives and reviews information from the Fund's Chief Compliance Officer (CCO) regarding the Fund's compliance policies and procedures established pursuant to Rule 38a-1 under the 1940 Act. The Board of Trustees also took into account the Investment Adviser's risk assessment processes.

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ADDITIONAL INFORMATION (unaudited) (continued)

In considering the nature, extent, and quality of the services provided by the Investment Adviser, the Board of Trustees also took into account its knowledge of the Investment Adviser's management and the quality of the performance of its duties, through discussions and reports and interactions during the preceding year and in past years.

The Board of Trustees concluded that the Investment Adviser had the quality and depth of personnel and investment methods essential to performing its duties under the Agreement, and that the nature and the quality of such advisory services supported the approval of the Agreement.

The Investment Adviser's historical performance.

In considering the Fund's performance, the Board of Trustees noted that it reviews at its regularly scheduled meetings information about the Fund's performance results. The Board of Trustees considered the performance of the Fund as described in the quarterly and other reports provided by management over the course of the year. The Board of Trustees noted that the Investment Adviser reviewed with the Board of Trustees on at least a quarterly basis detailed information about the Fund's performance results, portfolio composition and investment strategies. The Board of Trustees reviewed the historical performance of the Fund over various time periods and reflected on previous discussions regarding matters bearing on the Investment Adviser's performance at its meetings throughout the year. The Board of Trustees discussed the historical performance of the Fund and considered the relative performance of the Fund and its portfolio management team as compared to that of the Fund's peer group as selected by FUSE, as well as comparable indices. Among other data, the Board of Trustees also received data with respect to the Fund's leverage, discounts and distribution rates as compared to its peer group.

The Board of Trustees reviewed and considered the FUSE report, which provided a statistical analysis comparing the Fund's investment performance, expenses and fees to those of comparable funds for various periods ended June 30, 2023 and management's discussion of the same, including the effect of current market conditions on the Fund's more-recent performance. The Board of Trustees also received a review of the data contained in the FUSE report from representatives of FUSE. The Board of Trustees noted that while it found the data provided by FUSE, the independent third-party data provider, generally useful, it recognized its limitations, including in particular that the data may vary depending on the end date selected and the results of the performance comparisons may vary depending on the selection of the peer group. The Board of Trustees also took into account management's discussion of the category in which the Fund was placed for comparative purposes, including any differences between the Fund's investment strategy and the strategy of the funds in the Fund's respective category, as well as compared to the peer group selected by FUSE. The Board of Trustees also took into account its discussions with management over the course of the year regarding factors that contributed to the performance of the Fund, including presentations with the Fund's portfolio managers.

Among other data relating specifically to the Fund's performance, the Board of Trustees considered that the Fund outperformed (based on NAV) its benchmark, the FTSE All World Index, for the three-year period ended June 30, 2023, but underperformed its benchmark for the one-, five-, and ten-year periods ended June 30, 2023. The Board of Trustees then considered that the Fund (based on NAV) had outperformed its peer group median for the three-year period ended June 30, 2023; underperformed its peer group median for the one-year period ended June 30, 2023; and was in line with the performance of its peer group median for the five-and ten-year periods ended June 30, 2023. The Board of Trustees also took into account the unique mandate of the Fund as compared to the other funds in its peer group. The Board of Trustees also took into account management's discussion of the Fund's performance, including with respect to the Fund's discount as compared to the Fund's performance based on NAV, its distribution rate relative to its peers, as well as a discussion of certain of the Fund's holdings and actions already taken and other plans to potentially address the Fund's discount.

The Board of Trustees concluded that the Fund's overall performance and other relevant factors supported the continuation of the Agreement with respect to the Fund for an additional one-year period.

The costs of the services to be provided by the Investment Adviser and the profits to be realized by the Investment Adviser and its affiliates from the relationship with the Fund.

The Board of Trustees also gave consideration to the fees payable under the Agreement, the expenses the Investment Adviser incur in providing advisory services and the profitability to the Investment Adviser from managing the Fund, including: (1) information regarding the financial condition of the Investment Adviser and regarding profitability from the relationship with the Fund; (2) information regarding the total fees and payments received by the Investment Adviser for its services and, with respect to the Investment Adviser, whether such fees are appropriate given economies of scale and other considerations; (3) comparative information showing (a) the fees payable under the Agreement versus the investment advisory fees of certain registered investment companies and comparable funds that follow investment strategies similar to those of the Fund and (b) the expense ratios of the Fund versus the expense ratios of certain registered investment companies and comparable funds that follow investment

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ADDITIONAL INFORMATION (unaudited) (continued)

strategies similar to those of the Fund; and (4) information regarding the total fees and payments received and the related amounts waived and/or reimbursed by the Investment Adviser and whether such fees are appropriate.

The Board of Trustees considered that the Fund's total net expenses were lower than its peer group median and that the Fund's advisory fees were lower than its peer group median. The Board of Trustees took into account management's discussion of the Fund's expenses, including any differences in its investment strategy from other funds in the peer group, and the amounts waived and/or reimbursed by the Investment Adviser.

The Board of Trustees also considered the so-called "fallout benefits" to the Investment Adviser with respect to the Fund, such as the reputational value of serving as Investment Adviser to the Fund, potential fees paid to the Investment Adviser's affiliates by the Fund or portfolio companies for services provided, the benefits of scale from investment by the Fund in affiliated funds, and the benefits of research made available to the Investment Adviser by reason of brokerage commissions (if any) generated by the Fund's securities transactions. The Board of Trustees concluded that the benefits received by the Investment Adviser and its affiliates were reasonable in the context of the relationship between the Investment Adviser and the Fund.

After such review, the Board of Trustees determined that the profitability to the Investment Adviser and its affiliates from their relationship with the Fund, if any, was not excessive.

The extent to which economies of scale would be realized as the Fund grows and whether fee levels reflect these economies of scale for the benefit of shareholders.

The Board of Trustees also considered the effect of the Fund's growth in assets under management on its fees. The Board of Trustees noted that the Fund does not currently contain breakpoints in its advisory fee schedule. The Board of Trustees took into account the Investment Adviser's discussion of the fee structure, including that the Fund benefits from a waiver of a portion of its advisory fees, which the Investment Adviser believes can be more effective than breakpoints at controlling overall costs borne by shareholders. The Board of Trustees also noted the FUSE report, which compared fees among peers, included the Fund's contractual fee schedule at different asset levels. The Board of Trustees also noted the current size of the fund. The Board of Trustees noted that, if the Fund's assets increase over time, the Fund may realize other economies of scale if assets increase proportionally more than certain other fixed expenses. The Board of Trustees concluded that the fee structure is reasonable, and with respect to the Investment Adviser, should result in a sharing of economies of scale in view of the information provided. The Board of Trustees determined to continue to review the ways and extent to which economies of scale might be shared between the Investment Adviser, on the one hand, and shareholders of the Fund, on the other, as the assets in the Fund grow.

Conclusion.

Following a further discussion of the factors above, it was noted that in considering the approval of the Agreement, no single factor was determinative to the decision of the Board of Trustees. Rather, after weighing all factors and considerations, including those discussed above, the Board of Trustees, including separately, the Independent Trustees, unanimously agreed that the Agreement, including the advisory fee to be paid to the Investment Adviser, is fair and reasonable to the Fund in light of the services that the Investment Adviser provides, the expenses that it incurs and the reasonably foreseeable asset levels of the Fund.

Dividend Reinvestment Plan

Unless the registered owner of Common Shares elects to receive cash by contacting Global Shares ("Global Shares" or the "Plan Agent"), as agent for shareholders in administering the Plan, a registered owner will receive newly issued Common Shares for all dividends declared for Common Shares of the Fund. If a registered owner of Common Share selects not to participate in the Plan, they will receive all dividends in cash paid by check mailed directly to them (or, if the shares are held in street or other nominee name, then to such nominee) by Global Shares, as dividend disbursing agent. Shareholders may elect not to participate in the Plan and to receive all dividends in cash by sending written instructions or by contacting Global Shares, as dividend disbursing agent, at the address set forth below. Participation in the Plan is completely voluntary and may be terminated or resumed at any time without penalty by contacting the Plan Agent before the dividend record date; otherwise such termination or resumption will be effective with respect to any subsequently declared dividend. Some brokers may automatically elect to receive cash on the shareholders' behalf and may reinvest that cash in additional Common Shares of the Fund for them. The Plan Agent will open an account for each shareholder under the Plan in the same name in which such shareholder's Common Shares are registered. Whenever the Fund declares a dividend payable in cash, non-participants in the Plan will receive cash and participants in the Plan will receive the equivalent in Common Shares. The Common Shares will be acquired by the Plan Agent through receipt of additional unissued but authorized Common Shares from the Fund ("newly issued Common Shares"). The number of newly issued Common Shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the lesser of (i) the net asset value per Common Share
determined on the Declaration Date and (ii) the market price

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ADDITIONAL INFORMATION (unaudited) (continued)

per Common Share as of the close of regular trading on the New York Stock Exchange (the "NYSE") on the Declaration Date. The Plan Agent maintains all shareholders' accounts in the Plan and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Common Shares in the account of each Plan participant will be held by the Plan Agent on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. The Plan Agent will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants. In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, the Plan Agent will administer the Plan on the basis of the number of Common Shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan. There will be no brokerage charges with respect to Common Shares issued directly by the Fund. The automatic reinvestment of dividends will not relieve participants of any federal, state or local income tax that may be payable (or required to be withheld) on such dividends. Accordingly, any taxable dividend received by a participant that is reinvested in additional Common Shares will be subject to federal (and possibly state and local) income tax even though such participant will not receive a corresponding amount of cash with which to pay such taxes. Participants who request a sale of shares through the Plan Agent are subject to a $2.50 sales fee and pay a brokerage commission of $0.05 per share sold. The Fund reserves the right to amend or terminate the Plan. There is no direct service charge to participants in the Plan; however, the Fund reserves the right to amend the Plan to include a service charge payable by the participants. All correspondence concerning the Plan should be directed to the Plan Agent.

Control Persons and Principal Shareholders

As of September 30, 2023, the Trustees and officers of the Fund as a group owned less than 1% of the then outstanding shares of each class of shares of the Fund.

Control persons are presumed to control a Fund for purposes of voting on matters submitted to a vote of shareholders due to their beneficial ownership of 25% or more of a Fund's outstanding voting securities.

Unless otherwise noted, as of September 30, 2023, no persons known by the Fund owned 25% or more of Fund's outstanding shares.

A person who beneficially owns, either directly or indirectly, more than 25% of the voting securities of the Fund or acknowledges the existence of such control may be presumed to control the Fund. A control person could potentially control the outcome of any proposal submitted to the shareholders for approval, including changes to the Fund's fundamental policies or terms of the investment advisory agreement with the Investment Adviser.

Submission of Proposal to a Vote of Shareholders

The annual meeting of shareholders of the Fund was held on June 16, 2023. The following is a summary of the proposal submitted to shareholders for a vote at the meeting and the votes cast.

Proposal
To elect each of Dr. Bob Froehlich and Dorri McWhorter as a Class II Trustee of the Trust, to serve for a three-year term expiring at the 2026 Annual Meeting or until his/her successor is duly elected and qualifies, by the holders of the Fund's Common Shares.

Nominee/Trustee	Number of Common Shares Votes	Percentage of Outstanding Common Shares	Percentage of Common Shares Voted
Dr. Bob Froehlich			
For	13,203,038.757	58.722%	89.230%
Withheld	1,539,603.789	7.088%	10.770%
Dorri McWhorter			
For	13,189,934.697	58.663%	89.141%
Withheld	1,606,707.849	7.146%	10.859%

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ADDITIONAL INFORMATION (unaudited) (continued)

September 30, 2023 **Highland Global Allocation Fund**
Trustees and Officers

The Board is responsible for the overall management of the Fund, including supervision of the duties performed by the Investment Adviser. The names and birth dates of the Trustees and officers of the Fund, the year each was first elected or appointed to office, their principal business occupations during the last five years, the number of funds overseen by each Trustee and other directorships they hold are shown below. The business address for each Trustee and officer of the Fund is c/o NexPoint Asset Management, L.P., 300 Crescent Court, Suite 700, Dallas, TX 75201.

The “NexPoint Fund Complex,” as referred to herein consists of: each series of NexPoint Funds I (“NFI”), each series of NexPoint Funds II (“NFII”), Highland Global Allocation Fund (“GAF”), Highland Opportunities and Income Fund (“HFRO”), NexPoint Real Estate Strategies Fund (“NRESF”) and NexPoint Capital, Inc. (the “BDC”), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

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ADDITIONAL INFORMATION (unaudited) (continued)

September 30, 2023 **Highland Global Allocation Fund**
Trustees and Officers

Name and Date of Birth	Position(s) with the Trust	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Funds Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
			Independent Trustees			
Dr. Bob Froehlich (4/28/1953)	Trustee	Indefinite Term; Trustee since March 2016; 3 year term (expiring at 2026 annual meeting).	Retired.	8	Director of KC Concessions, Inc. (since January 2013); Trustee of Realty Capital Income Funds Trust (from January 2014 to December 2016); Director of American Sports Enterprise, Inc. (since January 2013); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Director of The Midwest League of Professional Baseball Clubs, Inc. (from January 2013 to December 2021); Director of Kane County Cougars Foundation, Inc. (since January 2013); Director of Galen Robotics, Inc. (since August 2016); Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); and Chairman; Director of First Capital Investment Corp. (from March 2017 to March 2018); Director and Special Advisor to Vault Data, LLC (since February 2018); and Director of American Association of Professional Baseball, Inc. (since February 2021).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.

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ADDITIONAL INFORMATION (unaudited) (continued)

September 30, 2023
Trustees and Officers

Highland Global Allocation Fund

Name and Date of Birth	Position(s) with the Trust	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Fund Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
			Independent Trustees			
Ethan Powell (6/20/1975)	Trustee; Chairman of the Board	Indefinite Term; Trustee since March 2016; Trustee since December 2013; Chairman of the Board since December 2013; 3 year term (expiring at 2025 annual meeting).	Principal and CIO of Brookmont Capital Management, LLC since May 2020; CEO, Chairman and Founder of Impact Shares LLC since December 2015; Trustee/Director of the Fund Complex from June 2012 until July 2013 and since December 2013; and Director of Kelly Strategic Management since August 2021.	8	Trustee of Impact Shares Funds I Trust	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Fund Complex; significant administrative and managerial experience.
Bryan A. Ward (2/4/1955)	Trustee	Trustee since inception in 2006; Indefinite Term.	Business Development Banker, CrossFirst Bank since January 2023 (President-Dallas from October 2020 until January 2023 and Senior Advisor from April 2019 until October 2022); Private Investor, BW Consulting, LLC since 2014; and Anderson Consulting/Accenture from 1991-2013.	8	Director of Equity Metrix, LLC	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the Fund Complex; significant administrative and managerial experience.

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ADDITIONAL INFORMATION (unaudited) (continued)

September 30, 2023
Trustees and Officers

Highland Global Allocation Fund

Name and Date of Birth	Position(s) with the Trust	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Fund Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
Independent Trustees						
Dorri McWhorter (6/30/1973)	Trustee	Trustee since May 2022; 3 year term (expiring at 2026 annual meeting).	President & CEO, YMCA of Metropolitan Chicago (2021-Present); Chief Executive Officer, YWCA Metropolitan Chicago (2013 2021).	8	Board Director of William Blair Funds (since 2019); Board Director of Skyway Concession Company, LLC (since 2018); Board Director of Illinois CPA Society (2017-2022); Board Director of Lifeway Foods, Inc. (since 2020); Board Director of Green Thumb Industries, Inc. since 2022); Member of Financial Accounting Standards Advisory Council (since 2021); Board Director of LanzaTech Global, Inc. (since 2023).	Significant managerial and executive experience, including experience as president and chief executive officer; significant background and experience in financial accounting; significant experience on other boards of directors, including for other registered investment companies.
Interested Trustee						
John Honis[2] (6/16/1958)	Trustee	Indefinite Term; Trustee since July 2013.	President of Rand Advisors, LLC (August 2013 - August 2022); Manager of Turtle Bay Resort, LLC (August 2011-December 2018); and President of Valience Group, LLC since July 2021.	8	Manager of Turtle Bay Resort, LLC (August 2011 – December 2018)	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors.

1 On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each Trustee's performance and determines whether to extend each such Trustee's service for another year. The Board adopted a retirement policy wherein the Governance and Compliance Committee shall not recommend the continued service as a Trustee of a Board member who is older than 80 years of age at the time the Governance and Compliance Committee reports its findings to the Board.

2 In light of certain relationships between Mr. Honis and historically affiliated entities of the Adviser, including Highland Capital Management, L.P. ("HCMLP"), arising out of HCMLP's pending Chapter 11 proceedings, Mr. Honis is treated as an Interested Trustee of the Trust effective January 28, 2020.

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ADDITIONAL INFORMATION (unaudited) (concluded)

September 30, 2023
Trustees and Officers

Highland Global Allocation Fund

Name and Date of Birth	Position(s) with the Trust	Term of Office and Length of Time Served	Principal Occupation(s) During Past Five Years
			Officers
Dustin Norris (1/6/1984)	Executive Vice President	Indefinite Term; Executive Vice President since April 2019.	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. since April 2018; Head of Distribution at NAM from November 2017 until March 2019; Chief Product Strategist at NAM from September 2015 to March 2019; Director of Product Strategy at NAM from May 2014 to September 2015; Officer of the Fund Complex since November 2012.
Frank Waterhouse (4/14/1971)	Treasurer, Principal Accounting Officer, Principal Financial Officer and Principal Executive Officer	Indefinite Term; Treasurer since May 2015; Principal Accounting Officer since October 2017; Principal Executive Officer and Principal Financial Officer since April 2021.	Chief Financial Officer of Skyview Group since February 2021; Chief Financial Officer and Partner of NexPoint Asset Management, L.P. ("NexPoint") from December 2011 and March 2015, respectively, to February 2021; Treasurer of the NexPoint Fund Complex since May 2015; Principal Financial Officer October 2017 to February 2021; Principal Executive Officer February 2018 to February 2021.
Will Mabry (7/2/1986)	Assistant Treasurer	Indefinite Term; Assistant Treasurer since April 2021.	Director, Fund Analysis of Skyview Group since February 2021. Prior to his current role at Skyview Group, Mr. Mabry served as Senior Manager – Fund Analysis, Manager – Fund Analysis, and Senior Fund Analyst for HCMLP.
Stephanie Vitiello (6/21/1983)	Secretary, Chief Compliance Officer and Anti-Money Laundering Officer	Indefinite Term; Secretary since April 2021; Chief Compliance Officer and Anti-Money Laundering Officer since November 2021.	Chief Compliance Officer, Anti-Money Laundering Officer and Counsel of Skyview Group since February 2021. Prior to her current role at Skyview Group, Ms. Vitiello served as Managing Director – Distressed, Assistant General Counsel, Associate General Counsel and In-House Counsel for HCMLP.

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IMPORTANT INFORMATION ABOUT THIS REPORT

Investment Adviser
NexPoint Asset Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Transfer Agent
American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Underwriter
NexPoint Securities, Inc.
200 Crescent Court, Suite 700
Dallas, TX 75201

Custodian
Bank of New York Mellon 240
Greenwich Street New York, NY 10286

Independent Registered Public Accounting Firm
Cohen & Company, Ltd.
1350 Euclid Ave., Suite 800
Cleveland, OH 44115

Fund Counsel
K&L Gates LLP
1 Congress St., Suite 2900 Boston, MA
02114-202

This report has been prepared for shareholders of Highland Global Allocation Fund (the "Fund"). As of January 1, 2021, paper copies of the Fund's shareholder reports will no longer be sent by mail. Instead, the reports will be made available on https://www.nexpointassetmgmt.com/resources/#forms, and you will be notified and provided with a link each time a report is posted to the website. You may request to receive paper reports from the Fund or from your financial intermediary free of charge at any time. For additional information regarding how to access the Fund's shareholder reports, or to request paper copies by mail, please call shareholder services at 1-877-665-1287.

A description of the policies and procedures that the Fund uses to determine how to vote proxies relating to their portfolio securities, and the Fund's proxy voting records for the most recent 12-month period ended June 30, are available (i) without charge, upon request, by calling 1-877-665-1287 and (ii) on the Securities and Exchange Commission's website at http://www.sec.gov.

The Fund files its complete schedules of portfolio holdings with the Securities and Exchange Commission for the first and third quarters of each fiscal year as an exhibit to its report on Form N-PORT within sixty days after the end of the period. The Fund's Form N-PORT are available on the Commission's website at http://www.sec.gov and also may be reviewed and copied at the Commission's Public Reference Room in Washington, DC. Information on the Public Reference Room may be obtained by calling 1-800-SEC-0330. Shareholders may also obtain the Form N-PORT by visiting the Fund's website at www.nexpointassetmgmt.com.

The Statement of Additional Information includes additional information about the Fund's Trustees and are available upon request without charge by calling 1-877-665-1287.

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NEXPOINT
ADVISORS

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Highland Global Allocation Fund

Annual Report, September 30, 2023

www.nexpointassetmgmt.com

GAF-AR-09/23

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Item 2. Code of Ethics.

(a) Highland Global Allocation Fund (the "Registrant"), as of the end of the period covered by this report, has adopted a code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party.

(b) Not applicable.

(c) There have been no amendments, during the period covered by this report, to a provision of the code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, and that relates to any element of the code of ethics description.

(d) The Registrant has not granted any waiver, including any implicit waiver, from a provision of the code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, that relates to one or more of the items set forth in paragraph (b) of this Item's instructions.

(e) Not applicable.

(f) The Registrant's code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions is filed herewith as Exhibit (a)(1).

Item 3. Audit Committee Financial Expert.

As of the end of the period covered by the report, the Registrant's Board of Trustees (the "Board") has determined that Bryan A. Ward, a member of the Audit & Qualified Legal Compliance Committee of the Board (the "Audit Committee"), is an audit committee financial expert as defined by the U.S. Securities and Exchange Commission (the "SEC") in Item 3 of Form N-CSR. Mr. Ward is "independent" as defined by the SEC for purposes of this Item 3 of Form N-CSR.

Item 4. Principal Accountant Fees and Services.

Audit Fees

(a) The aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the Registrant's annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years are $152,000 for the fiscal year ended September 30, 2022 and $152,000 for the fiscal year ended September 30, 2023.

Audit-Related Fees

(b) The aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit of the Registrant's financial statements and are not reported under paragraph (a) of this Item are $0 for the fiscal year ended September 30, 2022 and $0 for the fiscal year ended September 30, 2023.

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Tax Fees

(c) The aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning are $14,000 for the fiscal year ended September 30, 2022 and $14,000 for the fiscal year ended September 30, 2023. The nature of the services related to assistance on the Registrant's tax returns and excise tax calculations.

All Other Fees

(d) The aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this Item are $0 for the fiscal year ended September 30, 2022 and $0 for the fiscal year ended September 30, 2023.

(e)(1) Disclose the Audit Committee's pre-approval policies and procedures described in paragraph (c)(7) of Rule 2-01 of Regulation S-X:

The Audit Committee shall:

(a) have direct responsibility for the appointment, compensation, retention and oversight of the Registrant's independent auditors and, in connection therewith, to review and evaluate matters potentially affecting the independence and capabilities of the auditors; and

(b) review and pre-approve (including associated fees) all audit and other services to be provided by the independent auditors to the Registrant and all non-audit services to be provided by the independent auditors to the Registrant's investment adviser or any entity controlling, controlled by or under common control with the investment adviser (an "Adviser Affiliate") that provides ongoing services to the Registrant, if the engagement relates directly to the operations and financial reporting of the Registrant; and

(c) establish, to the extent permitted by law and deemed appropriate by the Audit Committee, detailed pre-approval policies and procedures for such services; and

(d) review and consider whether the independent auditors' provision of any non-audit services to the Registrant, the Registrant's investment adviser or an Adviser Affiliate not pre-approved by the Audit Committee are compatible with maintaining the independence of the independent auditors.

(e)(2) The percentage of services described in each of paragraphs (b) through (d) of this Item that were approved by the Audit Committee pursuant to paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X are as follows:

(b) 100%

(c) 100%

(d) N/A

(f) The percentage of hours expended on the principal accountant's engagement to audit the Registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees was less than fifty percent.

(g) The aggregate non-audit fees billed by the Registrant's principal accountant for services rendered to the Registrant, and rendered to the Registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and an Adviser Affiliate that provides ongoing services to the Registrant for each of the last two fiscal years of the Registrant was $14,000 for the fiscal year ended September 30, 2022 and $14,000 for the fiscal year ended September 30, 2023.

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(h) The Registrant's Audit Committee has considered whether the provision of non-audit services that were rendered to the Registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and an Adviser Affiliate that provides ongoing services to the Registrant that were not pre-approved pursuant to paragraph (c)(7)(ii) of Rule 2-01 of Regulation S-X is compatible with maintaining the principal accountant's independence.

Item 5. Audit Committee of Listed Registrants.

The Registrant has a separately-designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. It is composed of the following Trustees, each of whom is not an "interested person" as defined in the 1940 Act:

Dr. Bob Froehlich

Bryan A. Ward

Ethan Powell

Item 6. Investments.

(a) Schedule of Investments in securities of unaffiliated issuers as of the close of the reporting period is included as part of the Annual Report to Shareholders filed under Item 1 of this form.

(b) Not applicable.

Item 7. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies.

NEXPOINT ASSET MANAGEMENT, L.P.
PROXY VOTING POLICY

Purpose and Scope

The purpose of these voting policies and procedures (the "Policy") is to set forth the principles and procedures by which NexPoint Asset Management, L.P. (the "Company") votes or gives consents with respect to the securities owned by Clients for which the Company exercises voting authority and discretion.[1] For avoidance of doubt, this includes any proxy and any shareholder vote or consent, including a vote or consent for a private company or other issuer that does not involve a proxy. These policies and procedures have been designed to help ensure that votes are cast in the best interests of Clients in accordance with the Company's fiduciary duties and Rule 206(4)-6 under the Investment Advisers Act of 1940 (the "Advisers Act").

[1] In any case where a Client has instructed the Company to vote in a particular manner on the Client's behalf, those instructions will govern in lieu of parameters set forth in the Policy.

This Policy applies to securities held in all Client accounts (including Retail Funds and other pooled investment vehicles) as to which the Company has explicit or implicit voting authority. Implicit voting authority exists where the Company's voting authority is implied by a general delegation of investment authority without reservation of proxy voting authority to the Client.

If the Company has delegated voting authority to an investment sub-adviser with respect to any Retail Fund, such sub-adviser will be responsible for voting all proxies for such Retail Funds in accordance with the sub-adviser's proxy voting policies. The Compliance Department, to provide oversight over the proxy voting by

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sub-advisers and to ensure that votes are executed in the best interests of the Retail Funds, shall (i) review the proxy voting policies and procedures of each Retail Fund sub-adviser to confirm that they comply with Rule 206(4)-6, both upon engagement of the sub-adviser and upon any material change to the sub-adviser's proxy voting policies and procedures, and (ii) require each such sub-adviser to provide quarterly certifications that all proxies were voted pursuant to the sub-adviser's policies and procedures or to describe any inconsistent votes.

General Principles

The Company and its affiliates engage in a broad range of activities, including investment activities for their own accounts and for the accounts of various Clients and providing investment advisory and other services to Clients. In the ordinary course of conducting the Company's activities, the interests of a Client may conflict with the interests of the Company, other Clients and/or the Company's affiliates and their clients. Any conflicts of interest relating to the voting of proxies, regardless of whether actual or perceived, will be addressed in accordance with these policies and procedures. The guiding principle by which the Company votes all proxies is to vote in the best interests of each Client by maximizing the economic value of the relevant Client's holdings, taking into account the relevant Client's investment horizon, the contractual obligations under the relevant advisory agreements or comparable documents and all other relevant facts and circumstances at the time of the vote. The Company does not permit voting decisions to be influenced in any manner that is contrary to, or dilutive of, this guiding principle.

Voting Procedures

Third-Party Proxy Advisors

The Company may engage a third-party proxy advisor ("Proxy Advisor") to provide proxy voting recommendations with respect to Client proxies. Proxy Advisor voting recommendation guidelines are generally designed to increase investors' potential financial gain. When considering whether to retain or continue retaining any particular Proxy Advisor, the Compliance Department will ascertain, among other things, whether the Proxy Advisor has the capacity and competency to adequately analyze proxy issues. In this regard, the Compliance Department will consider, among other things: the adequacy and quality of the Proxy Advisor's staffing and personnel; the robustness of its policies and procedures regarding its ability to (a) ensure that its proxy voting recommendations are based on current and accurate information and (b) identify and address any conflicts of interest and any other considerations that the Compliance Department determines would be appropriate in considering the nature and quality of the services provided by the Proxy Advisor. To identify and address any conflicts that may arise on the part of the Proxy Advisor, the Compliance Department will ensure that the Proxy Advisor notifies the Compliance Department of any relevant business changes or changes to its policies and procedures regarding conflicts.

Third-Party Proxy Voting Services

The Company may utilize a third-party proxy voting service ("Proxy Voting Service") to monitor holdings in Client accounts for purposes of determining whether there are upcoming shareholder meetings or similar corporate actions and to execute Client proxies on behalf of the Company pursuant to the Company's instructions, which shall be given in a manner consistent with this Policy. The Compliance Department will oversee each Proxy Voting Service to ensure that proxies have been voted in a manner consistent with the Company's instructions.

Monitoring

Subject to the procedures regarding Nonstandard Proxy Notices described below, the Compliance Department of the Company shall have responsibility for monitoring Client accounts for proxy notices. Except as detailed below, if proxy notices are received by other employees of the Company, such employees must promptly forward all proxy or other voting materials to the Compliance Department.

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Portfolio Manager Review and Instruction

From time to time, the settlement group of the Company may receive nonstandard proxy notices, regarding matters including, but not limited to, proposals regarding corporate actions or amendments ("Nonstandard Proxy Notices") with respect to securities held by Clients. Upon receipt of a Nonstandard Proxy Notice, a member of the settlement group (the "Settlement Designee") shall send an email notification containing all relevant information to the Portfolio Manager(s) with responsibility for the security and *R-Settlement@highlandcapital.com*. Generally, the relevant Portfolio Manager(s) shall deliver voting instructions for Nonstandard Proxy Notices by replying to the email notice sent to the Portfolio Manager(s) and *R-Settlement@highlandcapital.com* by the Settlement Designee or by sending voting instructions to *R-Settlement@highlandcapital.com* and *R-Settlement@highlandcapital.com*. Any conflicts for Nonstandard Proxy Notices should also be disclosed to the Compliance Department. In the event a Portfolio Manager orally conveys voting instructions to the Settlement Designee or any other member of the Company's settlement group, that Settlement Designee or member of the Company's settlement group shall respond to the original notice email sent to R-Settlement@highlandcapital.com detailing the Portfolio Manager(s) voting instructions.

With regard to standard proxy notices, on a weekly basis, the Compliance Department will send a notice of upcoming proxy votes related to securities held by Clients and the corresponding voting recommendations of the Proxy Advisor to the relevant Portfolio Manager(s). Upon receipt of a proxy notice from the Compliance Department, the Portfolio Manager(s) will review and evaluate the upcoming votes and recommendations. The Portfolio Managers may rely on any information and/or research available to him or her and may, in his or her discretion, meet with members of an issuer's management to discuss matters of importance to the relevant Clients and their economic interests. Should the Portfolio Manager determine that deviating from the Proxy Advisor's recommendation is in a Client's best interest, the Portfolio Manager shall communicate his or her voting instructions to the Compliance Department.

In the event that more than one Portfolio Manager is responsible for making a particular voting decision and such Portfolio Managers are unable to arrive at an agreement as to how to vote with respect to a particular proposal, they should consult with the applicable Chief Compliance Officer (the "CCO") for guidance.

Voting

Upon receipt of the relevant Portfolio Managers' voting instructions, if any, the Compliance Department will communicate the instructions to the Proxy Voting Service to execute the proxy votes.

Non-Votes

It is the general policy of the Company to vote or give consent on all matters presented to security holders in any vote, and these policies and procedures have been designated with that in mind. However, the Company reserves the right to abstain on any particular vote if, in the judgment of the CCO, or the relevant Portfolio Manager, the effect on the relevant Client's economic interests or the value of the portfolio holding is insignificant in relation to the Client's portfolio, if the costs associated with voting in any particular instance outweigh the benefits to the relevant Clients or if the circumstances make such an abstention or withholding otherwise advisable and in the best interests of the relevant Clients not to vote. Such determination may apply in respect of all Client holdings of the securities or only certain specified Clients, as the Company deems appropriate under the circumstances. As examples, a Portfolio Manager may determine: (a) not to recall securities on loan if, in his or her judgment, the matters being voted upon are not material events affecting the securities and the negative consequences to Clients of disrupting the securities lending program would outweigh the benefits of voting in the particular instance or (b) not to vote proxies relating to certain foreign securities if, in his or her judgment, the expense and administrative inconvenience outweighs the benefits to Clients of voting the securities.

Conflicts of Interest

The Company's Compliance Department is responsible for monitoring voting decisions for any conflicts of interest, regardless of whether they are actual or perceived. All voting decisions contrary to the recommendation of a Proxy Advisor require a mandatory conflicts of interest review by the Compliance Department, which will include a consideration of whether the Company or any Portfolio Manager or other person recommending or providing input on how to vote has an interest in the vote that may present a conflict of interest.

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In addition, all Company investment professionals are expected to perform their tasks relating to the voting of proxies in accordance with the principles set forth above, according the first priority to the best interest of the relevant Clients. If at any time a Portfolio Manager or any other investment professional becomes aware of a potential or actual conflict of interest regarding any particular voting decision, he or she must contact the Compliance Department promptly and, if in connection with a proxy that has yet to be voted, prior to such vote. If any investment professional is pressured or lobbied, whether from inside or outside the Company, with respect to any particular voting decision, he or she should contact the Compliance Department promptly. The CCO will use his or her best judgment to address any such conflict of interest and ensure that it is resolved in accordance with his or her independent assessment of the best interests of the relevant Clients.

In the event of a conflict, the Company may choose to address such conflict by: (i) voting in accordance with the Proxy Advisor's recommendation; (ii) the CCO determining how to vote the proxy (if the CCO approves deviation from the Proxy Advisor's recommendation, then the CCO shall document the rationale for the vote); (iii) "echo voting" or "mirror voting" the proxy in the same proportion as the votes of other proxy holders that are not Clients; or (iv) with respect to Clients other than Retail Funds, notifying the affected Client of the material conflict of interest and seeking a waiver of the conflict or obtaining such Client's voting instructions. Where the Compliance Department deems appropriate, third parties may be used to help resolve conflicts. In this regard, the CCO or his or her delegate shall have the power to retain fiduciaries, consultants or professionals to assist with voting decisions and/or to delegate voting or consent powers to such fiduciaries, consultants or professionals.

Where a conflict of interest arises with respect to a voting decision for a Retail Fund, the Company shall disclose the conflict and the rationale for the vote taken to the Retail Fund's Board of Directors/Trustees at the next regularly scheduled quarterly meeting. The Compliance Department will maintain a log documenting the basis for the decision and will furnish the log to the Board of Trustees.

Material Conflicts of Interest

The following relationships or circumstances are examples of situations that may give rise to a material conflict of interest for purposes of this Policy. This list is not exclusive or determinative; any potential conflict (including payments of the types described below but less than the specified threshold) should be identified to the Company's Compliance Department:

(i) The issuer is a Client of the Company, or of an affiliate, accounting for more than 5% of the Company's or affiliate's annual revenues.

(ii) The issuer is an entity that reasonably could be expected to pay the Company or its affiliates more than $1 million through the end of the Company's next two full fiscal years.

(iii) The issuer is an entity in which a "Covered Person" (as defined in the Company's Policies and Procedures Designed to Detect and Prevent Insider Trading and to Comply with Rule 17j-1 of the 1940Act (the "Code of Ethics")) has a beneficial interest contrary to the position held by the Company on behalf of Clients.

(iv) The issuer is an entity in which an officer or partner of the Company or a relative of any such person is or was an officer, director or employee, or such person or relative otherwise has received more than $150,000 in fees, compensation and other payment from the issuer during the Company's last three fiscal years; provided, however, that the Compliance Department may deem such a relationship not to be a material conflict of interest if the Company representative serves as an officer or director of the issuer at the direction of the Company for purposes of seeking control over the issuer.

(v) The matter under consideration could reasonably be expected to result in a material financial benefit to the Company or its affiliates through the end of the Company's next two full fiscal years (for example, a vote to increase an investment advisory fee for a Retail Fund advised by the Company or an affiliate).

(vi) Another Client or prospective Client of the Company, directly or indirectly, conditions future engagement of the Company on voting proxies in respect of any Client's securities on a particular matter in a particular way.

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(vii) The Company holds various classes and types of equity and debt securities of the same issuer contemporaneously in different Client portfolios.

(viii) Any other circumstance where the Company's duty to serve its Clients' interests, typically referred to as its "duty of loyalty," could be compromised.

Notwithstanding the foregoing, a conflict of interest described above shall not be considered material for the purposes of this Policy in respect of a specific vote or circumstance if:

The securities in respect of which the Company has the power to vote account for less than 1% of the issuer's outstanding voting securities, but only if: (i) such securities do not represent one of the 10 largest holdings of such issuer's outstanding voting securities and (ii) such securities do not represent more than 2% of the Client's holdings with the Company.

The matter to be voted on relates to a restructuring of the terms of existing securities or the issuance of new securities or a similar matter arising out of the holding of securities, other than common equity, in the context of a bankruptcy or threatened bankruptcy of the issuer.

Recordkeeping

Following the submission of a proxy vote, the Registrant will maintain a report of the vote and all relevant documentation.

The Registrant shall retain records relating to the voting of proxies and the Company shall conduct due diligence, including on Proxy Voting Services and Proxy Advisors, as applicable, to ensure the following records are adequately maintained by the appropriate party:

(i) Copies of this Policy and any amendments thereto.

(ii) A current copy of the Proxy Advisor's voting guidelines, as amended.

(iii) A copy of each proxy statement that the Company receives regarding Client securities. The Company may rely on a third party to make and retain, on the Company's behalf, a copy of a proxy statement, provided that the Company has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request.

(iv) Records of each vote cast by the Company on behalf of Clients. The Company may satisfy this requirement by relying on a third party to make and retain, on the Company's behalf, a record of the vote cast, provided that the Company has obtained an undertaking from the third party to provide a copy of the record promptly upon request.

(v) A copy of any documents created by the Company that were material to making a decision how to vote or that memorializes the basis for that decision.

(vi) A copy of each written request for information on how the Company voted proxies on behalf of the Client, and a copy of any written response by the Company to any (oral or written) request for information on how the Company voted.

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These records shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the Company's fiscal year during which the last entry was made in the records, the first two years in an appropriate office of the Company.[2]

Enforcement of this Policy

It shall be the responsibility of the Compliance Department to handle or coordinate the enforcement of this Policy. The Compliance Department will periodically sample proxy voting records to ensure that proxies have been voted in accordance with this Policy, with a particular focus on any proxy votes that require additional analysis (e.g., proxies voted contrary to the recommendations of a Proxy Advisor).

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2 If the Company has essentially immediate access to a book or record (on the Company's proprietary system or otherwise) through a computer located at an appropriate office of the Company, then that book or record will be considered to be maintained at an appropriate office of the Company. "Immediate access" to books and records includes that the Company has the ability to provide promptly to Securities and Exchange Commission (the "SEC") examination staff hard copies of the books and records or access to the storage medium. The party responsible for the applicable books and records as described above shall also be responsible for ensuring that those books and records for the first two years are either physically maintained in an appropriate office of the Company or that the Company otherwise has essentially immediate access to the required books and records for the first two years.

If the Compliance Department determines that a Proxy Advisor or Proxy Voting Service may have committed a material error, the Compliance Department will investigate the error, taking into account the nature of the error, and seek to determine whether the Proxy Advisor or Proxy Voting Service is taking reasonable steps to reduce similar errors in the future.

In addition, no less frequently than annually, the Compliance Department will review the adequacy of this Policy to ensure that it has been implemented effectively and to confirm that this Policy continues to be reasonably designed to ensure that proxies are voted in the best interest of Clients.

Disclosures to Clients and Investors

The Company includes a description of its policies and procedures regarding proxy voting in Part 2 of Form ADV, along with a statement that Clients can contact the CCO to obtain a copy of these policies and procedures and information about how the Company voted with respect to a Client's securities. This Policy is, however, subject to change at any time without notice.

As a matter of policy, the Company does not disclose how it expects to vote on upcoming proxies. Additionally, the Company does not disclose the way it voted proxies to unaffiliated third parties without a legitimate need to know such information.

Item 8. Portfolio Managers of Closed-End Management Investment Companies.

(a)(1) **Identification of Portfolio Manager(s) or Management Team Members and Description of Role of Portfolio Manager(s) or Management Team Members**

The Registrant's portfolio manager, who is primarily responsible for the day-to-day management of the Registrant's portfolio, is James Dondero.

James Dondero — Mr. Dondero is co-founder of NexPoint Asset Management, L.P. ("NAM" or the "Adviser") co-founder of Highland Capital Management, L.P. and founder and President of NexPoint Advisors, L.P. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes. Formerly, Mr. Dondero served as Chief Investment Officer of Protective Life's GIC subsidiary and helped grow the business from concept to over $2 billion between 1989 and 1993. His portfolio management experience includes mortgage-backed securities, investment grade corporates, leveraged bank loans, high-yield bonds, emerging market debt, real estate, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately $1 billion in fixed income funds for American Express. Prior to American Express, he completed his financial training at Morgan Guaranty Trust Company. Mr. Dondero is a Beta Gamma Sigma graduate of the University of Virginia (1984) with degrees in Accounting and Finance. Mr. Dondero has earned the right to use the Chartered

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Financial Analyst designation. Mr. Dondero is a Certified Public Accountant and a Certified Management Accountant. Mr. Dondero currently serves as Chairman for NexBank and serves on the Board of Directors of Metro-Goldwyn-Mayer, SMU Cox School of Business, and SeaOne Holdings, LLC.

(a)(2) **Other Accounts Managed by Portfolio Manager(s) or Management Team Member and Potential Conflicts of Interest**

Other Accounts Managed by Portfolio Manager(s) or Management Team Member

The following table provides information about funds and accounts, other than the Registrant, for which the Registrant's portfolio manager is primarily responsible for the day-to-day portfolio management as of September 30, 2023.

James Dondero

Type of Accounts	Total # of Accounts Managed	Total Assets (millions)	# of Accounts Managed with Performance-Based Advisory Fee	Total Assets with Performance-Based Advisory Fee (millions)
Registered Investment Companies:	6	$ 1,910	1	$ 51
Other Pooled Investment Vehicles:	3	$ 5,195	3	$ 5,195
Other Accounts:	—	$ —	—	$ —

Potential Conflicts of Interests

The Adviser is an affiliate of NexPoint Advisors, L.P. ("NexPoint"). The Adviser and/or its general partner, limited partners, officers, affiliates and employees provide investment advice to other parties and manage other accounts and investment vehicles similar to the Registrant. For the purposes of this section, the term "NAM" shall include the Adviser and its affiliated investment advisors, and all affiliates listed on its Form ADV, as filed via an amendment with the SEC October 23, 2020 (CRD No. 149653).

In connection with such other investment management activities, the Adviser and/or its general partner, limited partners, officers, affiliates and employees may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Registrant's monies, in a particular security or strategy. In addition, the Adviser and such other persons will determine the allocation of funds from the Registrant and such other accounts to investment strategies and techniques on whatever basis they consider appropriate or desirable in their sole and absolute discretion.

NAM has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. NAM has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, NAM furnishes advisory services to numerous clients in addition to the Registrant, and NAM may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts that have performance or higher fees paid to NAM or in which portfolio managers have a personal interest in the receipt of such fees) that may be the same as or different from those made to the Registrant. In addition, NAM, its affiliates and any of their partners, directors, officers, stockholders or employees may or may not have an interest in the securities whose purchase and sale the Adviser recommends to the Registrant. Actions with respect to securities of the same kind may be the same as or different from the action that the Adviser, or any of its affiliates, or any of their partners, directors, officers, stockholders or employees or any member of their families may take with respect to the same securities. Moreover, the Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Adviser's (or its affiliates') partners, directors, officers or employees are directors or officers, or companies as to which the Adviser or any of its affiliates or partners, directors, officers and employees of any of them has any substantial economic interest or possesses material non-public information.

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The Adviser, its affiliates or their partners, directors, officers or employees similarly serve or may serve other entities that operate in the same or related lines of business, including accounts managed by an investment adviser affiliated with the Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Registrant. As a result, the Adviser will face conflicts in the allocation of investment opportunities to the Registrant and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Adviser will endeavor to allocate investment opportunities in a fair and equitable manner, pursuant to policies and procedures adopted by the Adviser and its advisory affiliates that are designed to manage potential conflicts of interest, which may, subject to applicable regulatory constraints, involve pro rata co-investment by the funds and such other clients or may involve a rotation of opportunities among the funds and such other clients. The Registrant will only make investments in which the Adviser or an affiliate hold an interest to the extent permitted under the 1940 Act and SEC staff interpretations or pursuant to the terms and conditions of the exemptive order received by certain advisers and funds affiliated with the Registrant, dated April 19, 2016. For example, exemptive relief is not required for the Registrant to invest in syndicated deals and secondary loan market transactions in which the Adviser or an affiliate has an interest where price is the only negotiated point. The order applies to all "Investment Companies," which includes future closed-end investment companies registered under the 1940 Act that are managed by affiliated advisers, which includes the Registrant. The Registrant, therefore, may in the future invest in accordance with the terms and conditions of the exemptive order. To mitigate any actual or perceived conflicts of interest, allocation of limited offering securities (such as IPOs and registered secondary offerings) to principal accounts that do not include third party investors may only be made after all other client account orders for the security have been filled. However, there can be no assurance that such policies and procedures will in every case ensure fair and equitable allocations of investment opportunities, particularly when considered in hindsight.

Conflicts may arise in cases when clients and/or the Adviser and other affiliated entities invest in different parts of an issuer's capital structure, including circumstances in which one or more clients own private securities or obligations of an issuer and other clients may own public securities of the same issuer. In addition, one or more clients may invest in securities, or other financial instruments, of an issuer that are senior or junior to securities, or financial instruments, of the same issuer that are held by or acquired for, one or more other clients. For example, if such issuer encounters financial problems, decisions related to such securities (such as over the terms of any workout or proposed waivers and amendments to debt covenants) may raise conflicts of interests. In such a distressed situation, a client holding debt securities of the issuer may be better served by a liquidation of the issuer in which it may be paid in full, whereas a client holding equity securities of the issuer might prefer a reorganization that holds the potential to create value for the equity holders. In the event of conflicting interests within an issuer's capital structure, NAM will generally pursue the strategy that NAM believes best reflects what would be expected to be negotiated in an arm's length transaction, but in all instances with due consideration being given to NAM's fiduciary duties to each of its accounts (without regard to the nature of the accounts involved or fees received from such accounts). This strategy may be recommended by one or more NAM investment professionals. A single person may make decisions with respect to more than one part of an issuer's capital structure. NAM personnel board members may still make recommendations to the applicable investment professional(s). A portfolio manager with respect to any applicable NAM registered investment company clients ("Retail Accounts") will make an independent determination as to which course of action he or she determines is in the best interest of the applicable Retail Accounts. NAM may use external counsel for guidance and assistance. The Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage potential conflicts of interest involving clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Registrant and such other clients. An investment opportunity that is suitable for multiple clients of the Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the 1940 Act. There can be no assurance that the Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Registrant. Not all conflicts of interest can be expected to be resolved in favor of the Registrant.

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Another type of conflict may arise if one client account buys a security and another client account sells or shorts the same security. Currently, such opposing positions are generally not permitted within the same account without prior trade approval by the Adviser's Chief Compliance Officer. However, a portfolio manager may enter into opposing positions for different clients to the extent each such client has a different investment objective and each such position is consistent with the investment objective of the applicable client. In addition, transactions in investments by one or more affiliated client accounts may have the effect of diluting or otherwise disadvantaging the values, prices or investment strategies of other client accounts.

Because certain client accounts may have investment objectives, strategies or legal, contractual, tax or other requirements that differ (such as the need to take tax losses, realize profits, raise cash, diversification, etc.), an affiliated adviser may purchase, sell or continue to hold securities for certain client accounts contrary to other recommendations. In addition, an affiliated adviser may be permitted to sell securities or instruments short for certain client accounts and may not be permitted to do so for other affiliated client accounts.

As a result of the Fund's arrangements with the Adviser, there may be times when NexPoint, the Adviser or its affiliates have interests that differ from those of the Fund's shareholders, giving rise to a conflict of interest. The Fund's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Fund does, or of investment funds managed by the Adviser or its affiliates. Similarly, the Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund or its shareholders. For example, the Fund's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles managed or sponsored by the Adviser and its affiliates. The Fund's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Registrant and other investment funds or accounts advised by or affiliated with the Adviser. The Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Fund can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

In addition, it is anticipated that a portion of the Registrant's assets will be represented by real estate investment trusts ("REITs"), asset backed securities and/or collateralized loan obligations ("CLOs") sponsored, organized and/or managed by the Adviser and its affiliates or its historical affiliates. The Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Registrant with an opportunity to periodically review the Registrant's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Registrant and its shareholders. The Adviser may effect client cross-transactions where it causes a transaction to be effected between the Registrant and another client advised by the Adviser or any of its affiliates. The Adviser may engage in a client cross-transaction involving the Registrant any time that the Adviser believes such transaction to be fair to the Registrant and the other client of the Adviser or its affiliates. As further described below, the Adviser may effect principal transactions where the Registrant may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, in each case in accordance with applicable law, which may include the Adviser obtaining the consent and approval of the Registrant prior to engaging in any such principal transaction between the Registrant and the Adviser or its affiliates.

The Adviser may direct the Registrant to acquire or dispose of investments in cross trades between the Registrant and other clients of the Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, to the extent permitted by the 1940 Act and SEC staff interpretations, the Registrant may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Registrant may enhance the profitability of the Adviser's own investments in such companies.

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(a)(3) **Compensation Structure of Portfolio Manager(s) or Management Team Members**

NAM's financial arrangements with its portfolio managers, its competitive compensation and its career path emphasis at all levels reflect the value senior management places on key resources. Compensation may include a variety of components and may vary from year to year based on a number of factors, including the relative performance of a portfolio manager's underlying account, the combined performance of the portfolio managers' underlying accounts, and the relative performance of the portfolio managers' underlying accounts measured against other employees. The principal components of compensation include a base salary, a discretionary bonus and various retirement benefits.

Base compensation. Generally, portfolio managers receive base compensation based on their seniority and/or their position with NAM, which may include the amount of assets supervised and other management roles within NAM. Base compensation is determined by taking into account current industry norms and market data to ensure that NAM pays a competitive base compensation.

Discretionary compensation. In addition to base compensation, portfolio managers may receive discretionary compensation, which can be a substantial portion of total compensation. Discretionary compensation can include a discretionary cash bonus paid to recognize specific business contributions and to ensure that the total level of compensation is competitive with the market.

Because each person's compensation is based on his or her individual performance, NAM does not have a typical percentage split among base salary, bonus and other compensation. Senior portfolio managers who perform additional management functions may receive additional compensation in these other capacities. Compensation is structured such that key professionals benefit from remaining with NAM.

(a)(4) Disclosure of Securities Ownership

The following table sets forth the dollar range of equity securities beneficially owned by the portfolio manager in the Registrant as of September 30, 2023.

Name of Portfolio Manager	Dollar Ranges of Equity Securities Beneficially Owned by Portfolio Manager
James Dondero	$ Over $1,000,000

(b) Not applicable.

Item 9. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers.

Not applicable.

Item 10. Submission of Matters to a Vote of Security Holders.

There have been no material changes to the procedures by which the shareholders may recommend nominees to the Registrant's Board.

Item 11. Controls and Procedures.

(a) Evaluation of Disclosure Controls and Procedures. The Registrant maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Registrant's filings under the Securities Exchange Act of 1934 (the "Exchange Act") and the 1940 Act is recorded, processed, summarized and reported within the periods specified in the rules and forms of the Securities and Exchange Commission. Such information is accumulated and communicated to the Registrant's management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. The Registrant's management, including the principal executive officer and principal financial officer, recognizes that any set of controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

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The Registrant's principal executive and principal financial officers, or persons performing similar functions, have concluded that the Registrant's disclosure controls and procedures (as defined in Rule 30a-3(c) under the 1940 Act (17 CFR 270.30a-3 (c)) are effective, as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph, based on their evaluation of these controls and procedures required by Rule 30a-3(b) under the 1940 Act (17 CFR 270.30a-3(b)) and Rules 13a-15(b) or 15d-15(b) under the Securities Exchange Act of 1934, as amended (17 CFR 240.13a-15(b) or 240.15d-15(b)).

(b) There were no changes in the Registrant's internal control over financial reporting (as defined in Rule 30a-3(d) under the 1940 Act (17 CFR 270.30a-3(d)) that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting.

Item 12. Disclosure of Securities Lending Activities for Closed-End Management Investment Companies.

(a)

(1) Gross income from securities lending activities: $0

(2) All fees and/or compensation for securities lending activities and related services: $0

(3) Aggregate fees/compensation: $0

(4) Net income from securities lending activities: $10,143

(b) The Registrant may lend up to 33 1/3% of the Registrant's total assets held by the Fund's custodian to certain qualified brokers, except those securities which the Registrant or the Advisor specifically identifies as not being available. By lending its investment securities, the Registrant attempts to increase its net investment income through the receipt of interest on the loan. Any gain or loss in the market price of the securities loaned that might occur and any interest or dividends declared during the term of the loan would accrue to the account of

the Registrant. Risks of delay in recovery of the securities or even loss of rights in the collateral may occur should the borrower of the securities fail financially. Risks may also arise to the extent that the value of the collateral decreases below the value of the securities loaned. Upon entering into a securities lending transaction, the Registrant receives cash or other securities as collateral in an amount equal to or exceeding 100% of the current market value of the loaned securities with respect to securities of the U.S. government or its agencies, 102% of the current market value of the loaned securities with respect to U.S. securities and 105% of the current market value of the loaned securities with respect to foreign securities. Any cash received as collateral is generally invested by the Fund's custodian acting in its capacity as securities lending agent. Non-cash collateral is not disclosed in the Registrant's Statement of Assets and Liabilities as it is held by the lending agent on behalf of the Registrant and the Registrant does not have the ability to re-hypothecate those securities. A portion of the dividends received on the collateral may be rebated to the borrower of the securities and the remainder is split between the Fund's custodian, as the securities lending agent, and the Registrant.

Item 13. Exhibits.

(a)(1) Code of ethics, or amendment thereto, that is the subject of disclosure required by Item 2 is attached hereto.

(a)(2) Certifications pursuant to Rule 30a-2(a) under the 1940 Act and Section 302 of the Sarbanes-Oxley Act of 2002 are attached hereto.

(a)(3) Not applicable.

(a)(4)(i) Not applicable.

(a)(4)(ii) Not applicable.

(b) Certifications pursuant to Rule 30a-2(b) under the 1940 Act and Section 906 of the Sarbanes-Oxley Act of 2002 are attached hereto.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HIGHLAND GLOBAL ALLOCATION FUND

By (Signature and Title): /s/ Frank Waterhouse
Frank Waterhouse
Treasurer, Principal
Accounting Officer, Principal
Financial Officer and
Principal
Executive Officer

Date: December 8, 2023

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

By (Signature and Title): /s/ Frank Waterhouse
Frank Waterhouse
Treasurer, Principal
Accounting Officer, Principal
Financial Officer and
Principal
Executive Officer

Date: December 8, 2023

EXHIBIT 5

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM N-CSR

CERTIFIED SHAREHOLDER REPORT OF REGISTERED MANAGEMENT INVESTMENT COMPANIES

Investment Company Act file number: 811-23268

HIGHLAND INCOME FUND
(Exact name of registrant as specified in charter)

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300 Crescent Court
Suite 700
Dallas, Texas 75201
(Address of principal executive offices) (Zip code)

NexPoint Asset Management, L.P.
300 Crescent Court
Suite 700
Dallas, Texas 75201
(Name and Address of Agent for Service)

Registrant's telephone number, including area code: (800) 357-9167

Date of fiscal year end: December 31

Date of reporting period: December 31, 2022

Item 1. Reports to Stockholders.

A copy of the Annual Report transmitted to shareholders pursuant to Rule 30e-1 under the Investment Company Act of 1940, as amended (the "1940 Act"), is attached herewith.

NEXPOINT
ADVISORS

Highland Income Fund

Annual Report
December 31, 2022

Highland Income Fund

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Privacy Policy

We recognize and respect your privacy expectations, whether you are a visitor to our web site, a potential shareholder, a current shareholder or even a former shareholder.

Collection of Information. We may collect nonpublic personal information about you from the following sources:

- **Account applications and other forms, which may include your name, address and social security number, written and electronic correspondence and telephone contacts;**
- **Web site information, including any information captured through the use of "cookies"; and**
- **Account history, including information about the transactions and balances in your accounts with us or our affiliates.**

Disclosure of Information. We may share the information we collect with our affiliates. We may also disclose this information as otherwise permitted by law. We do not sell your personal information to third parties for their independent use.

Confidentiality and Security of Information. We restrict access to nonpublic personal information about you to our employees and agents who need to know such information to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal standards to guard your nonpublic personal information, although you should be aware that data protection cannot be guaranteed.

Economic and market conditions change frequently.
There is no assurance that the trends described in this report will continue or commence.

A prospectus must precede or accompany this report. Please read the prospectus carefully before you invest.

PORTFOLIO MANAGER COMMENTARY (unaudited)

As of December 31, 2022 **Highland Income Fund (NYSE: HFRO)**

Performance Overview
For the twelve-month period ended December 31, 2022, Highland Income Fund (the "Fund" or "HFRO") experienced a total market price return of 1.70% and a total NAV return of 3.39%. Over the same period, the Fund's benchmark, the Credit Suisse Leveraged Loan Index (the "Index"), returned -1.06%.

Top contributors to performance during the year included MGM Holdings, shorts and market hedges. Publicly traded real estate exposure was among the largest detractors to performance during the year.

Manager's Discussion
2022 has been eventful with respect to regulatory, geopolitical, and macroeconomic factors. Markets began 2022 under pressure stemming from concerns around rising inflation, stretched equity valuations, and the prospect of rising interest rates. The pressure continued into February as Russia invaded Ukraine, resulting in a backlash of economic sanctions that drove crude oil prices above $100 a barrel for the first time since 2014. This oil supply shock added to the fears that already existed in the market around rising inflation. Regardless of the regulatory, geopolitical, and macroeconomic environment — the Fund was able to adapt accordingly and outperformed its benchmark by a substantial margin.

We expect to see the uncertainty and unpredictability of the market, economy, and geopolitical environment continue, and therefore consider resiliency to be an important investment feature (and one that we believe is already well represented across the portfolio). In our view, the most compelling opportunities are in areas that either call for a more active approach to investment management or require specialized expertise to unlock value. In many cases, these investments not only have strong growth potential but we believe can also weather periods of market volatility, as they tend to be less driven by market forces.

In March 2022, we completed the $40 million common share buyback program. Over the six-month period the Fund repurchased $40 million common shares at a weighted average price per share of $11.32. Results of the buy-back are posted to the Fund website. (https://nexpointassetmgmt.com/income-fund/) under the "Monthly Repurchases" section.

Portfolio Discussion
MGM Holdings ("MGM") was a positive contributor to performance during the year. MGM owns one of the world's deepest libraries of premium film and television content, with more than 4,000 titles in the company's film content library including iconic film franchises like James Bond, Rocky, Creed, The Magnificent Seven, Thelma & Louise, and many others. MGM also has over 17,000 episodes of programming in the company's television content library, including hit shows like The Handmaid's Tale, Fargo, and Vikings. The company has collectively won more than 180 Academy Awards and 100 Emmys.

The Fund's initial investment was in the company's debt, which converted to equity when MGM emerged from bankruptcy in 2010. On May 26, 2021, MGM and Amazon issued a press release announcing that the companies had entered into a definitive merger agreement under which Amazon would acquire MGM for a purchase price of $8.45 billion. The transaction closed in March 2022 for $8.45 billion.

Throughout the last few years the Fund has increased its allocation to Self-Storage Real Estate through its investments in SAFStor and NexPoint Storage Partners. SAFStor is a vertically-integrated, volume-driven developer/owner of institutional-quality self-storage. The Company's focus is on mitigating market and development risk. Accordingly, we (1) employ a data-driven approach, (2) target a geographically-diverse portfolio, and (3) partner with best-in-class capital providers, general contractors and management partners, including Extra Space Storage, CubeSmart, and Life Storage. To date, SAFStor has developed, constructed and managed over 7 million square feet and 55,000 units of class-A storage located through the continental United States. NexPoint Storage is a real estate investment platform that specializes in the self-storage sector. A product of NexPoint's 2020 acquisition of Jernigan Capital, NexPoint Storage invests in newly built, multi-story, climate controlled, Class-A self-storage facilities — known as "Generation V" facilities—located in dense and growing markets throughout the United States. NexPoint Storage acquires and selectively develops GenV self-storage facilities.

In December 2022, NexPoint Storage Partners, Inc. announced that it became the sole owner of 29 new, well-located, and high-quality self-storage properties developed by SAFStor. The acquisition brings NexPoint Storage to a total asset value of approximately $1.7 billion with 71 wholly owned and operating properties and one additional property expected to open in February 2023.

The newly acquired properties are in high-density, high-growth submarkets in major U.S. markets and are expected to benefit from demographics very similar to those of the existing NexPoint Storage portfolio, including strong household incomes, a high percentage of renters, and barriers to new development. The markets of the newly acquired properties include Baltimore, Cleveland, Detroit, Houston, Miami/Ft. Lauderdale, Nashville, New Orleans, Philadelphia, and Washington D.C.

PORTFOLIO MANAGER COMMENTARY (unaudited) (continued)

As of December 31, 2022 **Highland Income Fund (NYSE: HFRO)**

The Fund has increased its exposure to life Science real estate and in February 2023 NexPoint announced a proposal for a new life sciences district at the Former EDS campus. TxS District is a proposed 200-acre life sciences development in Plano, Texas. The project, named to signify “Technology x Science,” is designed to foster innovation and collaboration among companies and institutions across the life science sector.

The project centers on the 91-acre main campus, which previously served as headquarters for Electronic Data Systems (EDS). The district would incorporate 109 additional acres in the Legacy neighborhood. In total, the project would create over 4 million square feet of lab, office, and therapeutic production space across four phases of construction.

Phases one and two propose transforming two existing buildings on the main campus into 970,000 square feet of world-class lab and office space and 120,000 square feet of amenity space. Initial site improvement plans also include a public park, an amphitheater, and connectivity to the nearby Legacy retail development.

We believe the proposed project can be achieved through a public-private partnership. The firm is engaging with the City of Plano about NexPoint’s development plans and the project’s impact on the surrounding area.

NexPoint is collaborating with CRB, a leading global provider of sustainable engineering, architecture, construction, and consulting solutions to the life sciences industry, to provide architectural and engineering services throughout the four proposed phases of construction.

NexPoint engaged JLL as the project’s leasing agent. JLL has a dedicated life sciences team that works across the country and has been involved in the development of some of the top life sciences ecosystems in the U.S.

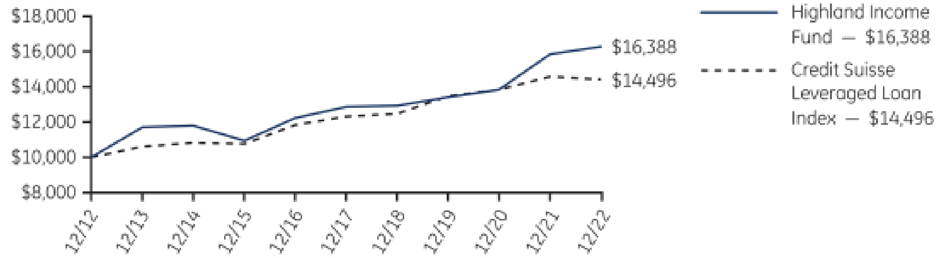
NexPoint purchased the main campus in 2018 and has been acquiring the additional acreage since then. The firm has been involved in several life science deals including its investment in IQHQ, a life science REIT that operates in life science clusters on the East and West Coasts.

We appreciate the engagement and support from shareholders throughout 2022 and look forward to continuing to implement these initiatives in the year ahead.

PORTFOLIO MANAGER COMMENTARY (unaudited) (concluded)

As of December 31, 2022 **Highland Income Fund (NYSE: HFRO)**

Growth of Hypothetical $10,000 Investment



HFRO	Average Annual Total Returns 1 Year	5 Year	10 Year
NAV	3.39%	4.99%	5.13%
Market Price	1.70%	-0.25%	2.73%

Returns shown in the chart and table do not reflect taxes that a shareholder would pay on Fund distributions or on the sale of the Fund shares.

The performance data quoted represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate so that an investor's share when redeemed may be worth more or less than their original cost. Current performance may be lower or higher than the performance data quoted. For performance data current to the most recent month-end, please visit our website at www.nexpointassetmgmt.com.

Stock and bond prices may fall or fail to rise over time for several reasons, including general financial market conditions, factors related to a specific issuer or industry and, with respect to bond prices, changing market perceptions of the risk of default and changes in government intervention. These factors may also lead to increased volatility and reduced liquidity in the bond markets. The Fund may invest in foreign securities which may cause more volatility and less liquidity due to currency changes, political instability and accounting differences.

FUND PROFILE (unaudited)

Highland Income Fund

Objective

Highland Income Fund seeks to provide a high level of current income, consistent with preservation of capital.

Net Assets as of December 31, 2022

$946.0 million

Portfolio Data as of December 31, 2022

The information below provides a snapshot of Highland Income Fund at the end of the reporting period. Highland Income Fund is actively managed and the composition of its portfolio will change over time. Current and future holdings are subject to risk.

Quality Breakdown as of 12/31/2022(%)[1]	
BBB	0.59
BB	2.73
B	13.18
CCC	7.03
NR	76.47

Top 5 Sectors as of 12/31/2022(%)[1][2][3]	
Real Estate	69.7
Collateralized Loan Obligations	11.0
Healthcare	7.7
LLC Interest	6.2
Information Technology	5.5

Top 10 Holdings as of 12/31/2022(%)[1][2][3]	
NFRO REIT SUB, LLC (Common Stocks)	14.8
NFRO REIT SUB II, LLC (Common Stocks)	12.9
NFRO SFR REIT, LLC (Common Stocks)	7.5
NexPoint Real Estate Finance REIT (Common Stocks)	7.3
NexPoint SFR Operating Partnership, LP, 05/24/27 (U.S. Senior Loans)	6.7
EDS Legacy Partners 10.25%, 12/14/23 (U.S. Senior Loans)	6.3
IQHQ, Inc. (Common Stocks)	5.9
NEXLS LLC (LLC Interest)	5.2
NHT Operating Partnership LLC Secured Promissory Note, 5.50%, 02/14/27 (U.S. Senior Loans)	4.1
NexPoint Storage Partners, Inc. (Common Stocks)	4.1

[1] Quality is calculated as a percentage of total credit instruments held by the portfolio. Sectors and holdings are calculated as a percentage of total net assets. The quality ratings reflected were issued by Standard & Poors, a nationally recognized statistical rating organization. Ratings are measured on a scale that generally ranges from AAA (highest) to D (lowest). Quality ratings reflect the credit quality of the underlying bonds in the Fund's portfolio and not that of the Fund itself. Credit quality ratings assigned by a rating agency are subjective opinions, not statements of fact, and are subject to change, including daily. The ratings assigned by credit rating agencies are but one of the considerations that the Fund's investment adviser incorporates into its credit analysis process, along with such other issuer specific factors as cash flows, capital structure and leverage ratios, ability to deleverage through free cash flow, quality of management, market positioning and access to capital, as well as such security-specific factors as the terms of the security (e.g., interest rate, and time to maturity) and the amount of any collateral.

[2] Sectors and holdings are calculated as a percentage of total net assets.

[3] Excludes the Fund's investment in a cash equivalent.

FINANCIAL STATEMENTS

A guide to understanding the Fund's financial statements

Investment Portfolio	The Investment Portfolio details all of the Fund's holdings and its market value as of the last day of the reporting period. Portfolio holdings are organized by type of asset and industry to demonstrate areas of concentration and diversification.
Statement of Assets and Liabilities	This statement details the Fund's assets, liabilities, net assets and share price for each share class as of the last day of the reporting period. Net assets are calculated by subtracting all of the Fund's liabilities (including any unpaid expenses) from the total of the Fund's investment and noninvestment assets. The net asset value per share for each class is calculated by dividing net assets allocated to that share class by the number of shares outstanding in that class as of the last day of the reporting period.
Statement of Operations	This statement reports income earned by the Fund and the expenses incurred by the Fund during the reporting period. The Statement of Operations also shows any net gain or loss the Fund realized on the sales of its holdings during the period as well as any unrealized gains or losses recognized over the period. The total of these results represents the Fund's net increase or decrease in net assets from operations.
Statements of Changes in Net Assets	These statements detail how the Fund's net assets were affected by its operating results, distributions to shareholders and shareholder transactions (e.g., subscriptions, redemptions and distribution reinvestments) during the reporting periods. The Statements of Changes in Net Assets also details changes in the number of shares outstanding.
Statement of Cash Flows	This statement reports net cash and foreign currency provided or used by operating, investing and financing activities and the net effect of those flows on cash and foreign currency during the period.
Financial Highlights	The Financial Highlights demonstrate how the Fund's net asset value per share was affected by the Fund's operating results. The Financial Highlights also disclose the classes' performance and certain key ratios (e.g., net expenses and net investment income as a percentage of average net assets).
Notes to Financial Statements	These notes disclose the organizational background of the Fund, certain of its significant accounting policies (including those surrounding security valuation, income recognition and distributions to shareholders), federal tax information, fees and compensation paid to affiliates and significant risks and contingencies.

INVESTMENT PORTFOLIO

As of December 31, 2022 **Highland Income Fund**

Shares		Value ($)
Common Stocks - 62.1%		
COMMUNICATION SERVICES - 1.2%		
97,600	Telesat (a)	732,000
96,700	Telesat, Class B (a)	725,250
27,134	TerreStar Corporation (a)(b)(c)(d)	9,887,358
		11,344,608
CONSUMER DISCRETIONARY - 0.0%		
1,450	Toys 'R' Us (a)(b)(c)	13,895
ENERGY - 0.0%		
1,118,286	Value Creation, Inc. (a)(b)(c)	—
GAMING/LEISURE - 0.6%		
34,512	LLV Holdco LLC - Series A, Membership Interest (a)(b)(c)(e)	5,565,738
436	LLV Holdco LLC - Series B, Membership Interest (a)(b)(c)(e)	70,257
		5,635,995
HEALTHCARE - 2.4%		
12,026,660	CCS Medical Inc. (a)(b)(c)(e)	22,261,348
MATERIALS - 0.2%		
299,032	MPM Holdings, Inc. (a)	1,495,160
REAL ESTATE - 57.7%		
1,474,379	Allenby (a)(b)(c)(e)	—
10,359,801	Claymore (a)(b)(c)(e)	—
844,371	Elme Communities, REIT	15,029,804
574,004	Healthcare Realty Trust, Class A, REIT	11,061,057
68,862	Independence Realty Trust, Inc., REIT	1,161,013
2,356,665	IQHQ, Inc. (b)(c)	55,593,727
1,275,616	NexPoint Diversified Real Estate Trust REIT (e)(o)	14,299,655
4,372,286	NexPoint Real Estate Finance REIT (e)	69,475,621
186,372	NexPoint Residential Trust, Inc., REIT (e)	8,110,910
32,203	NexPoint Storage Partners, Inc. (a)(b)(c)(e)	38,663,114
90,436,434	NFRO REIT SUB II, LLC (a)(b)(c)(e)	122,113,514
45,834,343	NFRO REIT SUB, LLC (a)(b)(c)(e)	139,917,765
2,843,308	NFRO SFR REIT, LLC (b)(c)(e)	71,134,542
		546,560,722
	Total Common Stocks (Cost $876,591,353)	587,311,728

Principal Amount ($)		Value ($)
U.S. Senior Loans (f) - 24.1%		
COMMUNICATION SERVICES - 0.9%		
8,538,103	TerreStar Corporation, Term Loan D, 1st Lien, 02/27/28 (b)(c)	8,488,582
61,901	TerreStar Corporation, Term Loan H, 1st Lien, 02/28/23 (b)(c)	61,542
66,346	TerreStar Corporation, Term Loan, 1st Lien, 02/28/23 (b)(c)	65,961
		8,616,085
ENERGY - 0.7%		
6,403,998	Quarternorth Energy Holding, Term Loan, 2nd Lien, 08/27/26	6,389,333
GAMING/LEISURE - 1.4%		
15,473,255	LLV Holdco LLC, Revolving Exit Loan, 12/31/23 (b)(c)(e)	13,833,090
HEALTHCARE - 3.0%		
16,657,339	Carestream Health Inc., Term Loan, 1st Lien, 09/30/27	12,742,864
15,501,667	CCS Medical Inc., Junior Credit Term Loan, 1st Lien, 01/04/27 (b)(c)(e)	15,408,657
		28,151,521
INFORMATION TECHNOLOGY - 6.3%		
61,411,237	EDS Legacy Partners, LIBOR USD 3 Month + 2.750%, 12/14/23 (b)(c)(e)	59,271,980
REAL ESTATE - 11.4%		
65,000,000	NexPoint SFR Operating Partnership, LP, 05/24/27 (b)(c)(e)	63,590,800
6,400,000	NHT Operating Partnership LLC Convertible Promissory Note, 09/30/42 (b)(c)(e)	5,798,400
42,777,343	NHT Operating Partnership LLC Secured Promissory Note, 02/14/27 (b)(c)(e)	38,769,231
		108,158,431
RETAIL - 0.4%		
3,843,933	GNC Holdings LLC, Term Loan, 2nd Lien, 10/07/26	3,570,052
	Total U.S. Senior Loans (Cost $264,405,146)	227,990,492
Collateralized Loan Obligations - 11.0%		
5,800,000	ACAS CLO, Series 2018-1A, Class FRR ICE LIBOR USD 3 Month + 7.910%, 12.10%, 10/18/2028 (g)(h)	3,016,387
2,000,000	Apex Credit CLO, Series 2019-1A, Class D ICE LIBOR USD 3 Month + 7.100%, 11.29%, 4/18/2032 (g)(h)	1,609,000
1,500,000	Atlas Senior Loan Fund, Series 2017- 8A, Class F ICE LIBOR USD 3 Month + 7.150%, 11.23%, 1/16/2030 (g)(h)	822,450
2,400,000	Atlas Senior Loan Fund XII, Series 2018-12A, Class E ICE LIBOR USD 3 Month + 5.950%, 10.27%, 10/24/2031 (g)(h)	1,560,000
1,250,000	Cathedral Lake CLO, Series 2017-1A, Class DR ICE LIBOR USD 3 Month + 7.250%, 11.33%, 10/15/2029 (g)(h)	855,750
2,000,000	Cathedral Lake VII, Series 2021-7RA, Class E ICE LIBOR USD 3 Month + 7.770%, 11.85%, 1/15/2032 (g)(h)	1,620,000
5,462,500	CIFC Funding, Series 2013-2A 0.00%, 10/18/2030 (g)(h)(i)	901,312
1,000,000	CIFC Funding, Series 2018-1A, Class ER2 ICE LIBOR USD 3 Month + 5.850%, 10.04%, 1/18/2031 (g)(h)	840,000

 See Glossary on page 11 for abbreviations along with accompanying Notes to Financial Statements.

INVESTMENT PORTFOLIO (continued)

As of December 31, 2022 **Highland Income Fund**

Principal Amount ($)		Value ($)
Collateralized Loan Obligations (continued)		
3,000,000	CIFC Funding, Series 2015-1A 0.00%, 1/22/2031 (g)(h)(i)(j)	615,000
3,324,756	CIFC Funding, Series 2014-4RA 0.00%, 1/17/2035 (g)(h)(i)(j)	706,511
2,500,000	CIFC Funding, Series 2014-1A 0.00%, 1/18/2031 (g)(h)(i)	375,000
3,000,000	Covenant Credit Partners CLO III, Series 2017-1A, Class F ICE LIBOR USD 3 Month + 7.950%, 12.03%, 10/15/2029 (g)(h)	1,815,000
1,537,000	Dryden 36 Senior Loan Fund, Series 2019-36A, Class ER2 ICE LIBOR USD 3 Month + 6.880%, 10.96%, 4/15/2029 (g)(h)	1,335,038
4,000,000	Eaton Vance CLO, Series 2019-1A, Class F ICE LIBOR USD 3 Month + 8.250%, 12.33%, 4/15/2031 (g)(h)	3,120,000
36,203,269	FREMF Mortgage Trust, Series 2021-KF112, Class CS SOFR30A + 6.250%, 9.98%, 1/25/2031 (g)(h)(u)	36,203,269
5,450,000	Galaxy XXVI CLO, Series 2018-26A, Class F ICE LIBOR USD 3 Month + 8.000%, 12.66%, 11/22/2031 (g)(h)	3,924,000
1,000,000	GoldenTree Loan Management US CLO 3, Series 2018-3A, Class F ICE LIBOR USD 3 Month + 6.500%, 10.74%, 4/20/2030 (g)(h)	751,250
2,500,000	GoldenTree Loan Opportunities IX, Series 2018-9A, Class FR2 ICE LIBOR USD 3 Month + 7.640%, 12.05%, 10/29/2029 (g)(h)	1,976,667
2,125,000	ICG US CLO, Series 2022-1A, Class DJ TSFR3M + 5.730%, 7.84%, 7/20/2035 (g)(h)	1,989,552
4,000,000	Jay Park CLO, Ltd., Series 2018-1A, Class ER ICE LIBOR USD 3 Month + 7.350%, 11.59%, 10/20/2027 (g)(h)	3,380,000
3,000,000	KKR CLO 18, Series 2017-18, Class E ICE LIBOR USD 3 Month + 6.450%, 10.64%, 7/18/2030 (g)(h)	2,635,800
1,400,000	Madison Park Funding XX, Series 2018-20A, Class ER ICE LIBOR USD 3 Month + 5.300%, 9.66%, 7/27/2030 (g)(h)	1,166,760
2,350,000	Madison Park Funding XXIV, Series 2019-24A, Class ER TSFR3M + 7.462%, 11.42%, 10/20/2029 (g)(h)	2,179,860
2,000,000	Madison Park Funding XXIX, Series 2018-29A, Class F ICE LIBOR USD 3 Month + 7.570%, 11.76%, 10/18/2030 (g)(h)	1,613,000
1,000,000	Madison Park Funding XXX, Series 2018-30A, Class F ICE LIBOR USD 3 Month + 6.850%, 10.93%, 4/15/2029 (g)(h)	802,300
490,000	Magnetite VII, Ltd., Series 2018-7A, Class ER2 ICE LIBOR USD 3 Month + 6.500%, 10.58%, 1/15/2028 (g)(h)	406,700
2,500,000	Man GLG US CLO, Series 2018-1A, Class DR ICE LIBOR USD 3 Month + 5.900%, 10.14%, 4/22/2030 (g)(h)	1,853,000
4,000,000	Northwoods Capital XII-B, Ltd., Series 2018-12BA, Class F ICE LIBOR USD 3 Month + 8.170%, 12.94%, 6/15/2031 (g)(h)	2,480,000
2,900,000	OHA Credit Partners XII, Series 2018- 12A, Class FR ICE LIBOR USD 3 Month + 7.680%, 12.00%, 7/23/2030 (g)(h)	2,319,130
3,110,000	OZLM XXII, Ltd., Series 2018-22A, Class E ICE LIBOR USD 3 Month + 7.390%, 11.47%, 1/17/2031 (g)(h)	1,866,000
2,000,000	Park Avenue Institutional Advisers CLO, Series 2021-2A, Class E ICE LIBOR USD 3 Month + 7.010%, 11.09%, 7/15/2034 (g)(h)	1,685,000
3,150,000	Saranac CLO III, Ltd., Series 2018-3A, Class ER ICE LIBOR USD 3 Month + 7.500%, 12.25%, 6/22/2030 (g)(h)	1,988,438
2,000,000	Symphony CLO XXVI, Series 2021-26A, Class ER ICE LIBOR USD 3 Month + 7.500%, 11.74%, 4/20/2033 (g)(h)	1,780,000
5,955,627	THL Credit Wind River, Series 2014-2A 0.00%, 1/15/2031 (g)(h)(i)(k)	1,235,793
2,200,000	TICP CLO I-2, Series 2018-IA, Class E ICE LIBOR USD 3 Month + 8.000%, 12.33%, 4/26/2028 (g)(h)	1,897,170
4,150,000	TICP CLO III-2, Series 2018-3R, Class F ICE LIBOR USD 3 Month + 7.980%, 12.22%, 4/20/2028 (g)(h)	3,569,000
1,000,000	Vibrant CLO 1X, Series 2018-9A, Class D ICE LIBOR USD 3 Month + 6.250%, 10.49%, 7/20/2031 (g)(h)	712,500
1,275,000	Voya CLO, Series 2018-2A, Class DR TSFR3M + 5.862%, 9.92%, 4/25/2031 (g)(h)	938,017
1,000,000	Webster Park CLO, Series 2018-1A, Class ER ICE LIBOR USD 3 Month + 7.750%, 11.99%, 7/20/2030 (g)(h)	795,000
3,000,000	Zais CLO 3, Ltd., Series 2018-3A, Class DR ICE LIBOR USD 3 Month + 6.910%, 10.99%, 7/15/2031 (g)(h)	1,995,000
3,300,000	Zais CLO 8, Ltd., Series 2018-1A, Class E ICE LIBOR USD 3 Month + 5.250%, 9.33%, 4/15/2029 (g)(h)	2,450,250
	Total Collateralized Loan Obligations (Cost $123,498,918)	103,784,904
Shares		
LLC Interest - 6.2%		
882	NEXLS LLC (b)(c)(e)	49,601,366
10,000,000	SFR WLIF III, LLC (b)(c)(e)	9,408,770
	Total LLC Interest (Cost $43,294,362)	59,010,136

INVESTMENT PORTFOLIO (continued)

As of December 31, 2022 **Highland Income Fund**

Units		Value ($)
Warrants - 4.0%		
ENERGY - 4.0%		
5,801	Arch Resources, Expires 10/08/2023 (a)	545,410
85,465	Quarternorth Energy Holding Inc. Tranche 1, Expires 08/27/2029 (a)	961,481
164,598	Quarternorth Energy Holding Inc. Tranche 2, Expires 08/27/2029 (a)	1,440,233
254,538	Quarternorth Energy Holding Inc. Tranche 3, Expires 08/27/2029 (a)	35,126,244
	Total Warrants (Cost $31,011,555)	38,073,368

Shares		Value ($)
Preferred Stock - 3.5%		
FINANCIALS - 0.5%		
3,980	Eastland CLO 1.00% (b)(c)(l)	36,302
34,500	Eastland CLO II (a)(b)(c)(l)(m)	314,674
8,860	Gleneagles CLO, 12/30/2049 (a)(b)(c)(m)	303,119
40,000	Granite Point Mortgage Trust REIT 7.00% (l)(n)	686,000
62,600	Grayson CLO (b)(c)(l)(m)	549,569
150,977	NexPoint Real Estate Finance REIT 8.50% (e) (l)	2,818,544
12,553	Rockwall CDO, 08/01/2024 (a)(b)(c)(m)	62,507
4,800	Rockwall CDO (b)(c)(l)(m)	75
		4,770,790
HEALTHCARE - 2.4%		
414,378	Apnimed (b)(c)(l)(m)	4,600,010
2,361,111	Sapience Therapeutics Inc 8.00% (b)(c)(l)	7,815,277
3,440,476	Sapience Therapeutics Inc, Class B 8.00% (a)(b)(c)(l)	9,667,738
		22,083,025
REAL ESTATE - 0.6%		
325,976	Braemar Hotels & Resorts, Inc., REIT 5.50% (a)(l)	5,081,966
47,300	Wheeler Real Estate Investment Trust, REIT 8.75% (a)(l)(o)(p)	606,265
82,301	Wheeler Real Estate Investment Trust, REIT 9.00% (a)(l)	125,098
		5,813,329
	Total Preferred Stock (Cost $75,904,189)	32,667,144
Registered Investment Company - 0.0%		
48,649	Highland Global Allocation Fund (e)	458,274
	Total Registered Investment Company (Cost $120,412)	458,274
Exchange-Traded Funds - 1.3%		
109,265	Direxion Daily S&P 500 Bull 3X	6,786,449
293,675	ProShares UltraPro QQQ	5,080,578
	Total Exchange-Traded Funds (Cost $13,863,380)	11,867,027

Principal Amount ($)		Value ($)
Corporate Bonds & Notes - 0.4%		
COMMUNICATION SERVICES - 0.0%		
3,100	iHeartCommunications, Inc. 6.38%, 05/01/26	2,857
FINANCIALS - 0.4%		
4,000,000	South Street Securities Funding LLC 6.25%, 12/30/26 (h)	3,480,000
INDUSTRIALS - 0.0%		
7,500,000	American Airlines 12/31/49 (b)(c)(i)(k)(q)	—
UTILITIES - 0.0%		
15,222,107	Bruce Mansfield Pass-Through Trust 6.85%, 06/01/34 (k)	—
	Total Corporate Bonds & Notes (Cost $4,063,640)	3,482,857

Shares		Value ($)
Master Limited Partnership - 0.2%		
ENERGY - 0.2%		
179,200	Energy Transfer L.P.	2,127,104
	Total Master Limited Partnership (Cost $1,869,174)	2,127,104

Units		Value ($)
Rights - 0.0%		
UTILITIES - 0.0%		
4,933	Texas Competitive Electric Holdings Co., LLC (a)	6,228
	Total Rights (Cost $–)	6,228

Principal Amount ($)		Value ($)
Repurchase Agreements (r)(s) - 0.0%		
153,719	Citigroup 4.300%, dated 12/30/2022 to be repurchased on 01/03/2023, repurchase price $153,792 (collateralized by U.S. Government and Treasury obligations, ranging in par value $499 - $79,992, 1.375% - 4.500%, 04/15/2025 - 11/01/2051; with total market value $156,925)	153,719
249,000	RBC 4.300%, dated 12/30/2022 to be repurchased on 01/03/2023, repurchase price $249,119 (collateralized by U.S. Government and Treasury obligations, ranging in par value $0 - $68,175, 2.000% -6.000%, 09/01/2024 - 10/20/2052; with total market value $253,980)	249,000
	Total Repurchase Agreements (Cost $402,719)	402,719

 See Glossary on page 11 for abbreviations along with accompanying Notes to Financial Statements.

INVESTMENT PORTFOLIO (continued)

As of December 31, 2022 **Highland Income Fund**

Shares		Value ($)
Cash Equivalent - 2.7%		
MONEY MARKET FUND (t) - 2.7%		
25,072,014	Dreyfus Treasury Obligations Cash Management, Institutional Class 4.170%	25,072,014
	Total Cash Equivalent (Cost $25,072,014)	25,072,014
Total Investments - 115.5% (Cost $1,460,096,862)		**1,092,253,995**
Securities Sold Short - (0.7)%		
Common Stocks - (0.7)%		
INFORMATION TECHNOLOGY - (0.7)%		
(41,100)	Texas Instruments, Inc.	(6,790,542)
	Total Common Stocks (Proceeds $4,920,256)	(6,790,542)
	Total Securities Sold Short - (0.7)% (Proceeds $4,920,256)	(6,790,542)
Other Assets & Liabilities, Net - (14.8)% (v)		**(139,475,776)**
Net Assets - 100.0%		**945,987,677**

(a) Non-income producing security.

(b) Securities with a total aggregate value of $752,868,908, or 79.6% of net assets, were classified as Level 3 within the three-tier fair value hierarchy. Please see Notes to Financial Statements for an explanation of this hierarchy, as well as a list of unobservable inputs used in the valuation of these instruments.

(c) Represents fair value as determined by the Investment Adviser pursuant to the policies and procedures approved by the Board of Trustees (the "Board"). The Board has designated the Investment Adviser as "valuation designee" for the Fund pursuant to Rule 2a-5 of the Investment Company Act of 1940, as amended. The Investment Adviser considers fair valued securities to be securities for which market quotations are not readily available and these securities may be valued using a combination of observable and unobservable inputs. Securities with a total aggregate value of $752,868,908, or 79.6% of net assets, were fair valued under the Fund's valuation procedures as of December 31, 2022. Please see Notes to Financial Statements.

(d) Restricted Securities. These securities are not registered and may not be sold to the public. There are legal and/or contractual restrictions on resale. The Fund does not have the right to demand that such securities be registered. The values of these securities are determined by valuations provided by pricing services, brokers, dealers, market makers, or in good faith under the policies and procedures established by the Board. Additional Information regarding such securities follows:

Restricted Security	Security Type	Acquisition Date	Cost of Security	Fair Value at Year End	Percent of Net Assets
TerreStar Corporation	Common Stocks	3/16/2018	$3,093,276	$ 9,887,358	1.0%

(e) Affiliated issuer. Assets with a total aggregate fair value of $750,571,576, or 79.3% of net assets, were affiliated with the Fund as of December 31, 2022.

(f) Senior loans (also called bank loans, leveraged loans, or floating rate loans) in which the Fund invests generally pay interest at rates which are periodically determined by reference to a base lending rate plus a spread (unless otherwise identified, all senior loans carry a variable rate of interest). These base lending rates are generally (i) the Prime Rate offered by one or more major United States banks, (ii) the lending rate offered by one or more European banks such as the London Interbank Offered Rate ("LIBOR") or (iii) the Certificate of Deposit rate. As of December 31, 2022, the LIBOR USD 3 Month rates were 4.77%. Senior loans, while exempt from registration under the Securities Act of 1933, as amended (the "1933 Act"), contain certain restrictions on resale and cannot be sold publicly. Senior secured floating rate loans often require prepayments from excess cash flow or permit the borrower to repay at its election. The degree to which borrowers repay, whether as a contractual requirement or at their election, cannot be predicted with accuracy. As a result, the actual remaining maturity maybe substantially less than the stated maturity shown.

(g) Variable or floating rate security. The rate shown is the effective interest rate as of period end. The rates on certain securities are not based on published reference rates and spreads and are either determined by the issuer or agent based on current market conditions; by using a formula based on the rates of underlying loans; or by adjusting periodically based on prevailing interest rates.

(h) Securities exempt from registration under Rule 144A of the 1933 Act. These securities may only be resold in transactions exempt from registration to qualified institutional buyers. The Board has determined these investments to be liquid. At December 31, 2022, these securities amounted to $107,264,904 or 11.3% of net assets.

(i) No interest rate available.

(j) Interest only security ("IO"). These types of securities represent the right to receive the monthly interest payments on an underlying pool of mortgages. Payments of principal on the pool reduce the value of the "interest only" holding.

(k) The issuer is, or is in danger of being, in default of its payment obligation.

(l) Perpetual security with no stated maturity date.

(m) There is currently no rate available.

(n) Variable or floating rate security. The base lending rates are generally the lending rate offered by one or more European banks such as the LIBOR. The interest rate shown reflects the rate in effect December 31, 2022.

(o) Securities (or a portion of securities) on loan. As of December 31, 2022, the fair value of securities loaned was $389,253. The loaned securities were secured with cash and/or securities collateral of $402,719. Collateral is calculated based on prior day's prices.

(p) Step Coupon Security. Coupon rate will either increase (step-up bond) or decrease (step-down bond) at regular intervals until maturity. Interest rate shown reflects the rate currently in effect.

(q) Represents value held in escrow pending future events. No interest is being accrued.

(r) Tri-Party Repurchase Agreement.

(s) This security was purchased with cash collateral held from securities on loan. The total value of such securities as of December 31, 2022 was $402,719.

(t) Rate reported is 7 day effective yield.

(u) As of December 31, 2022, investments with a total aggregate value of $36,203,269 were fully or partially segregated with broker(s)/custodian as collateral for reverse repurchase agreements.

(v) As of December 31, 2022, $6,782,322 in cash was segregated or on deposit with the brokers to cover investments sold short and is included in "Other Assets & Liabilities, Net".

INVESTMENT PORTFOLIO (concluded)

As of December 31, 2022 **Highland Income Fund**

Reverse Repurchase Agreement outstanding as of December 31, 2022 was as follows:

Counterparty	Collateral Pledged	Interest Rate %	Trade Date	Repurchase Amount	Principal Amount	Value
Mizuho Securities	FREMF Mortgage Trust, Series 2021-KF103, Class CS, 02/01/2023	5.88	12/15/2022	$(21,722,000)	$(21,722,000)	$(21,722,000)
Total Reverse Repurchase Agreement					$(21,722,000)	$(21,722,000)

GLOSSARY: (abbreviations that may be used in the preceding statements) (unaudited)

Other Abbreviations:

CDO	Collateralized Debt Obligation
ICE	Intercontinental Exchange
LIBOR	London Interbank Offered Rate
REIT	Real Estate Investment Trust
USD	United States Dollar

STATEMENT OF ASSETS AND LIABILITIES

As of December 31, 2022 **Highland Income Fund**

	$
Assets	
Investments from unaffiliated issuers, at value[(a)]	316,207,686
Affiliated investments, at value (Note 9)	750,571,576
Total Investments, at value (Cost $1,434,622,129)	1,066,779,262
Repurchase Agreements, at value	402,719
Cash equivalent (Note 2)	25,072,014
Cash	139,323
Restricted Cash — Securities Sold Short (Note 2)	6,782,322
Receivable for:	
Cash pledged as collateral on reverse repurchase agreements	1,870,000
Dividends and interest	28,046,175
Fund shares sold	124,115
Due from broker	6,886
Prepaid expenses and other assets	357,523
Total assets	1,129,580,339
Liabilities:	
Securities sold short, at value (Proceeds $4,920,256) (Note 2)	6,790,542
Reverse Repurchase Agreements (Note 3)	21,722,000
Payable for:	
Investments purchased	13,100,000
Investment advisory and administration fees (Note 6)	865,164
Collateral from securities loaned (Note 4)	402,719
Legal fees	344,730
Printing fees	159,135
Audit fees	155,000
Accrued expenses and other liabilities	297,123
Total liabilities	43,836,413
Mezzanine Equity:	
Cumulative preferred shares (Series A), net of deferred financing costs (Notes 1 and 2)	139,756,249
Net Assets	**945,987,677**
Net Assets Consist of:	
Paid-in capital	1,454,795,842
Total accumulated losses	(508,808,165)
Net Assets	**945,987,677**
Investments, at cost	363,409,113
Affiliated investments, at cost (Note 9)	1,071,213,016
Cash equivalents, at cost (Note 2)	25,072,014
Repurchase Agreements, at cost	402,719
Proceeds from securities sold short	4,920,256
Common Shares	
Shares outstanding ($0.001 par value; unlimited authorization)	68,121,308
Net asset value per share (Net assets/shares outstanding)	13.89
(a) Includes fair value of securities on loan	389,253

STATEMENT OF OPERATIONS

For the Year Ended December 31, 2022	Highland Income Fund
	$
Investment Income	
Income:	
Dividends from unaffiliated issuers	70,457,158
Dividends from affiliated issuers (Note 9)	6,270,395
Securities lending income (Note 4)	46,353
Interest from unaffiliated issuers	14,668,227
Interest from affiliated issuers (Note 9)	10,225,535
Interest paid in kind from unaffiliated issuers	905,745
Interest paid in kind from affiliated issuers (Note 9)	3,050,153
ROC reclass from affiliated issuers (Note 9)	(70,410)
Total income	105,553,156
Expenses:	
Investment advisory (Note 6)	7,269,814
Administration fees (Note 6)	2,339,062
Legal fees	1,056,052
Accounting services fees	691,901
Interest expense, commitment fees, and financing costs	384,897
Reports to shareholders	299,982
Trustees fees (Note 6)	223,384
Insurance	204,893
Dividends and fees on securities sold short (Note 2)	192,751
Audit fees	183,404
Pricing fees	173,437
Transfer agent fees	158,387
Registration fees	146,323
Conversion fees (Note 2)	138,426
Custodian/wire agent fees	28,790
Total operating expenses	13,491,503
Net investment income	92,061,653
Preferred dividend expenses	(7,793,750)
Net Realized and Unrealized Gain (Loss)	
Realized gain (loss) on:	
Investments from unaffiliated issuers	78,379,604
Investments in affiliated issuers (Note 9)	8,345,554
Securities sold short (Note 2)	7,121,644
Written options contracts (Note 3)	37,559
Futures contracts (Note 3)	41,918,345
Net realized gain	135,802,706
Net Change in Unrealized Appreciation (Depreciation) on:	
Investments	(146,548,259)
Investments in affiliated issuers (Note 9)	(49,911,663)
Securities sold short (Note 2)	2,725,741
Futures contracts (Note 3)	4,568,959
Net change in unrealized appreciation (depreciation)	(189,165,222)
Net realized and unrealized gain (loss)	(53,362,516)
Total increase in net assets resulting from operations	30,905,387

STATEMENTS OF CHANGES IN NET ASSETS

Highland Income Fund

	Year Ended December 31, 2022 ($)	Year Ended December 31, 2021 ($)
Increase (Decrease) in Net Assets		
Operations:		
Net investment income	92,061,653	51,197,156
Preferred dividend expenses	(7,793,750)	(7,793,756)
Net realized gain (loss)	135,802,706	(81,417,609)
Net change in unrealized appreciation (depreciation)	(189,165,222)	168,217,003
Net increase from operations	30,905,387	130,202,794
Distributions Declared to Common Shareholders:		
Distributions	(35,874,540)	(15,595,827)
Return of capital	(27,155,040)	(50,110,849)
Total distributions:	(63,029,580)	(65,706,676)
Increase (decrease) in net assets from operations and distributions	(32,124,193)	64,496,118
Share transactions:		
Value of distributions reinvested	1,718,646	1,661,743
Shares repurchased of closed-end fund (Note 1)	(24,643,897)	(25,760,920)
Gains from the retirement of repurchased shares	5,422,282	4,870,013
Net decrease from shares transactions	(17,502,969)	(19,229,164)
Total increase (decrease) in net assets	(49,627,162)	45,266,954
Net Assets		
Beginning of year	995,614,839	950,347,885
End of year	945,987,677	995,614,839
Change in Common Shares:		
Issued for distribution reinvested	152,754	152,218
Shares redeemed (Note 1)	(1,679,705)	(1,854,281)
Net decrease in fund shares	(1,526,951)	(1,702,063)

STATEMENT OF CASH FLOWS

For the Year Ended December 31, 2022 **Highland Income Fund**

	$
Cash Flows Provided by Operating Activities:	
Net increase in net assets resulting from operations	30,905,387
Adjustments to Reconcile Net Increase in Net Assets Resulting from Operations to Net Cash Provided by Operating Activities:	
Purchases of investment securities from unaffiliated issuers	(293,297,707)
Purchases of investment securities from affiliated issuers	(601,190,765)
Interest paid in kind from unaffiliated issuers	(905,745)
Interest paid in kind from affiliated issuers	(3,050,153)
Proceeds from disposition of investment securities from unaffiliated issuers	330,382,156
Proceeds from disposition of investment securities from affiliated issuers	163,314,139
Paydowns at cost	104,825,104
Net (amortization) accretion of discount	(997,654)
Proceeds from return of capital of investment securities from affiliated issuers	192,675,501
Purchases of repurchase agreements, net	(246,362)
Purchases to cover securities sold short	(6,836,960)
Purchases to cover written options	(588,290)
Proceeds of written options	625,849
Net realized (gain) loss on Investments from unaffiliated issuers	(78,379,604)
Net realized (gain) loss on Investments from affiliated issuers	(8,345,554)
Net realized (gain) loss on written options and securities sold short	(7,159,203)
Net change in unrealized (appreciation) depreciation on investments, investments in affiliated issuers, and securities sold short	193,734,181
(Increase) Decrease in receivable for cash pledged as collateral on reverse repurchase agreements	(1,870,000)
(Increase) Decrease in receivable for investments sold and principal paydowns	580,003
(Increase) Decrease in receivable for dividends and interest	(12,829,428)
(Increase) Decrease in receivable for variation margin	712,785
(Increase) Decrease in due from broker	(6,886)
(Increase) Decrease in prepaid expenses and other assets	56,527
Increase (Decrease) in payable for investments purchased	(2,070,483)
Increase (Decrease) in payable to investment advisory	9,862
Increase (Decrease) in payable for upon return of securities loaned	246,362
Increase (Decrease) in payable for printing fees	50,025
Increase (Decrease) in payable for audit fees	155,000
Increase (Decrease) in payable for legal fees	132,011
Increase (Decrease) in accrued expenses and other liabilities	(171,382)
Net cash flow provided by operating activities	458,716
Cash Flows Used In Financing Activities:	
Distributions paid in cash, net of distributions reinvested	(61,310,934)
Payments on shares redeemed, net of payable	(19,221,615)
Proceeds from shares sold, net of receivable	(5,093)
Proceeds from reverse repurchase agreement	21,722,000
Net cash flow used in financing activities	(58,815,642)
Net decrease in cash	(58,356,926)
Cash, cash equivalents, restricted cash and due to/from broker:	
Beginning of year	90,350,585
End of year	31,993,659
End of year cash balances:	
Cash	139,323
Cash equivalent	25,072,014
Restricted cash	6,782,322
End of year	31,993,659
Supplemental disclosure of cash flow information:	
Reinvestment of distributions	1,718,646
Cash paid during the year for interest expense and commitment fees	384,897

FINANCIAL HIGHLIGHTS

Highland Income Fund

Selected data for a share outstanding throughout each year/period is as follows:

	For the Years Ended December 31,				For the Period Ended December 31,	For the Year Ended June 30,
	2022	2021	2020	2019	2018**	2018*‡
Net Asset Value, Beginning of Year/Period	$ 14.29	$ 13.32	$ 13.88	$ 14.28	$ 15.12	$ 15.01
Income from Investment Operations:						
Net investment income[(a)]	1.35	0.72	0.54	0.85	0.42	0.75
Preferred dividend expense	(0.11)	(0.11)	(0.11)	(0.05)	—	—
Net realized and unrealized gain (loss)	(0.80)	1.21	(0.10)	(0.29)	(0.80)	0.18
Total Income from Investment Operations	0.44	1.82	0.33	0.51	(0.38)	0.93
Less Distributions Declared to shareholders:						
From net investment income	(0.52)	(0.22)	(0.43)	(0.81)	(0.45)	(0.72)
From return of capital	(0.40)	(0.70)	(0.49)	(0.11)	(0.01)	(0.10)
Total distributions declared to shareholders	(0.92)	(0.92)	(0.92)	(0.92)	(0.46)	(0.82)
Capital Share Transactions:						
Retirement of Tendered Shares[(a)]	$ 0.08	$ 0.07	$ 0.03	$ 0.01	$ —	$ —
Net Asset Value, End of Year/Period[(b)]	$ 13.89	$ 14.29	$ 13.32	$ 13.88	$ 14.28	$ 15.12
Market Value, End of Year/Period	$ 10.30	$ 10.99	$ 10.28	$ 12.43	$ 12.80	$ 15.62
Market Value Total Return[(c)]	1.70%	16.35%	(8.29)%	4.30%	(15.44)%[(d)]	9.77%
Ratios based on Average Managed Assets						
Gross operating expenses[(e)(f)]	1.15%	1.44%	1.83%	2.28%	N/A	N/A
Net investment income[(e)]	7.87%	4.53%	2.89%	3.98%	N/A	N/A
Ratios to Average Net Assets / Supplemental Data:[(g)(h)]						
Net Assets, End of Year/Period (000's)	$945,988	$995,615	$950,348	$995,405	$ 1,026,412	$ 1,085,547
Gross operating expenses[(e)(f)]	1.32%	1.67%	2.68%	3.39%	3.10%	1.79%
Net investment income[(e)]	8.98%	5.26%	4.22%	5.93%	5.48%	4.98%
Portfolio turnover rate	45%	38%	22%	18%	27%[(d)]	177%
Average commission rate paid[(i)]	$ 0.0092	$ 0.0348	$ 0.0969	$ 0.0032	$ 0.0243	$ 0.0300

* Per share data prior to November 3, 2017 has been adjusted to give effect to an approximately 2 to 1 reverse stock split as part of the conversion to a closed-end fund.
** For the six-month period ended December 31, 2018. Effective April 11, 2019, the Fund had a fiscal year change from June 30 to December 31.
‡ Reflects the financial highlights of Class Z of the open-end fund prior to the conversion.
(a) Per share data was calculated using average shares outstanding during the period.
(b) The Net Asset Value per share and total return have been calculated based on net assets which include adjustments made in accordance with U.S. Generally Accepted Accounting Principles required at period end for financial reporting purposes. These figures do not necessarily reflect the Net Asset Value per share or total return experienced by the shareholder at period end.
(c) Total return is based on market value per share for periods after November 3, 2017. Distributions are assumed for purposes of this calculation to be reinvested at prices obtained under the Fund's Dividend Reinvestment Plan. Prior to November 3, 2017, total return is at net asset value assuming all distributions are reinvested. For periods with waivers/reimbursements, had the Fund's investment adviser not waived or reimbursed a portion of expenses, total return would have been lower.
(d) Not annualized.
(e) Excludes 12b-1 fees from partial period operating as an open-end fund. Following the conversion on November 3, 2017, the Fund is no longer subject to 12b-1 fees.
(f) Includes dividends and fees on securities sold short.
(g) All ratios for the period have been annualized, unless otherwise indicated.
(h) Supplemental expense ratios are shown below.
(i) Represents the total dollar amount of commissions paid on portfolio transactions divided by total number of portfolio shares purchased and sold for which commissions were charged. The period prior to the Conversion Date is not presented.

FINANCIAL HIGHLIGHTS (concluded)

Highland Income Fund

Supplemental Expense Ratios:

	For the Years Ended December 31,				For the Period Ended December 31, 2018**	For the Year Ended June 30, 2018*‡
	2022	2021	2020	2019		
Ratios based on Average Managed Assets						
Net operating expenses (net of waiver/reimbursement, if applicable, but gross of all other operating expenses)	1.15%	1.44%	1.83%	2.28%	N/A	N/A
Interest expense and commitment fees, and preferred dividend expense	0.70%	0.74%	1.17%	1.27%	N/A	N/A
Dividends and fees on securities sold short	0.02%	0.02%	0.02%	0.01%	N/A	N/A
Ratios to Average Net Assets						
Net operating expenses (net of waiver/reimbursement, if applicable, but gross of all other operating expenses)	1.32%	1.67%	2.68%	3.39%	3.10%	1.79%
Interest expense and commitment fees, and preferred dividend expense	0.80%	0.86%	1.71%	1.90%	1.63%	0.49%
Dividends and fees on securities sold short	0.02%	0.02%	0.03%	0.01%	—%(j)	—%(j)
Borrowing at end of year/period:						
Aggregate Amount Outstanding Excluding Preferred Shares*	21,722,000	—	200,000,000	419,796,600	496,141,100	498,563,423
Asset Coverage Per $1,000*	44,549.75	—	5,751.74	3,371.16	3,068.79	3,177.35
Aggregate Amount Outstanding Including Preferred Shares*	166,722,000	145,000,000	345,000,000	564,796,600	496,141,100	498,563,423
Asset Coverage Per $1,000*	6,674.04	7,859.92	3,754.63	2,762.41	3,068.79	3,177.35

* See Note 10 for further details.
(j) Represents less than 0.005%.

NOTES TO FINANCIAL STATEMENTS

Note 1. Organization

Highland Income Fund (the "Fund") is organized as an unincorporated business trust under the laws of The Commonwealth of Massachusetts. The Fund is registered with the U.S. Securities and Exchange Commission (the "SEC") under the Investment Company Act of 1940, as amended (the "1940 Act"), as a non-diversified, closed-end management investment company. On September 25, 2017, the Fund acquired the assets of Highland Floating Rate Opportunities Fund (the "Predecessor Fund"), a series of NexPoint Funds I (formerly Highland Funds I), a Delaware statutory trust. The Fund is the successor to the accounting and performance information of the Predecessor Fund.

On July 29, 2019, the Fund issued 5.4 million 5.375% Series A Cumulative Preferred shares (NYSE: HFRO.PR.A) with an aggregate liquidation value of $135 million. Subsequently on August 9, 2019, the underwriters exercised their option to purchase additional overallotment shares of $10mm, resulting in a total Preferred outstanding offering of $145mm.

The Series A Cumulative Preferred shares are perpetual, non-callable for five years, and have a liquidation preference of $25.00 per share. Distributions are scheduled quarterly, with payments beginning on September 30, 2019. Series A Preferred shares trade on the NYSE. Moody's Investors Service has assigned an A1 rating to the preferred shares.

On October 13, 2021, the Board authorized the repurchase of $40 million common shares over a six-month period. Under this program from October 2021 to March 2022, the Fund repurchased 3,533,986, at an average price of $11.29, for a total investment of $40.0 million. Upon retirement of the repurchased shares, the net asset value was $50.4 million, or $14.26 per share.

Note 2. Significant Accounting Policies

The following summarizes the significant accounting policies consistently followed by the Fund in the preparation of its financial statements.

Use of Estimates

The Fund is an investment company that follows the investment company accounting and reporting guidance of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 946 Financial Services — Investment Companies applicable to investment companies. The Fund's financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"), which require NexPoint Asset Management, L.P. (formerly Highland Capital Management Fund Advisors, L.P.) ("NexPoint" or the "Investment Adviser") to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of increases or decreases in net assets from operations during the reporting period. Changes in the economic environment, financial markets and any other parameters used in determining these estimates could cause actual results to differ materially.

Fund Valuation

The net asset value ("NAV") of the Fund's common shares is calculated daily on each day that the NYSE is open for business as of the close of the regular trading session on the NYSE, usually 4:00 PM, Eastern Time. The NAV is calculated by dividing the value of the Fund's net assets attributable to common shares by the numbers of common shares outstanding.

Valuation of Investments

Pursuant to Rule 2a-5 under the 1940 Act, the Board has designated NexPoint as the Fund's valuation designee to perform the fair valuation determination for securities and other assets held by the Fund. NexPoint acting through its "Valuation Committee," is responsible for determining the fair value of investments for which market quotations are not readily available. The Valuation Committee is comprised of officers of NexPoint and certain of NexPoint's affiliated companies and determines fair value and oversees the calculation of the NAV. The Valuation Committee is subject to Board oversight and certain reporting and other requirements intended to provide the Board the information it needs to oversee NexPoint's fair value determinations.

The Fund's investments are recorded at fair value. In computing the Fund's net assets attributable to shares, securities with readily available market quotations on the NYSE, National Association of Securities Dealers Automated Quotation ("NASDAQ") or other nationally recognized exchange, use the closing quotations on the respective exchange for valuation of those securities. Securities for which there are no readily available market quotations will be valued pursuant to policies and procedures adopted by NexPoint and approved by the Board. Typically, such securities will be valued at the mean between the most recently quoted bid and ask prices provided by the principal market makers. If there is more than one such principal market maker, the value shall be the average of such means. Securities without a sale price or quotations from principal market makers on the valuation day may be priced by an independent pricing service. Generally, the Fund's loan and bond positions are not traded on exchanges and consequently are valued based on a mean of the bid and ask price from the third-party pricing services or broker-dealer sources that the Investment Adviser has determined to have the capability to provide appropriate pricing services.

NOTES TO FINANCIAL STATEMENTS (continued)

Securities for which market quotations are not readily available, or for which the Fund has determined that the price received from a pricing service or broker-dealer is "stale" or otherwise does not represent fair value (such as when events materially affecting the value of securities occur between the time when market price is determined and calculation of the Fund's NAV, will be valued by the Fund at fair value, as determined by the Valuation Committee in good faith in accordance with policies and procedures established by NexPoint and approved by the Board, taking into account factors reasonably determined to be relevant, including, but not limited to: (i) the fundamental analytical data relating to the investment; (ii) the nature and duration of restrictions on disposition of the securities; and (iii) an evaluation of the forces that influence the market in which these securities are purchased and sold. In these cases, the Fund's NAV will reflect the affected portfolio securities' fair value as determined in the judgment of the Valuation Committee instead of being determined by the market. Using a fair value pricing methodology to value securities may result in a value that is different from a security's most recent sale price and from the prices used by other investment companies to calculate their NAVs. Determination of fair value is uncertain because it involves subjective judgments and estimates.

There can be no assurance that the Fund's valuation of a security will not differ from the amount that it realizes upon the sale of such security. Those differences could have a material impact to the Fund. The NAV shown in the Fund's financial statements may vary from the NAV published by the Fund as of its period end because portfolio securities transactions are accounted for on the trade date (rather than the day following the trade date) for financial statement purposes.

Deferred Financing Costs on the Preferred Stock

Deferred financing costs on the preferred shares consist of fees and expenses incurred in connection with the closing of the preferred stock offerings, and are capitalized at the time of payment. Based on ASC 480-10-S99, preferred stock that, by its terms, is contingently redeemable upon the occurrence of an event that is outside of the issuer's control should be classified as mezzanine equity; therefore, these costs are only amortized once it is probable the shares will become redeemable. As of December 31, 2022, the Fund is compliant with all contingent redemption provisions of the preferred offering, therefore the financing costs are currently unamortized until probable. Deferred financing costs of $5.2 million are presented net with the mezzanine equity on the Statement of Assets and Liabilities.

Issuer	Shares at December 31, 2021	Beginning Value as of December 31, 2021	Issuance Net Liquidation Value	Deferred Issuance Costs	Paydowns	Balance net of Deferred Financing Costs at December 31, 2022	Shares at December 31, 2022
Cumulative preferred shares (Series A)	5,800,000	$ 139,756,249	$145,000,000	$5,243,751	$ —	$ 139,756,249	5,800,000

Fair Value Measurements

The Fund has performed an analysis of all existing investments and derivative instruments to determine the significance and character of inputs to their fair value determination. The levels of fair value inputs used to measure the Fund's investments are characterized into a fair value hierarchy. Where inputs for an asset or liability fall into more than one level in the fair value hierarchy, the investment is classified in its entirety based on the lowest level input that is significant to that investment's valuation. The three levels of the fair value hierarchy are described below:

Level 1 — Quoted unadjusted prices for identical instruments in active markets to which the Fund has access at the date of measurement;

Level 2 — Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active, but are valued based on executed trades; broker quotations that constitute an executable price; and alternative pricing sources supported by observable inputs are classified within Level 2. Level 2 inputs are either directly or indirectly observable for the asset in connection with market data at the measurement date; and

Level 3 — Model derived valuations in which one or more significant inputs or significant value drivers are unobservable. In certain cases, investments classified within Level 3 may include securities for which the Fund has obtained indicative quotes from broker-dealers that do not necessarily represent prices the broker may be willing to trade on, as such quotes can be subject to material management judgment. Unobservable inputs are those inputs that reflect the Fund's own assumptions that market participants would use to price the asset or liability based on the best available information.

NOTES TO FINANCIAL STATEMENTS (continued)

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

As of December 31, 2022, the Fund's investments consisted of common stocks, U.S. senior loans, collateralized loan obligations, preferred stock, LLC interests, exchange-traded funds, warrants, registered investment companies, corporate bonds and notes, a master limited partnership, rights, repurchase agreements, a reverse repurchase agreement, and a cash equivalent. The fair value of the Fund's senior loans and bonds are generally based on quotes received from brokers or independent pricing services. Loans, bonds and asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the measurement date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, indicative bids, or a limited number of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable. The fair value of the Fund's futures contracts are valued based on the settlement price established each day by the board of trade or exchange on which they principally trade and are classified as Level 1 liabilities.

The fair value of the Fund's common stocks, registered investment companies, rights and warrants that are not actively traded on national exchanges are generally priced using quotes derived from implied values, indicative bids, or a limited amount of actual trades and are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable. Exchange-traded options are valued based on the last trade price on the primary exchange on which they trade. If an option does not trade, the mid-price, which is the mean of the bid and ask price, is utilized to value the option.

At the end of each calendar quarter, the Investment Adviser evaluates the Level 2 and 3 assets and liabilities for changes in liquidity, including but not limited to: whether a broker is willing to execute at the quoted price, the depth and consistency of prices from third party services, and the existence of contemporaneous, observable trades in the market. Additionally, the Investment Adviser evaluates the Level 1 and 2 assets and liabilities on a quarterly basis for changes in listings or delistings on national exchanges.

Reverse repurchase agreements are priced at their acquisition cost, and assessed for credit adjustments, which represent fair value. These investments will generally be categorized as Level 2 liabilities.

Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market value, the fair value of the Fund's investments may fluctuate from period to period. Additionally, the fair value of investments may differ significantly from the values that would have been used had a ready market existed for such investments and may differ materially from the values the Fund may ultimately realize. Further, such investments may be subject to legal and other restrictions on resale or otherwise be less liquid than publicly traded securities.

The inputs or methodology used for valuing securities are not necessarily an indication of the risk associated with investing in those securities. A summary of the inputs used to value the Fund's assets and liabilities as of December 31, 2022, is as follows:

	Total value at December 31, 2022 ($)	Level 1 Quoted Price ($)	Level 2 Significant Observable Inputs ($)	Level 3 Significant Unobservable Inputs ($)
Highland Income Fund				
Assets				
Common Stocks				
Communication Services	11,344,608	1,457,250	—	9,887,358
Consumer Discretionary	13,895	—	—	13,895
Energy	—	—	—	—[1]
Gaming/Leisure	5,635,995	—	—	5,635,995
Healthcare	22,261,348	—	—	22,261,348
Materials	1,495,160	—	1,495,160	—
Real Estate	546,560,722	119,138,060	—	427,422,662

NOTES TO FINANCIAL STATEMENTS (continued)

December 31, 2022 **Highland Income Fund**

	Total value at December 31, 2022 ($)	Level 1 Quoted Price ($)	Level 2 Significant Observable Inputs ($)	Level 3 Significant Unobservable Inputs ($)
U.S. Senior Loans				
Communication Services	8,616,085	—	—	8,616,085
Energy	6,389,333	—	6,389,333	—
Gaming/Leisure	13,833,090	—	—	13,833,090
Healthcare	28,151,521	—	12,742,864	15,408,657
Information Technology	59,271,980	—	—	59,271,980
Real Estate	108,158,431	—	—	108,158,431
Retail	3,570,052	—	3,570,052	—
Collateralized Loan Obligations	103,784,904	—	103,784,904	—
LLC Interest	59,010,136	—	—	59,010,136
Warrants				
Energy	38,073,368	—	38,073,368	—
Preferred Stock				
Financials	4,770,790	2,818,544	686,000	1,266,246
Healthcare	22,083,025	—	—	22,083,025
Real Estate	5,813,329	5,813,329	—	—
Registered Investment Company	458,274	458,274	—	—
Exchange-Traded Funds	11,867,027	11,867,027	—	—
Corporate Bonds & Notes				
Communication Services	2,857	—	2,857	—
Financials	3,480,000	—	3,480,000	—
Industrials	—	—	—	—[1]
Utilities	—	—	—[1]	—
Master Limited Partnership				
Energy	2,127,104	2,127,104	—	—
Rights				
Utilities	6,228	—	6,228	—
Repurchase Agreements	402,719	402,719	—	—
Cash Equivalent	25,072,014	25,072,014	—	—
Total Assets	1,092,253,995	169,154,321	170,230,766	752,868,908
Liabilities				
Securities Sold Short				
Common Stocks				
Information Technology	(6,790,542)	(6,790,542)	—	—
Reverse Repurchase Agreement	(21,722,000)	—	(21,722,000)	—
Total Liabilities	(28,512,542)	(6,790,542)	(21,722,000)	—
Total	1,063,741,453	162,363,779	148,508,766	752,868,908

[1] This category includes securities with a value of zero.

NOTES TO FINANCIAL STATEMENTS (continued)

December 31, 2022 **Highland Income Fund**

The table below sets forth a summary of changes in the Fund's assets measured at fair value using significant unobservable inputs (Level 3) for the year ended December 31, 2022.

	Balance as of December 31, 2021 $	Transfers Into Level 3 $	Transfers Out of Level 3 $	Accrued Discounts (Premiums) $	Distribution to Return Capital $	Realized Gain (Loss) $	Net Change in Unrealized Appreciation (Depreciation) $	Net Purchases $	Net Sales $	Balance as of December 31, 2022 $	Change in Unrealized Appreciation (Depreciation) from Investments held at December 31, 2022 $
Common Stocks											
Communication Services	9,098,844	—	—	—	—	—	788,514	—	—	9,887,358	788,514
Consumer Discretionary	31,683	—	—	—	(82,427)	—	64,639	—	—	13,895	63,639
Gaming/Leisure	3,321,591	—	—	—	—	—	2,314,404	—	—	5,635,995	2,314,404
Healthcare	385,699	—	—	—	—	—	(24,095,605)	45,971,254	—	22,261,348	(24,095,605)
Real Estate	379,145,661	—	—	—	(190,163,539)	(509,145)	(21,111,900)	260,061,585	—	427,422,662	(21,294,900)
U.S. Senior Loans											
Communication Services	7,755,762	—	—	31	—	—	(45,453)	905,745	—	8,616,085	(45,453)
Gaming/Leisure	16,635,684	—	—	—	—	(67,924,983)	63,017,931	3,533,154	(1,428,696)	13,833,090	(4,191,765)
Healthcare	48,880,946	—	—	—	—	—	20,545,024	40,848,841	(94,866,154)[1]	15,408,657	(25,270,184)
Information Technology	49,533,000	—	—	—	—	—	5,327,744	4,411,236	—	59,271,980	5,327,744
Real Estate	80,337,570	—	—	—	—	—	(6,018,912)	173,652,315	(139,812,542)[1]	108,158,431	(6,018,912)
Utilities	59,423	—	—	—	—	(1,840,163)	1,780,740	—	—	—	—
Collateralized Loan Obligations	1,471,635	—	(1,471,635)	—	—	—	—	—	—	—	—
LLC Interest	46,562,687	—	—	—	—	(333,599)	8,637,141	15,665,294	(11,521,387)	59,010,136	8,028,886
Preferred Stock											
Financials	133,611,395	24,278,638	—	—	375,432	92,371,672	(143,630,849)	—	(105,740,042)	1,266,246	(50,964,592)
Healthcare	—	—	—	—	—	—	913,012	21,170,013	—	22,083,025	913,012
Real Estate	249,514	—	—	—	—	111,635	—	—	(361,149)	—	—
Claims	52,138	—	—	—	—	(1,814,883)	1,762,745	—	—	—	—
Total	777,133,232	24,278,638	(1,471,635)	31	(189,870,534)	20,060,534	(89,750,825)	566,219,437	(353,729,970)	752,868,908	(114,445,212)

[1] Sales from paydowns. There was no realized gain (loss).

Investments designated as Level 3 may include assets valued using quotes or indications furnished by brokers which are based on models or estimates without observable inputs and may not be executable prices. In light of the developing market conditions, the Investment Adviser continues to search for observable data points and evaluate broker quotes and indications received for portfolio investments.

NOTES TO FINANCIAL STATEMENTS (continued)

December 31, 2022 **Highland Income Fund**

Determination of fair value is uncertain because it involves subjective judgements and estimates that are unobservable. The following is a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy:

Category	Fair Value at 12/31/22 $	Valuation Technique	Unobservable Inputs	Range Input Value(s) (Average Input Value)
Common Stocks	465,221,258	Multiples Analysis	Unadjusted Price/MHz-PoP	$0.09 - $0.95 ($0.52)
			NAV / sh multiple	1.10x - 1.45x (1.28x)
			Revenue Multiples	0.32x -0.42x (0.37x)
		Net Asset Value	N/A	$28.00
		Liquidation Analysis	Recovery Rate	40% -100% (70%)
		Discounted Cash Flow	Discount Rate	8.75% -32.50% (15.70%)
			Capitalization Rate	5.13% - 9.50% (6.75%)
		Transaction Analysis	Multiple of EBITDA less CAPEX	12.50x - 15.00x (13.75x)
			Price per Sq. Ft.	$22.00 - $33.00 ($28.67)
		Transaction Indication of Value	Enterprise Value ($mm)	$872 -$969 ($920.50)
			Cost Price ($mm)	$56.20
U.S. Senior Loans	205,288,243	Discounted Cash Flow	Discount Rate	8.00%- 20.00% (11.18%)
		Volatility Analysis	Volatility	30.00% -60.00% 46.67%)
Preferred Stock	23,349,271	NAV Approach	Discount Rate	70.0%
		Option Pricing Model	Volatility	40% - 60% (50%)
		Transaction Indication of Value	Recap Price	$11.10
LLC Interest	59,010,136	Discounted Cash Flow	Discount Rate	4.73% - 14.00% (9.22%)
	752,868,908			

In addition to the unobservable inputs utilized for various valuation methodologies, the Fund frequently uses a combination of two or more valuation methodologies to determine fair value for a single holding. In such instances, the Fund assesses the methodologies and ascribes weightings to each methodology. The weightings ascribed to any individual methodology ranged from as low as 10% to as high as 90% as of December 31, 2022. The selection of weightings is an inherently subjective process, dependent on professional judgement. These selections may have a material impact to the concluded fair value for such holdings.

The significant unobservable inputs used in the fair value measurement of the Fund's Preferred Stock are the discount rate and volatility. Significant decreases (increases) in any of those inputs in isolation could result in a significantly higher (lower) fair value measurement.

The significant unobservable inputs used in the fair value measurement of the Fund's U.S. Senior Loans are the discount rate and volatility. Significant decreases (increases) in any of those inputs in isolation could result in a significantly higher (lower) fair value measurement.

The significant unobservable input used in the fair value measurement of the Fund's LLC interests is the discount rate. Significant decreases (increases) in any of those inputs in isolation could result in a significantly higher (lower) fair value measurement.

The significant unobservable inputs used in the fair value measurement of the Fund's common stock are the unadjusted price/MHz-PoP multiple, EBITDA multiple, revenue multiple, discount rate, price per sq. ft., enterprise value, NAV per share multiple, and capitalization rate. Significant increases (decreases) in any of those inputs in isolation could result in a significantly lower (higher) fair value measurement. Generally, a change in the assumption used for the risk discount is accompanied by a directionally opposite change in the assumption for the price/MHz-PoP multiple.

Security Transactions

Security transactions are accounted for on the trade date. Realized gains/(losses) on investments sold are recorded on the basis of the specific identification method for both financial statement and U.S. federal income tax purposes taking into account any foreign taxes withheld.

Income Recognition

Corporate actions (including cash dividends) are recorded on the ex-dividend date, net of applicable withholding taxes, except for certain foreign corporate actions, which are recorded as soon after ex-dividend date as such information

becomes available and is verified. Interest income and PIK are recorded on the accrual basis.

Accretion of discount on taxable bonds and loans is computed to the maturity date, while amortization of premium on taxable bonds and loans is computed to the earliest call date, whichever is shorter, both using the effective yield method. Withholding taxes on foreign dividends have been provided for in accordance with the Fund's understanding of the applicable country's tax rules and rates.

The Fund records distributions received from investments in real estate investment trusts ("REIT") and partnerships in excess of income from underlying investments as a reduction of cost of investments and/or realized gain. Such amounts are based on estimates if actual amounts are not available, and actual amounts of income, realized gain and return of capital may differ from the estimated amounts. The Fund adjusts the estimated amounts once the issuers provide information about the actual composition of the distributions.

U.S. Federal Income Tax Status

The Fund is treated as a separate taxpayer for U.S. federal income tax purposes. The Fund intends to qualify each year as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986 (the "Code"), as amended, and will distribute substantially all of its taxable income and gains, if any, for the tax year, and as such will not be subject to U.S. federal income taxes. In addition, the Fund intends to distribute, in each calendar year, all of its net investment income, capital gains and certain other amounts, if any, such that the Fund should not be subject to U.S. federal excise tax. Therefore, no U.S. federal income or excise tax provisions are recorded. The Fund recognizes interest and penalties, if any, related to unrecognized tax benefits as income tax expense in Statement of Operations. There were no interest or penalties during the year ended December 31, 2022.

The Investment Adviser has analyzed the Fund's tax positions taken on U.S. federal income tax returns for all open tax years (current and prior three tax years), and has concluded that no provision for U.S. federal income tax is required in the Fund's financial statements. The Fund's U.S. federal and state income and U.S. federal excise tax returns for tax years for which the applicable statutes of limitations have not expired are subject to examination by the Internal Revenue Service and state departments of revenue. Furthermore, the Investment Adviser of the Fund is also not aware of any tax positions for which it is reasonably possible that the total amounts of unrecognized tax benefits will significantly change in the next 12 months.

Distributions to Shareholders

The Fund plans to pay distributions from net investment income monthly and net realized capital gains annually to common shareholders. To permit the Fund to maintain more stable monthly distributions and annual distributions, the Fund may from time to time distribute less than the entire amount of income and gains earned in the relevant month or year, respectively. The undistributed income and gains would be available to supplement future distributions. In certain years, this practice may result in the Fund distributing, during a particular taxable year, amounts in excess of the amount of income and gains earned therein. Such distributions would result in a portion of each distribution occurring in that year to be treated as a return of capital to shareholders. Shareholders of the Fund will automatically have all distributions reinvested in Common Shares of the Fund issued by the Fund in accordance with the Fund's Dividend Reinvestment Plan (the "Plan") unless an election is made to receive cash. The number of newly issued Common Shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the lesser of (i) the NAV per Common Share determined on the Declaration Date and (ii) the market price per Common Share as of the close of regular trading on the NYSE on the Declaration Date. Participants in the Plan requesting a sale of securities through the plan agent of the Plan are subject to a sales fee and a brokerage commission.

Statement of Cash Flows

Information on financial transactions which have been settled through the receipt or disbursement of cash is presented in the Statement of Cash Flows. The cash amount shown in the Statement of Cash Flows is the amount included within the Fund's Statement of Assets and Liabilities and includes cash on hand at its custodian bank and/or sub-custodian bank(s) cash equivalents, foreign currency and restricted cash held at broker(s).

Cash & Cash Equivalents

The Fund considers liquid assets deposited with a bank and certain short-term debt instruments of sufficient credit quality with original maturities of three months or less to be cash equivalents. These investments represent amounts held with financial institutions that are readily accessible to pay Fund expenses or purchase investments. Cash and cash equivalents are valued at cost plus accrued interest, which approximates fair value. The value of cash equivalents denominated in foreign currencies is determined by converting to U.S. dollars on the date of this financial report.

These balances may exceed the federally insured limits under the Federal Deposit Insurance Corporation ("FDIC").

NOTES TO FINANCIAL STATEMENTS (continued)

Foreign Currency

Accounting records of the Fund are maintained in U.S. dollars. Foreign currencies, investments and other assets and liabilities denominated in foreign currencies are translated into U.S. dollars at exchange rates using the current 4:00 PM London Time Spot Rate. Fluctuations in the value of the foreign currencies and other assets and liabilities resulting from changes in exchange rates, between trade and settlement dates on securities transactions and between the accrual and payment dates on dividends, interest income and foreign withholding taxes, are recorded as unrealized foreign currency gains/(losses). Realized gains/(losses) and unrealized appreciation/(depreciation) on investment securities and income and expenses are translated on the respective dates of such transactions. The effects of changes in foreign currency exchange rates on investments in securities are not segregated in the Statement of Operations from the effects of changes in market prices of those securities, but are included with the net realized and unrealized gain or loss on investment securities.

Securities Sold Short

The Fund may sell securities short. A security sold short is a transaction in which the Fund sells a security it does not own in anticipation that the market price of that security will decline. When the Fund sells a security short, it must borrow the security sold short from a broker-dealer and deliver it to the buyer upon conclusion of the transaction. The Fund may have to pay a fee to borrow particular securities and is obligated to pay over any dividends or other payments received on such borrowed securities. In some circumstances, the Fund may be allowed by its prime broker to utilize proceeds from securities sold short to purchase additional investments, resulting in leverage. Cash held as collateral for securities sold short is classified as restricted cash on the Statement of Assets and Liabilities, as applicable. Restricted cash in the amount of $6,782,322 was held with the broker for the Fund. Securities valued at $39,693,247 were posted in the Fund's segregated account as collateral.

Other Fee Income

Fee income may consist of origination/closing fees, amendment fees, administrative agent fees, transaction break-up fees and other miscellaneous fees. Origination fees, amendment fees, and other similar fees are nonrecurring fee sources. Such fees are received on a transaction by transaction basis and do not constitute a regular stream of income and are recognized when incurred.

Conversion Costs

In conjunction with the shareholder proposal to convert the Fund from an open-end fund to a C-Corporation (see Note 1), the Fund has incurred legal fees and other fees in preparation of this conversion. These conversion costs include both actual and estimated fees, and are included in the Statement of Operations as conversion fees.

Note 3. Derivative Transactions

The Fund is subject to equity securities risk, interest rate risk and currency risk in the normal course of pursuing its investment objectives. The Fund enters into derivative transactions for the purpose of hedging against the effects of changes in the value of portfolio securities due to anticipated changes in market conditions, to gain market exposure for residual and accumulating cash positions and for managing the duration of fixed income investments.

Futures Contracts

A futures contract represents a commitment for the future purchase or sale of an asset at a specified price on a specified date. The Fund may invest in interest rate, financial and stock or bond index futures contracts subject to certain limitations. The Fund invests in futures contracts to manage its exposure to the stock and bond markets and fluctuations in currency values. Buying futures tends to increase the Fund's exposure to the underlying instrument while selling futures tends to decrease the Fund's exposure to the underlying instrument, or economically hedge other Fund investments. With futures contracts, there is minimal counterparty credit risk to the Fund since futures contracts are exchange-traded and the exchange's clearinghouse, as counterparty to all traded futures, guarantees the futures against default. The Fund's risks in using these contracts include changes in the value of the underlying instruments, non-performance of the counterparties under the contracts' terms and changes in the liquidity of the secondary market for the contracts. Futures contracts are valued at the settlement price established each day by the board of trade or exchange on which they principally trade.

Upon entering into a financial futures contract, the Fund is required to pledge to the broker an amount of cash and/or other assets equal to a certain percentage of the contract amount, known as initial margin deposit. Subsequent payments, known as variation margins, are made or can be received by the Fund each day, depending on the daily fluctuation in the fair value of the underlying security. The Fund records an unrealized gain/(loss) equal to the daily variation margin. Should market conditions move unexpectedly, the Fund may not achieve the anticipated benefits of the futures contracts and may incur a loss. The Fund recognizes a realized gain/(loss) on the expiration or closing of a futures contract.

During the year ended December 31, 2022, the Fund entered into futures transactions for the purpose of hedging against the effects of changes in the value of portfolio securities due

NOTES TO FINANCIAL STATEMENTS (continued)

to anticipated changes in market conditions, and to gain market exposure for residual and accumulating cash positions. Cash held as collateral for futures contracts is shown on the Statement of Assets and Liabilities as "Restricted Cash — Futures." As of December 31, 2022, the Fund did not have any cash held as collateral for futures contract.

Options

The Fund may utilize options on securities or indices to varying degrees as part of their principal investment strategy. An option on a security is a contract that gives the holder of the option, in return for a premium, the right to buy from (in the case of a call) or sell to (in the case of a put) the writer of the option the security underlying the option at a specified exercise or "strike" price. The writer of an option on a security has the obligation upon exercise of the option to deliver the underlying security upon payment of the exercise price or to pay the exercise price upon delivery of the underlying security. The Fund may hold options, write option contracts, or both.

If an option written by the Fund expires unexercised, the Fund realizes on the expiration date a capital gain equal to the premium received by the Fund at the time the option was written. If an option purchased by the Fund expires unexercised, the Fund realizes a capital loss equal to the premium paid. Prior to the earlier of exercise or expiration, an exchange-traded option may be closed out by an offsetting purchase or sale of an option of the same series (type, underlying security, exercise price and expiration). There can be no assurance, however, that a closing purchase or sale transaction can be effected when the Fund desires.

The Fund will realize a capital gain from a closing purchase transaction if the cost of the closing option is less than the premium received from writing the option, or, if the cost of the closing option is more than the premium received from writing the option, a capital loss. The Fund will realize a capital gain from a closing sale transaction if the premium received from the sale is more than the original premium paid when the option position was opened, or a capital loss, if the premium received from a sale is less than the original premium paid.

As of December 31, 2022, the Fund did not hold written options.

Reverse Repurchase Agreements

The Fund may engage in reverse repurchase agreement transactions with respect to instruments that are consistent with the Fund's investment objective or policies. This creates leverage for the Fund because the cash received can be used to purchase other securities.

A reverse repurchase transaction is a repurchase transaction in which the Fund is the seller of securities or other assets and agrees to repurchase them at a date certain or on demand. Pursuant to the Repurchase Agreement, the Fund may agree to sell securities or other assets to Mizuho Securities for an agreed upon price (the "Purchase Price"), with a simultaneous agreement to repurchase such securities or other assets from Mizuho Securities for the Purchase Price plus a price differential that is economically similar to interest. The price differential is negotiated for each transaction. This creates leverage for the Fund because the cash received can be used to purchase other securities.

At December 31, 2022, the Fund had investments in a reverse repurchase agreement with a gross value of $21,722,000, which is reflected as reverse repurchase agreements on the consolidated statement of assets and liabilities. The value of the related collateral exceeded the value of the reverse repurchase agreements at December 31, 2022. The collateral pledged for the reverse repurchase agreements includes Agency Collateralized Mortgage Obligations and cash, both of which are reflected on the consolidated statement of assets and liabilities. The Fund's average daily balance was $7,124,753 at a weighted average interest rate of 4.97% for the days outstanding.

Additional Derivative Information

The Fund is required to disclose; a) how and why an entity uses derivative instruments; b) how derivative instruments and related hedged items are accounted for; c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows; and d) how the netting of derivatives subject to master netting arrangements (if applicable) affects the net exposure of the Fund related to the derivatives.

The fair value of derivative instruments on the Statement of Assets and Liabilities have the following risk exposure at December 31, 2022:

	Fair Value	
Risk Exposure	Asset Derivative	Liability Derivative
Equity Price Risk	$ —[1]	$ —[1]

[1] As of December 31, 2022, the Fund did not have any outstanding derivatives. Includes cumulative unrealized depreciation of futures contracts as reported in the Investment Portfolio, if applicable, and within the components of net assets section of the Statement of Assets and Liabilities.

NOTES TO FINANCIAL STATEMENTS (continued)

The effect of derivative instruments on the Statement of Operations for the year ended December 31, 2022, is as follows:

Risk Exposure	Net Realized Gain/(Loss) on Derivatives	Net Change in Unrealized Appreciation/ (Depreciation) on Derivatives
Equity Price Risk	$ 41,955,904[(1)]	$ 4,568,959[(2)]

(1) Statement of Operations location: Realized gain (loss) on futures and written options contracts.
(2) Statement of Operations location: Net change in unrealized appreciation (depreciation) on futures contracts.

The average monthly volume of derivative activity for the year ended December 31, 2022, is as follows:

Income Fund	Units/ Contracts	Appreciation/ (Depreciation)
Futures Contracts	—	$ 1,164,004

The Fund had insignificant levels of written options transactions during the year ended December 31, 2022.

Note 4. Securities Lending

Effective January, 7, 2020, the Fund entered into a securities lending agreement with The Bank of New York Mellon (“BNY” or the “Lending Agent”).

Securities lending transactions are entered into by the Fund under the Securities Lending Agreement (“SLA”), which permits the Fund, under certain circumstances such as an event of default, to offset amounts payable by the Fund to the same counterparty against amounts receivable from the counterparty to create a net payment due to or from the Fund.

The following is a summary of securities lending agreements held by the Fund, with cash collateral of overnight maturities, which would be subject to offset as of December 31, 2022:

Gross Amount of Recognized Assets (Value of Securities on Loan)	Value of Cash Collateral Received[(1)]	Value of Non-Cash Collateral Received	Net Amount
$389,253	$ 389,253	$ —	$ —

(1) Collateral received in excess of market value of securities on loan is not presented in this table. The total cash collateral received by the Fund is disclosed in the Statement of Assets and Liabilities.

Amounts designated as (—) are $0.

The value of loaned securities and related collateral outstanding at December 31, 2022 are shown in the Investment Portfolio. The value of the collateral held may be temporarily less than that required under the lending contract. As of December 31, 2022, the cash collateral was invested in repurchase agreements with the following maturities:

Remaining Contractual Maturity of the Agreements, as of December 31, 2022

	Overnight and Continuous	<30 Days	Between 30 & 90 Days	>90 Days	Total
Repurchase Agreements	$ 402,719	$ —	$ —	$ —	$402,719
Total	$ 402,719	$ —	$ —	$ —	$402,719

Amounts designated as (—) are $0.

The Fund could seek additional income by making secured loans of its portfolio securities through its custodian. Such loans would be in an amount not greater than one-third of the value of the Fund’s total assets. BNY would charge a fund fees based on a percentage of the securities lending income.

The fair value of the loaned securities is determined at the close of each business day of the Fund and any additional required collateral is delivered to the Fund, or excess collateral is returned by the Fund, on the next business day.

The Fund would receive collateral consisting of cash (U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, sovereign debt, convertible bonds, irrevocable bank letters of credit or such other collateral as may be agreed on by the parties to a securities lending arrangement, initially with a value of 102% or 105% of the market value of the loaned securities and thereafter maintained at a value of 100% of the market value of the loaned securities. If the collateral consists of non-cash collateral, the borrower would pay the Fund a loan premium fee. If the collateral consists of cash, BNY would reinvest the cash in repurchase agreements and money market accounts. Although voting rights, or rights to consent, with respect to the loaned securities pass to the borrower, the Fund would recall the loaned securities upon reasonable notice in order that the securities could be voted by the Fund if the holders of such securities are asked to vote upon or consent to matters materially affecting the investment. The Fund also could call such loans in order to sell the securities involved.

Securities lending transactions were entered into pursuant to SLAs, which would provide the right, in the event of default (including bankruptcy or insolvency) for the

NOTES TO FINANCIAL STATEMENTS (continued)

non-defaulting party to liquidate the collateral and calculate a net exposure to the defaulting party or request additional collateral. In the event that a borrower defaulted, the Fund, as lender, would offset the market value of the collateral received against the market value of the securities loaned. The value of the collateral is typically greater than that of the market value of the securities loaned, leaving the lender with a net amount payable to the defaulting party. However, bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against such a right of offset in the event of an SLA counterparty's bankruptcy or insolvency. Under the SLA, the Fund can reinvest cash collateral, or, upon an event of default, resell or repledge the collateral, and the borrower can resell or repledge the loaned securities. The risks of securities lending also include the risk that the borrower may not provide additional collateral when required or may not return the securities when due. To mitigate this risk, the Fund benefits from a borrower default indemnity provided by BNY. BNY's indemnity generally provides for replacement of securities lent or the approximate value thereof.

Note 5. U.S. Federal Income Tax Information

The character of income and gains to be distributed is determined in accordance with income tax regulations which may differ from GAAP. These differences include (but are not limited to) investments organized as partnerships for tax purposes, tax treatment of organizational start-up costs, losses deferred due to wash sale transactions, and tax attributes from Fund reorganizations. Reclassifications are made to the Fund's capital accounts to reflect income and gains available for distribution (or available capital loss carryovers) under income tax regulations. These reclassifications have no impact on net investment income, realized gains or losses, or NAV of the Fund. The calculation of net investment income per share in the Financial Highlights table excludes these adjustments.

For the year ended December 31, 2022, permanent differences chiefly resulting from return of capital distributions paid by the Fund were identified and reclassified among the components of the Fund's net assets as follows:

Distributable Earnings (Accumulated Losses)	Paid-in-Capital
$4,877,268	$ (4,877,268)

At December 31, 2022, the Fund's most recent tax year end, components of distributable earnings (accumulated losses) on a tax basis are as follows:

Other Temporary Losses	Accumulated Capital Losses	Unrealized Appreciation (Depreciation)[1]
$—	$(193,465,924)	$(315,342,241)

[1] Any differences between book-basis and tax-basis net unrealized appreciation/(depreciation) are primarily due to wash sales, non-taxable dividends, partnerships, PFICs, REIT basis adjustments and difference in premium amortization methods for book and tax.

As of December 31, 2022, the Fund has capital loss carryovers as indicated below. The capital loss carryovers are available to offset future realized capital gains to the extent provided in the Code and regulations promulgated thereunder. To the extent that these carryover losses are used to offset future capital gains, the gains offset will not be distributed to shareholders. During the year ended December 31, 2022, the Fund utilized $142,321,291 of capital carryforwards to offset capital gains.

No Expiration Short- Term	No Expiration Long-Term	Total
$—	$(193,465,924)	$(193,465,924)

The tax character of distributions paid during the last two fiscal years ended December 31, is as follows:

	Ordinary Income	Long-term Capital Gain	Return of Capital
2022	$35,874,540	$ —	$27,155,040
2021	15,595,827	—	50,110,849

Amounts designated as (—) are $0.

Unrealized appreciation (depreciation) at December 31, 2022, based on cost of investments, securities sold short and foreign currency transactions for U.S. federal income tax purposes was:

Gross Appreciation	Gross Depreciation	Net Appreciation/ (Depreciation)	Cost
$131,976,649	$ (447,318,890)	$ (315,342,241)	$ 1,405,718,901

Qualified Late Year Ordinary and Post October Losses

Under current laws, certain capital losses and specified losses realized after October 31 may be deferred and treated as occurring on the first day of the following fiscal year. For the fiscal year ended December 31, 2022, the Fund did not defer any qualified late year ordinary nor post October losses.

NOTES TO FINANCIAL STATEMENTS (continued)

Note 6. Investment Advisory, Administration and Trustee Fees

For its investment advisory services, the Fund pays the Investment Adviser a monthly fee, computed and accrued daily, based on an annual rate of the Fund's Average Daily Managed Assets. Average Daily Managed Assets of a Fund means the average daily value of the total assets of a Fund less all accrued liabilities of a Fund (other than the aggregate amount of any outstanding borrowings constituting financial leverage). On occasion, the Investment Adviser voluntarily waives additional fees to the extent assets are invested in certain affiliated investments.

The table below shows the Fund's contractual advisory fee with the Investment Adviser for the year ended December 31, 2022:

Annual Fee Rate to the Investment Advisor	> 1 Billion	> 2 Billion
0.65%	0.60%	0.55%

Administration Fee

The Investment Adviser provides administrative services to the Fund. For its services, the Investment Adviser receives an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Fund's Managed Assets. Under a separate sub-administration agreement, the Investment Adviser delegates certain administrative functions and pays the sub-administrator directly for these sub-administration services. Effective October 1, 2018, the Investment Adviser entered into an administrative services agreement with SEI Investments Global Funds Services, a wholly owned subsidiary of SEI Investments Company.

Fees Paid to Officers and Trustees

Each Trustee who oversees all of the funds in the NexPoint Fund Complex receives an annual retainer of $150,000 payable in quarterly installments and allocated among each portfolio in the NexPoint Fund Complex based on relative net assets. The annual retainer for a Trustee who does not oversee all of the funds in the NexPoint Fund Complex is prorated based on the portion of the $150,000 annual retainer allocable to the funds overseen by such Trustee. The Chairman of the Audit Committee and the Chairman of the Board each receive an additional annual payment of $10,000 payable in quarterly installments and allocated among each portfolio in the NexPoint Fund Complex based on relative net assets. The "NexPoint Fund Complex" consists of all of the registered investment companies advised by the Investment Adviser or its affiliated advisers as of the date of this report and NexPoint Capital, Inc., a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

The Fund pays no compensation to its officers, all of whom are employees of the Investment Adviser or one of its affiliates.

Trustees are reimbursed for actual out-of-pocket expenses relating to attendance at meetings.

The Trustees do not receive any separate compensation in connection with service on Committees or for attending Board or Committee Meetings. The Trustees do not have any pension or retirement plan.

Expedited Settlement Agreements

On June 15, 2017 and May 14, 2019, the Fund entered into Expedited Settlement Agreements with two major dealers in the floating rate loan market, pursuant to which the Fund has the right to designate certain loans it sells to the dealer to settle on or prior to three days from the trade date in exchange for a quarterly fee (the "Expedited Settlement Agreements"). The Expedited Settlement Agreements are designed to reduce settlement times from the standard seven days to three days for eligible loans. For the year ended December 31, 2022, the Expedited Settlement Agreement was not used by the Fund.

While the Expedited Settlement Agreements are intended to provide the Fund with additional liquidity with respect to such loans, and may not represent the exclusive method of expedited settlement of such loans, no assurance can be given that the Expedited Settlement Agreements or other methods for expediting settlements will provide the Fund with sufficient liquidity in the event of abnormally large redemptions.

Other Matters

NexPoint has entered into a Services Agreement (the "Services Agreement") with Skyview Group ("Skyview"), effective February 25, 2021, pursuant to which NexPoint will receive administrative and operational support services to enable it to provide the required advisory services to the Fund. The Investment Adviser, and not the Fund, will compensate all Investment Adviser and Skyview personnel who provide services to the Fund.

Effective July 12, 2022, certain Skyview personnel became dual-employees of NexPoint Services, Inc., a wholly-owned subsidiary of the Investment Adviser. The same services are being performed by the dual-employees. The Investment Adviser, and not the Fund, will compensate all Investment Adviser, Skyview, and dual-employee personnel who provide services to the Fund.

Indemnification

Under the Fund's organizational documents, the officers and Trustees have been granted certain indemnification rights against certain liabilities that may arise out of performance

of their duties to the Fund. Additionally, in the normal course of business, the Fund may enter into contracts with service providers that contain a variety of indemnification clauses. The Fund's maximum exposure under these arrangements is dependent on future claims that may be made against the Fund and, therefore, cannot be estimated.

Note 7. Disclosure of Significant Risks and Contingencies

The Fund's investments expose the Fund to various risks, certain of which are discussed below. Please refer to the Fund's Prospectus and Statement of Additional Information for a full listing of risks associated with the Fund's investments.

Concentration in Real Estate Securities Risk

Although the Fund does not invest directly in real estate, the Fund will concentrate its investments in investment vehicles that invest principally in real estate and real estate related securities, its portfolio will be significantly impacted by the performance of the real estate market and may experience more volatility and be exposed to greater risk than a more diversified portfolio. The values of companies engaged in the real estate industry are affected by: (i) changes in general economic and market conditions; (ii) changes in the value of real estate properties; (iii) risks related to local economic conditions, overbuilding and increased competition; (iv) increases in property taxes and operating expenses; (v) changes in zoning laws; (vi) casualty and condemnation losses; (vii) variations in rental income, neighborhood values or the appeal of property to tenants; (viii) the availability of financing and (ix) changes in interest rates and leverage.

Counterparty Risk

Counterparty risk is the potential loss the Fund may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Counterparty risk is measured as the loss the Fund would record if its counterparties failed to perform pursuant to the terms of their obligations to the Fund. Because the Fund may enter into over-the-counter forwards, options, swaps and other derivative financial instruments, the Fund may be exposed to the credit risk of its counterparties. To limit the counterparty risk associated with such transactions, the Fund conducts business only with financial institutions judged by the Investment Adviser to present acceptable credit risk.

Credit Risk

The value of debt securities owned by the Fund may be affected by the ability of issuers to make principal and interest payments and by the issuer's or counterparty's credit quality. If an issuer cannot meet its payment obligations or if its credit rating is lowered, the value of its debt securities may decline. Lower quality bonds are generally more sensitive to these changes than higher quality bonds. Non-payment would result in a reduction of income to the Fund, a reduction in the value of the obligation experiencing non-payment and a potential decrease in the Fund's net asset value and the market price of the Fund's shares.

Currency Risk

A portion of the Fund's assets may be quoted or denominated in non-U.S. currencies. These securities may be adversely affected by fluctuations in relative currency exchange rates and by exchange control regulations. The Fund's investment performance may be negatively affected by a devaluation of a currency in which the Fund's investments are quoted or denominated. Further, the Fund's investment performance may be significantly affected, either positively or negatively, by currency exchange rates because the U.S. dollar value of securities quoted or denominated in another currency will increase or decrease in response to changes in the value of such currency in relation to the U.S. dollar.

Derivatives Risk

Derivatives risk is a combination of several risks, including the risks that: (1) an investment in a derivative instrument may not correlate well with the performance of the securities or asset class to which the Fund seeks exposure, (2) derivative contracts, including options, may expire worthless and the use of derivatives may result in losses to the Fund, (3) a derivative instrument entailing leverage may result in a loss greater than the principal amount invested, (4) derivatives not traded on an exchange may be subject to credit risk, for example, if the counterparty does not meet its obligations (see also "Counterparty Risk"), and (5) derivatives not traded on an exchange may be subject to liquidity risk and the related risk that the instrument is difficult or impossible to value accurately.

Effective August 19, 2022 (the "Compliance Date"), Rule 18f-4 under the 1940 Act (the "Derivatives Rule") replaced the asset segregation regime of Investment Company Act Release No. 10666 (Release 10666) with a new framework for the use of derivatives by registered funds. As of the Compliance Date, the SEC rescinded Release 10666 and withdrew no-action letters and similar guidance addressing a fund's use of derivatives and began requiring funds to satisfy the requirements of the Derivatives Rule. As a result, on or after the Compliance Date, the Fund will no longer engage in "segregation" or "coverage" techniques with respect to derivatives transactions and will instead comply with the applicable requirements of the Derivatives Rule. The Derivatives Rule mandates that a fund adopt and/or implement: (i) value-at-risk limitations (VaR); (ii) a written derivatives risk management program; (iii) new Board oversight responsibilities; and (iv) new reporting and record-

NOTES TO FINANCIAL STATEMENTS (continued)

keeping requirements. In the event that a fund's derivative exposure is 10% or less of its net assets, excluding certain currency and interest rate hedging transactions, it can elect to be classified as a limited derivatives user (Limited Derivatives User) under the Derivatives Rule, in which case the fund is not subject to the full requirements of the Derivatives Rule. Limited Derivatives Users are excepted from VaR testing, implementing a derivatives risk management program, and certain Board oversight and reporting requirements mandated by the Derivatives Rule. However, a Limited Derivatives User is still required to implement written compliance policies and procedures reasonably designed to manage its derivatives risks.

Distressed and Defaulted Securities Risk

The Fund may invest in companies that are troubled, in distress or bankrupt. As such, they are subject to a multitude of legal, industry, market, environmental and governmental forces that make analysis of these companies inherently difficult. Further, the Investment Adviser relies on company management, outside experts, market participants and personal experience to analyze potential investments for the Fund. There can be no assurance that any of these sources will prove credible, or that the resulting analysis will produce accurate conclusions.

Equity Securities Risk

The risk that stock prices will fall over short or long periods of time. In addition, common stocks represent a share of ownership in a company, and rank after bonds and preferred stock in their claim on the company's assets in the event of bankruptcy. In addition to these risks, preferred stock and convertible securities are also subject to the risk that issuers will not make payments on securities held by the Fund, which could result in losses to the Fund. The credit quality of preferred stock and convertible securities held by the Fund may be lowered if an issuer's financial condition changes, leading to greater volatility in the price of the security.

Exchange-Traded Funds ("ETF") Risk

The risk that the price movement of an ETF may not exactly track the underlying index and may result in a loss. In addition, shareholders bear both their proportionate share of the Fund's expenses and similar expenses of the underlying investment company when the Fund invests in shares of another investment company.

Financial Services Industry Risk

The risk associated with the fact that the Fund's investments in Senior Loans are arranged through private negotiations between a borrower ("Borrower") and several financial institutions. Investments in the financial services sector may be subject to credit risk, interest rate risk, and regulatory risk, among others. Banks and other financial institutions can be affected by such factors as downturns in the U.S. and foreign economies and general economic cycles, fiscal and monetary policy, adverse developments in the real estate market, the deterioration or failure of other financial institutions, and changes in banking or securities regulations. The financial services industry is subject to extensive government regulation, which can limit both the amounts and types of loans and other financial commitments financial services companies can make and the interest rates and fees they can charge. Profitability is largely dependent on the availability and cost of capital funds, and can fluctuate significantly when interest rates change. Because financial services companies are highly dependent on short-term interest rates, they can be adversely affected by downturns in the U.S. and foreign economies or changes in banking regulations. Losses resulting from financial difficulties of Borrowers can negatively affect financial services companies. The financial services industry is currently undergoing relatively rapid change as existing distinctions between financial service segments become less clear. This change may make it more difficult for the Investment Adviser to analyze investments in this industry. Additionally, the recently increased volatility in the financial markets and implementation of the recent financial reform legislation may affect the financial services industry as a whole in ways that may be difficult to predict.

Hedging Risk

The Fund may engage in "hedging," the practice of attempting to offset a potential loss in one position by establishing an opposite position in another investment. Hedging strategies in general are usually intended to limit or reduce investment risk, but can also be expected to limit or reduce the potential for profit. For example, if the Fund has taken a defensive posture by hedging its portfolio, and stock prices advance, the return to investors will be lower than if the portfolio had not been hedged. No assurance can be given that any particular hedging strategy will be successful, or that the Investment Adviser will elect to use a hedging strategy at a time when it is advisable.

High Yield Debt Securities Risk

The risk that below investment grade securities or unrated securities of similar credit quality (commonly known as "high yield securities" or "junk securities") are more likely to default than higher rated securities. The Fund's ability to invest in high-yield debt securities generally subjects the Fund to greater risk than securities with higher ratings. Such securities are regarded by the rating organizations as predominantly speculative with respect to capacity to pay interest and repay principal in accordance with the terms of the obligation. The market value of these securities is generally more sensitive to corporate developments and

NOTES TO FINANCIAL STATEMENTS (continued)

December 31, 2022 **Highland Income Fund**

economic conditions and can be volatile. Market conditions can diminish liquidity and make accurate valuations difficult to obtain.

Illiquid and Restricted Securities Risk

Certain investments made by the Fund may be illiquid, and consequently the Fund may not be able to sell such investments at prices that reflect the Investment Adviser's assessment of their value or the amount originally paid for such investments by the Fund. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale and other factors. Furthermore, the nature of the Fund's investments, especially those in financially distressed companies, may require a long holding period prior to profitability.

Restricted securities (i.e., securities acquired in private placement transactions) and illiquid securities may offer higher yields than comparable publicly traded securities. The Fund, however, may not be able to sell these securities when the Investment Adviser considers it desirable to do so or, to the extent they are sold privately, may have to sell them at less than the price of otherwise comparable securities. Restricted securities are subject to limitations on resale which can have an adverse effect on the price obtainable for such securities. Also, if in order to permit resale the securities are registered under the Securities Act at the Fund's expense, the Fund's expenses would be increased.

Interest Rate Risk

The risk that fixed income securities will decline in value because of changes in interest rates. When interest rates decline, the value of fixed rate securities already held by the Fund can be expected to rise. Conversely, when interest rates rise, the value of existing fixed rate portfolio securities can be expected to decline. A fund with a longer average portfolio duration will be more sensitive to changes in interest rates than a fund with a shorter average portfolio duration.

On July 27, 2017, the head of the United Kingdom's Financial Conduct Authority announced that it will stop encouraging banks to provide the quotations needed to sustain LIBOR. The ICE Benchmark Administration Limited, the administrator of LIBOR, ceased publishing most LIBOR maturities, including some US LIBOR maturities, on December 31, 2021, and is expected to cease publishing the remaining and most liquid US LIBOR maturities on June 30, 2023. It is expected that market participants will transition to the use of alternative reference or benchmark rates prior to the applicable LIBOR cessation date. Additionally, although regulators have encouraged the development and adoption of alternative rates, such as the Secured Overnight Financing Rate ("SOFR"), the future utilization of LIBOR or of any particular replacement rate remains uncertain.

Although the transition process away from LIBOR has become increasingly well-defined in advance of the anticipated discontinuation dates, the impact on certain debt securities, derivatives and other financial instruments remains uncertain. It is expected that market participants will adopt alternative rates such as SOFR or otherwise amend financial instruments referencing LIBOR to include fallback provisions and other measures that contemplate the discontinuation of LIBOR or other similar market disruption events, but neither the effect of the transition process nor the viability of such measures is known. Further, uncertainty and risk remain regarding the willingness and ability of issuers and lenders to include alternative rates and revised provisions in new and existing contracts or instruments. To facilitate the transition of legacy derivatives contracts referencing LIBOR, the International Swaps and Derivatives Association, Inc. launched a protocol to incorporate fallback provisions. While the transition process away from LIBOR has become increasingly well-defined in advance of the expected LIBOR cessation dates, there are obstacles to converting certain longer term securities and transactions to a new benchmark or benchmarks and the effectiveness of one alternative reference rate versus multiple alternative reference rates in new or existing financial instruments and products has not been determined. Furthermore, the risks associated with the cessation of LIBOR and transition to replacement rates may be exacerbated if an orderly transition to alternative reference rates is not completed in a timely manner. Certain proposed replacement rates to LIBOR, such as SOFR, which is a broad measure of secured overnight US Treasury repo rates, are materially different from LIBOR, and changes in the applicable spread for financial instruments transitioning away from LIBOR will need to be made to accommodate the differences. Furthermore, the risks associated with the expected discontinuation of LIBOR and transition to replacement rates may be exacerbated if an orderly transition to an alternative reference rate is not completed in a timely manner. As market participants transition away from LIBOR, LIBOR's usefulness may deteriorate and these effects could be experienced until the permanent cessation of the majority of U.S. LIBOR rates in 2023. The transition process may lead to increased volatility and illiquidity in markets that currently rely on LIBOR to determine interest rates. LIBOR's deterioration may adversely affect the liquidity and/or market value of securities that use LIBOR as a benchmark interest rate.

Alteration of the terms of a debt instrument or a modification of the terms of other types of contracts to replace LIBOR or another interbank offered rate ("IBOR") with a new reference rate could result in a taxable exchange and the realization of income and gain/loss for U.S. federal income tax purposes. The Internal Revenue Service ("IRS") has issued final regulations regarding the tax consequences of the transition from IBOR to a new reference rate in debt instruments

and non-debt contracts. Under the final regulations, alteration or modification of the terms of a debt instrument to replace an operative rate that uses a discontinued IBOR with a qualified rate (as defined in the final regulations) including true up payments equalizing the fair market value of contracts before and after such IBOR transition, to add a qualified rate as a fallback rate to a contract whose operative rate uses a discontinued IBOR or to replace a fallback rate that uses a discontinued IBOR with a qualified rate would not be taxable. The IRS may provide additional guidance, with potential retroactive effect.

Leverage Risk

The Fund may use leverage in its investment program, including the use of borrowed funds and investments in certain types of options, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent the Fund purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. If the interest expense on borrowings were to exceed the net return on the portfolio securities purchased with borrowed funds, the Fund's use of leverage would result in a lower rate of return than if the Fund were not leveraged.

Management Risk

The risk associated with the fact that the Fund relies on the Investment Adviser's ability to achieve its investment objective. The Investment Adviser may be incorrect in its assessment of the intrinsic value of the companies whose securities the Fund holds, which may result in a decline in the value of fund shares and failure to achieve its investment objective.

Mortgage-Backed Securities Risk

The risk of investing in mortgage-backed securities, and includes interest rate risk, liquidity risk and credit risk, which may be heightened in connection with investments in loans to "subprime" borrowers. Certain mortgage-backed securities are also subject to prepayment risk. Mortgage-backed securities, because they are backed by mortgage loans, are also subject to risks related to real estate, and securities backed by private-issued mortgages may experience higher rates of default on the underlying mortgages than securities backed by government-issued mortgages. The Fund could lose money if there are defaults on the mortgage loans underlying these securities.

Non-Diversification Risk

The risk that an investment in the Fund could fluctuate in value more than an investment in a diversified fund. As a non-diversified fund for purposes of the 1940 Act, the Fund may invest a larger portion of its assets in the securities of fewer issuers than a diversified fund. The Fund's investments in fewer issuers may result in the Fund's shares being more sensitive to the economic results of those issuers. An investment in the Fund could fluctuate in value more than an investment in a diversified fund.

Non-U.S. Securities Risk

The Fund may invest in non-U.S. securities. Investing in non-U.S. securities involves certain risks not involved in domestic investments, including, but not limited to: fluctuations in foreign exchange rates; future foreign economic, financial, political and social developments; different legal systems; the possible imposition of exchange controls or other foreign governmental laws or restrictions; lower trading volume; much greater price volatility and illiquidity of certain non-U.S. securities markets; different trading and settlement practices; less governmental supervision; changes in currency exchange rates; high and volatile rates of inflation; fluctuating interest rates; less publicly available information; and different accounting, auditing and financial recordkeeping standards and requirements.

Options Risk

There are several risks associated with transactions in options on securities. For example, there are significant differences between the securities and options markets that could result in an imperfect correlation between these markets, causing a given transaction not to achieve its objectives. A transaction in options or securities may be unsuccessful to some degree because of market behavior or unexpected events.

When the Fund writes a covered call option, the Fund forgoes, during the option's life, the opportunity to profit from increases in the market value of the security covering the call option above the sum of the premium and the strike price of the call, but retains the risk of loss should the price of the underlying security decline. The writer of an option has no control over the time when it may be required to fulfill its obligation and once an option writer has received an exercise notice, it must deliver the underlying security in exchange for the strike price.

When the Fund writes a covered put option, the Fund bears the risk of loss if the value of the underlying stock declines below the exercise price minus the put premium. If the option is exercised, the Fund could incur a loss if it is required to purchase the stock underlying the put option at a price greater than the market price of the stock at the time of exercise plus the put premium the Fund received when it wrote the option. While the Fund's potential gain in writing a covered put option is limited to distributions earned on the liquid assets securing the put option plus the premium received from the purchaser of the put option, the Fund risks

NOTES TO FINANCIAL STATEMENTS (continued)

a loss equal to the entire exercise price of the option minus the put premium.

Pandemics and Associated Economic Disruption

An outbreak of respiratory disease caused by a novel coronavirus was first detected in China in late 2019 and subsequently spread globally ("COVID-19"). This coronavirus has resulted, and may continue to result in, the closing of borders, enhanced health screenings, disruptions to healthcare service preparation and delivery, quarantines, cancellations, disruptions to supply chains and customer activity, as well as general anxiety and economic uncertainty. Health crises caused by outbreaks of disease, such as the coronavirus, may exacerbate other preexisting political, social and economic risks. The impact of this outbreak, and other epidemics and pandemics that may arise in the future, could continue to negatively affect the global economy, as well as the economies of individual countries, individual companies and the market in general in significant and unforeseen ways. For example, a widespread health crisis such as a global pandemic could cause substantial market volatility, exchange trading suspensions and closures, and impact the Fund's ability to complete repurchase requests. Any such impact could adversely affect the Fund's performance, the performance of the securities in which the Fund invests, lines of credit available to the Fund and may lead to losses on your investment in the Fund. In addition, the increasing interconnectedness of markets around the world may result in many markets being affected by events or conditions in a single country or region or events affecting a single or small number of issuers.

The United States responded to the coronavirus pandemic and resulting economic distress with fiscal and monetary stimulus packages, including the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") passed in late March 2020. The CARES Act provides for over $2.2 trillion in resources to small businesses, state and local governments, and individuals adversely impacted by the COVID-19 pandemic. In late December 2020, the government also passed a spending bill that included $900 billion in stimulus relief for the COVID-19 pandemic. Further, in March 2021, the government passed the American Rescue Plan Act of 2021, a $1.9 trillion stimulus bill to accelerate the United States' recovery from the economic and health effects of the COVID-19 pandemic. In addition, in mid-March 2020, the U.S. Federal Reserve (the "Fed") cut interest rates to historically low levels and announced a new round of quantitative easing, including purchases of corporate and municipal government bonds. The Fed also enacted various programs to support liquidity operations and funding in the financial markets, including expanding its reverse repurchase agreement operations, which added $1.5 trillion of liquidity to the banking system; establishing swap lines with other major central banks to provide dollar funding; establishing a program to support money market funds; easing various bank capital buffers; providing funding backstops for businesses to provide bridging loans for up to four years; and providing funding to help credit flow in asset-backed securities markets. In addition, the Fed extended credit to small- and medium-sized businesses. As the Fed "tapers" or reduces the amount of securities it purchases pursuant to quantitative easing, and/or if the Fed raises the federal funds rate, there is a risk that interest rates will rise, which could expose fixed-income and related markets to heightened volatility and could cause the value of a fund's investments, and the fund's NAV, to decline, potentially suddenly and significantly. As a result, the Fund may experience high redemptions and, as a result, increased portfolio turnover, which could increase the costs that the Fund incurs and may negatively impact the Fund's performance. There is no assurance that the U.S. government's support in response to COVID-19 economic distress will offset the adverse impact to securities in which the Fund may invest and future governmental support is not guaranteed.

Preferred Share Risk

The risk associated with the issuance of preferred shares to leverage the common shares. When preferred shares are issued, the NAV and market value of the common shares become more volatile, and the yield to the holders of common shares will tend to fluctuate with changes in the shorter-term dividend rates on the preferred shares. The Trust will pay (and the holders of common shares will bear) all costs and expenses relating to the issuance and ongoing maintenance of the preferred shares, including higher advisory fees. Accordingly, the issuance of preferred shares may not result in a higher yield or return to the holders of the common shares. If the dividend rate and other costs of the preferred shares approach the net rate of return on the Fund's investment portfolio, the benefit of leverage to the holders of the common shares would be reduced. If the dividend rate and other costs of the preferred shares exceed the net rate of return on the Fund's investment portfolio, the leverage will result in a lower rate of return to the holders of common shares than if the Fund had not issued preferred shares.

Preferred Stock Risk

Preferred stock, which may include preferred stock in real estate transactions, represents an equity or ownership interest in an issuer that pays dividends at a specified rate and that has precedence over common stock in the payment of dividends. In the event an issuer is liquidated or declares bankruptcy, the claims of creditors and owners of bonds take precedence over the claims of those who own preferred and common stock. If interest rates rise, the fixed dividend on preferred stocks may be less attractive, causing the price of

NOTES TO FINANCIAL STATEMENTS (continued)

preferred stocks to decline. Preferred stock may have mandatory sinking fund provisions, as well as provisions allowing the stock to be called or redeemed prior to its maturity, which can have a negative impact on the stock's price when interest rates decline. Unlike interest on debt securities, preferred stock dividends are payable only if declared by the issuer's board. The value of convertible preferred stock can depend heavily upon the value of the security into which such convertible preferred stock is converted, depending on whether the market price of the underlying security exceeds the conversion price.

Real Estate Investment Trust Risk

Real estate investments are subject to various risk factors. Generally, real estate investments could be adversely affected by a recession or general economic downturn where the properties are located. Real estate investment performance is also subject to the success that a particular property manager has in managing the property.

Real Estate Market Risk

The Fund is exposed to economic, market and regulatory changes that impact the real estate market generally through its investment in NFRO REIT Sub, LLC, NFRO REIT Sub II, LLC, and NFRO SFR REIT, LLC (together the "REIT Subsidiaries"), which may cause the Fund's operating results to suffer. A number of factors may prevent the REIT Subsidiaries' properties and other real estate-related investments from generating sufficient net cash flow or may adversely affect their value, or both, resulting in less cash available for distribution, or a loss, to us. These factors include: national, regional and local economic conditions; changing demographics; the ability of property managers to provide capable management and adequate maintenance; the quality of a property's construction and design; increases in costs of maintenance, insurance, and operations (including energy costs and real estate taxes); potential environmental and other legal liabilities; the level of financing used by each REIT Subsidiary and the availability and cost of refinancing; potential instability, default or bankruptcy of tenants in the properties owned by each REIT Subsidiary; the relative illiquidity of real estate investments in general, which may make it difficult to sell a property at an attractive price or within a reasonable time frame.

Securities Lending Risk

The Fund may make secured loans of its portfolio securities. Any decline in the value of a portfolio security that occurs while the security is out on loan is borne by the Fund, and will adversely affect performance. Also, there may be delays in recovery of securities loaned, losses in the investment of collateral, and loss of rights in the collateral should the borrower of the securities fail financially while holding the security.

Senior Loans Risk

The risk associated with Senior Loans, which are typically below investment grade and are considered speculative because of the credit risk of their issuers. As with any debt instrument, Senior Loans are generally subject to the risk of price declines and as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. The secondary market for loans is generally less liquid than the market for higher grade debt. Less liquidity in the secondary trading market could adversely affect the price at which the Fund could sell a loan, and could adversely affect the NAV of the Fund's shares. The volume and frequency of secondary market trading in such loans varies significantly over time and among loans. Declines in interest rates may increase prepayments of debt obligations and require the Fund to invest assets at lower yields. No active trading market may exist for certain Senior Loans, which may impair the ability of the Fund to realize full value in the event of the need to liquidate such assets. Adverse market conditions may impair the liquidity of some actively traded Senior Loans.

Short Sales Risk

Short sales by the Fund that are not made where there is an offsetting long position in the asset that it is being sold short theoretically involve unlimited loss potential since the market price of securities sold short may continuously increase. Short selling allows the Fund to profit from declines in market prices to the extent such decline exceeds the transaction costs and costs of borrowing the securities. However, since the borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. Purchasing securities to close out the short position can itself cause the price of securities to rise further, thereby exacerbating the loss. The Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Fund might have difficulty purchasing securities to meet margin calls on its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales.

If other short positions of the same security are closed out at the same time, a "short squeeze" can occur where demand exceeds the supply for the security sold short. A short squeeze makes it more likely that the Fund will need to replace the borrowed security at an unfavorable price.

NOTES TO FINANCIAL STATEMENTS (continued)

Structured Finance Securities Risk

A portion of the Fund's investments may consist of equipment trust certificates, collateralized mortgage obligations, collateralized bond obligations, collateralized loan obligations or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Fund and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral. In some instances, the structured finance securities are issued in multiple tranches, offering investors various maturity and credit risk characteristics, often categorized as senior, mezzanine and subordinated/equity according to their degree of risk. The riskiest securities are the equity tranche, which bears the bulk of defaults from the bonds or loans serving as collateral, and thus may protect the other, more senior tranches from default. If there are defaults or the relevant collateral otherwise underperforms, scheduled payments to senior tranches of such securities take precedence over those of mezzanine tranches, and scheduled payments to mezzanine tranches take precedence over those to subordinated/equity tranches. A senior tranche typically has higher ratings and lower yields than the underlying securities, and may be rated investment grade. Despite the protection from the equity tranche, other tranches can experience substantial losses due to actual defaults, increased sensitivity to defaults due to previous defaults and the disappearance of protecting tranches, market anticipation of defaults and aversion to certain structured finance securities as a class.

Valuation Risk

Certain of the Fund's assets are fair valued, including the Fund's investment in equity issued by TerreStar Corporation ("TerreStar"). TerreStar is a nonoperating company that does not currently generate substantial revenue and which primarily derives its value from licenses for use of two spectrum frequencies, the license with respect to one of which was granted a conditional waiver by the FCC on April 30, 2020. The fair valuation of TerreStar involves significant uncertainty as it is materially dependent on estimates of the value of both spectrum licenses.

Gain Contingency

Claymore Holdings, LLC, a partially-owned affiliate of the Fund, is engaged in ongoing litigation that could result in a possible gain contingency to the Fund. The probability, timing, and potential amount of recovery, if any, are unknown.

Note 8. Investment Transactions

Purchases & Sales of Securities

The cost of purchases and the proceeds from sales of investments, other than short-term securities for the year ended December 31, 2022, were as follows:

U.S Government Securities		Other Securities	
Purchases	Sales	Purchases	Sales
$ —	$ —	$625,142,978	$500,400,792

Note 9. Affiliated Issuers

Under Section 2(a)(3) of the 1940 Act, as amended, a portfolio company is defined as "affiliated" if a fund owns five percent or more of its outstanding voting securities or if the portfolio company is under common control. The table below shows affiliated issuers of the Fund as of December 31, 2022:

Issuer	Shares at December 31, 2021	Beginning Value as of December 31, 2021 $	Purchases at Cost $	Proceeds from Sales $	Distribution to Return of Capital $	Net Realized Gain/ (Loss) on Sales $	Change in Unrealized Appreciation/ (Depreciation) $	Ending Value as of December 31, 2022 $	Shares at December 31, 2022	Affiliated Income $
Majority Owned, Not Consolidated										
Allenby (Common Stocks)	1,474,379	—	—	—	—	—	—	—	1,474,379	—
Claymore (Common Stocks)	10,359,801	—	—	—	—	—	—	—	10,359,801	—
Other Affiliates										
CCS Medical, Inc. (U.S. Senior Loans & Common Stocks)	72,299,652	40,766,645	85,754,878	(101,386,296)	—	—	12,534,778	37,670,005	27,528,327	577,484
EDS Legacy Partners (U.S. Senior Loans)	57,000,000	49,533,000	4,411,237	—	—	—	5,327,743	59,271,980	61,411,237	4,308,176

NOTES TO FINANCIAL STATEMENTS (continued)

December 31, 2022 **Highland Income Fund**

Issuer	Shares at December 31, 2021	Beginning Value as of December 31, 2021 $	Purchases at Cost $	Proceeds from Sales $	Distribution to Return of Capital $	Net Realized Gain/ (Loss) on Sales* $	Change in Unrealized Appreciation/ (Depreciation) $	Ending Value as of December 31, 2022 $	Shares at December 31, 2022	Affiliated Income $
Highland Global Allocation Fund (Registered Investment Company)	48,649	441,246	—	—	(29,817)	—	46,845	458,274	48,649	17,470
Highland Income Fund (Registered Investment Company)	9,600	105,504	19,033,778	(25,301,659)	—	6,160,372	2,005	—	—	—
LLV Holdco LLC (U.S. Senior Loans & Common Stocks)	13,247,111	19,078,993	3,533,154	(1,272,062)[(a)]	—	—	(1,871,000)	19,469,085	15,508,203	3,881,591
NEXLS LLC (LLC Interest)	763	35,315,956	5,665,294	—	—	—	8,620,116	49,601,366	882	—
NexPoint Diversified Real Estate Trust REIT (Common Stocks)	1,156,943	15,711,286	1,641,249	—	—	—	(3,052,880)	14,299,655	1,275,616	711,967
NexPoint Real Estate Finance REIT (Common Stocks & Preferred Stock)	552,534	10,636,280	87,142,412	—	—	—	(25,484,527)	72,294,165	4,523,263	4,989,861
NexPoint Residential Trust, Inc. (Common Stocks)	153,276	12,849,127	1,524,948	—	(163,901)	—	(6,099,264)	8,110,910	186,372	1,471
NexPoint SFR Operating Partnership, LP (U.S. Senior Loans)	—	—	65,000,000	—	—	—	(1,409,200)	63,590,800	65,000,000	2,681,250
NexPoint Storage Partners, Inc. (Common Stocks)	18,568	25,868,009	18,995,600	—	—	—	(6,200,495)	38,663,114	32,203	—
NFRO REIT SUB II, LLC, NFRO REIT SUB, LLC, NFRO SFR REIT, LLC (Common Stocks)	106,355,853	310,315,649	241,215,043	—	(190,163,540)	—	(28,201,331)	333,165,821	139,114,085	—
NexPoint Real Estate Finance Operating Partnership, L.P., NREF OP II (LLC Interest)	624,311	12,017,981	11,521,327	(23,832,735)	—	(174,807)	468,234	—	—	—
NHT Operating Partnership LLC Convertible Promissory Note (U.S. Senior Loans)	—	—	6,400,000	—	—	—	(601,600)	5,798,400	6,400,000	121,333
NHT Operating Partnership LLC Secured Promissory Note (U.S. Senior Loans)	—	—	42,777,343	—	—	—	(4,008,112)	38,769,231	42,777,343	1,705,854
SFR WLIF I, III, LLC (LLC Interest)	11,854,986	11,246,731	10,000,000	(11,521,387)	—	(333,599)	17,025	9,408,770	10,000,000	479,216
Total	275,156,426	543,886,407	604,616,263	(163,314,139)	(190,357,258)	5,651,966	(49,911,663)	750,571,576	385,640,360	19,475,673

(a) Denotes paydown.

* Excludes capital gain distributions of $2,693,588 included in realized gain (loss) on investments from affiliated issuers on the Statement of Operations.

NOTES TO FINANCIAL STATEMENTS (concluded)

December 31, 2022 **Highland Income Fund**

Note 10. Asset Coverage

The Fund is required to maintain 300% asset coverage with respect to amounts outstanding (excluding short-term borrowings) under its various leverage facilities. Additionally, the Fund is required to maintain 200% asset coverage with respect to the preferred share issuance as well as its various leverage facilities. Asset coverage is calculated by subtracting the Fund's total liabilities, not including any amount representing bank borrowings and senior securities, from the Fund's total assets and dividing the result by the principal amount of the borrowings outstanding. As of the dates indicated below, the Fund's debt outstanding and asset coverage was as follows:

Date	Amount Outstanding Excluding Preferred Shares $	Asset Coverage of Indebtedness Excluding Preferred Shares %	Amount Outstanding Including Preferred Shares $	Asset Coverage of Indebtedness Including Preferred Shares[2] %
12/31/2022	21,722,000	4,454.98	166,722,000	667.40
12/31/2021	N/A	N/A	145,000,000	785.99
12/31/2020	200,000,000	575.25	345,000,000	375.50
12/31/2019	419,796,600	337.13	564,796,600	276.25
12/31/2018[1]	496,141,100	306.80	496,141,100	306.80
6/30/2018	498,563,423	317.70	498,563,423	317.70
6/30/2017	N/A	N/A	N/A	N/A
6/30/2016	N/A	N/A	N/A	N/A
6/30/2015	51,500,000	1,641.40	51,500,000	1,641.40
6/30/2014	60,000,000	1,577.60	60,000,000	1,577.60
6/30/2013	N/A	N/A	N/A	N/A

1 For the six-month period ended December 31, 2018. Effective April 11, 2019, the Fund had a fiscal year change from June 30 to December 31.

2 As referenced in Note 1, the Fund issued $145mm in preferred shares subject to the 200% Asset Coverage of Indebtedness requirements under the 1940 Act.

Note 11. Unconsolidated Significant Subsidiaries

In accordance with Regulation S-X and GAAP, the Fund is not permitted to consolidate any subsidiary or other entity that is not an investment company, including those in which the Fund has a controlling interest unless the business of the controlled subsidiary consists of providing services to the Fund. In accordance with Regulation S-X Rules 3-09 and 4-08(g), the Fund evaluates its unconsolidated controlled subsidiaries as significant subsidiaries under the respective rules. As of December 31, 2022, NFRO REIT Sub, LLC, NFRO REIT Sub II, LLC, and NFRO SFR REIT, LLC were considered significant unconsolidated subsidiaries under Regulation S-X Rule 4-08(g). This subsidiary is wholly owned by the Fund. Based on the requirements under Regulation S-X Rule 4-08(g), the summarized financial information of these unconsolidated subsidiaries is presented below:

	NFRO REIT Sub, LLC December 31, 2022 $	NFRO REIT Sub II, LLC December 31, 2022 $
Balance Sheet:		
Current Assets	26,251,000	188,000
Noncurrent Assets	285,967,000	134,882,000
Total Assets	312,218,000	135,070,000
Current Liabilities	20,358,000	—
Noncurrent Liabilities	160,232,000	—
Total Liabilities	180,590,000	—
Preferred Stock	1,000	104,000
Non-Controlling interest (in consolidated investments)	3,642,000	—
Invested Equity	127,985,000	134,966,000
Total Equity	131,628,000	135,070,000

	NFRO REIT Sub, LLC For the Year Ended December 31, 2022 $	NFRO REIT Sub II, LLC For the Year Ended December 31, 2022 $
Summary of Operations:		
Net Sales	9,478,000	(4,640,000)
Gross Profit (Loss)	(1,767,000)	(4,648,000)
Net Income (Loss)	(2,554,000)	44,544,000
Net Income (Loss) attributable to non-controlling interest (in consolidated investments), preferred shares, and other comprehensive income	147,000	—

Note 12. Subsequent Events

Management has evaluated the impact of all subsequent events on the Fund through the date the financial statements were issued, and has determined that there were no such subsequent events to report which have not already been recorded or disclosed in these financial statements and accompanying notes.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Trustees of
Highland Income Fund:

Opinion on the Financial Statements

We have audited the accompanying statement of assets and liabilities, including the investment portfolio, of Highland Income Fund (the "Fund") as of December 31, 2022, the related statements of operations and cash flows for the year then ended, the statements of changes in net assets for each of the two years in the period then ended, the related notes, and the financial highlights for each of the three years in the period then ended (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Fund as of December 31, 2022, the results of its operations and its cash flows for the year then ended, the changes in net assets for each of the two years in the period then ended, and the financial highlights for each of the three years in the period then ended, in conformity with accounting principles generally accepted in the United States of America.

The Fund's financial highlights for the years ended December 31, 2019, and prior, were audited by other auditors whose report dated April 10, 2020, expressed an unqualified opinion on those financial highlights.

Basis for Opinion

These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on the Fund's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Fund in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our procedures included confirmation of securities owned as of December 31, 2022, by correspondence with the custodian, agent banks, transfer agents, issuers and brokers; when replies were not received from brokers, we performed other auditing procedures. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Fund's auditor since 2020.

COHEN & COMPANY, LTD.
Cleveland, Ohio
March 3, 2023

ADDITIONAL INFORMATION (unaudited)

Investment Objective and Strategy Overview

The Fund's investment objective is to provide a high level of current income, consistent with preservation of capital.

The Fund seeks to achieve its objective by investing directly and indirectly (e.g., through derivatives that are the economic equivalent of direct investments) in the following categories of securities and instruments: (i) floating rate loans and other securities deemed to be floating rate investments; (ii) investments in securities or other instruments directly or indirectly secured by real estate, including real estate investment trusts ("REITs"), preferred equity, securities convertible into equity securities and mezzanine debt; and (iii) other instruments, including, but not limited to, secured and unsecured fixed-rate loans and corporate bonds, distressed securities, mezzanine securities, structured products (including but not limited to mortgage-backed securities, collateralized loan obligations and asset-backed securities), convertible and preferred securities, equities (public and private), and futures and options.

The Fund will invest at least 25% of its assets in investments in securities or other instruments directly or indirectly secured by real estate, including REITs, preferred equity, securities convertible into equity securities and mezzanine debt.

Floating Rate Investments. Floating rate investments are debt obligations of companies or other entities, the interest rates of which float or vary periodically based upon a benchmark indicator of prevailing interest rates. Floating rate investments may include, by way of example, floating rate debt securities, money market securities of all types, repurchase agreements with remaining maturities of no more than 60 days, collateralized loan obligations and asset backed securities. The reference in the Fund's investment objective to capital preservation does not indicate that the Fund may not lose money. NexPoint seeks to employ strategies that are consistent with capital preservation, but there can be no assurance that the Investment Adviser will be successful in doing so. In making floating rate investments for the Fund, the Fund's Investment Adviser will seek to purchase instruments that it believes are undervalued or will provide attractive income, while attempting to minimize losses.

Floating rate loans in which the Fund invests are expected to be adjustable rate senior loans ("Senior Loans") to domestic or foreign corporations, partnerships and other entities that operate in a variety of industries and geographic regions ("Borrowers"). Senior Loans are business loans that have a right to payment senior to most other debts of the Borrower. Senior Loans generally are arranged through private negotiations between a Borrower and several financial institutions (the "Lenders") represented in each case by one or more such Lenders acting as agent (the "Agent") of the several Lenders. On behalf of the Lenders, the Agent is primarily responsible for negotiating the loan agreement ("Loan Agreement") that establishes the relative terms and conditions of the Senior Loan and rights of the Borrower and the Lenders.

The Fund may invest in securities of any credit quality. Senior Loans are typically below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("NRSRO") or are unrated but deemed by the Investment Adviser to be of comparable quality. The Fund may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

The Fund may invest in participations ("Participations") in Senior Loans, may purchase assignments ("Assignments") of portions of Senior Loans from third parties, and may act as one of a group of Lenders originating a Senior Loan ("Primary Lender"). Senior Loans often are secured by specific assets of the Borrower, although the Fund may invest without limitation in Senior Loans that are not secured by any collateral. When the Fund acts as a Primary Lender, the Fund or Investment the Adviser could be subject to allegations of lender liability. Senior Loans in which the Fund invests generally pay interest at rates that are periodically re-determined by reference to a base lending rate plus a spread.

Real Estate Investments. The Fund defines securities of issuers conducting their principal business activities in the real estate industry to include common stock, convertible or non-convertible preferred stock, warrants, convertible or non-convertible secured or unsecured debt, and partnership or membership interests issued by:

- commercial mortgage-backed securities ("CMBS"), residential mortgage-backed securities ("RMBS") and other real estate credit investments, which include existing first and second mortgages on real estate, either originated or acquired in the secondary market, and secured, unsecured and/or convertible notes offered by real estate operating companies ("REOCs") and REITs;
- publicly traded REITs managed by affiliated or unaffiliated asset managers and their foreign equivalents ("Public REITs");
- REOCs;
- private real estate investment funds managed by affiliated or unaffiliated institutional asset managers ("Private Real Estate Investment Funds");

ADDITIONAL INFORMATION (unaudited) (continued)

- registered closed-end funds that invest principally in real estate (collectively, "Public Investment Funds");
- real estate exchange traded funds ("ETFs"); and
- publicly-registered non-traded REITs ("Non-Traded REITs") and private REITs, generally wholly-owned by the Fund or wholly-owned or managed by an affiliate.

REITs are pooled investment vehicles that invest primarily in income-producing real estate or real estate-related loans or interests, and REOCs are companies that invest in real estate and whose shares trade on public exchanges. Foreign REIT equivalents are entities located in jurisdictions that have adopted legislation substantially similar to the REIT tax provisions in that they provide for favorable tax treatment for the foreign REIT equivalent and require distributions of income to shareholders. The Fund may enter into certain real estate and real-estate related investments through its wholly-owned REIT subsidiaries, NFRO REIT Sub, LLC, NFRO REIT Sub II, LLC, and NFRO SFR REIT, LLC (together the "REIT Subsidiaries"). With respect to the Fund's real estate investments, the Investment Adviser seeks to: (i) recognize and allocate capital based upon where the Investment Adviser believes we are in the current real estate cycle, and as a result (ii) minimize drawdowns during market downturns and maximize risk adjusted returns during all market cycles, though there can be no assurance that this strategy will achieve this objective. The Fund will rely on the expertise of the Investment Adviser and its affiliates to determine the appropriate structure for structured credit investments, which may include bridge loans, common and preferred equity or other debt-like positions, as well as the acquisition of such instruments from banks, servicers or other third parties.

Preferred equity and mezzanine investments in real estate transactions come in various forms which may or may not be documented in the borrower's organizational documents. Generally, real estate preferred equity and/or mezzanine investments are typically junior to first mortgage financing but senior to the borrower's or sponsor's equity contribution. The investments are typically structured as an investment by a third-party investor in the real estate owner or various affiliates in the chain of ownership in exchange for a direct or indirect ownership interest in the real estate owner entitling it to a preferred/priority return on its investment. Sometimes, the investment is structured much like a loan where (i) "interest" on the investment is required to be paid monthly by the "borrower" regardless of available property cash flow; (ii) the entire investment is required to be paid by a certain maturity date; (iii) default rate "interest" and penalties are assessed against the "borrower" in the event payments are not made timely; and (iv) a default in the repayment of investment potentially results in the loss of management and/or ownership control by the "borrower" in the company in favor of the investor or other third-party.

Other Investments. The Fund may invest up to 15% of its net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any collateralized loan obligations, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

In addition, the Fund may invest in equity securities of companies of any market capitalization, market sector or industry. Equity securities of U.S. or non-U.S. issuers in which the Fund may invest include common stocks, preferred stocks, convertible securities, depositary receipts and warrants to buy common stocks. The Fund may invest in securities issued by other investment companies, including investment companies that are advised by the Investment Adviser or its affiliates, to the extent permitted by applicable law and/or pursuant to exemptive relief from the SEC, and exchange-traded funds ("ETFs"). Fees and expenses of such investments will be borne by shareholders of the investing fund (the Fund), and the Investment Adviser voluntarily waives the higher of the two fees for the portion of the Fund's management fee attributable to the Fund's investment in the affiliated investment company.

The Fund's investment in fixed income securities may include convertible securities. A convertible security is a bond, debenture, note, preferred stock or other security that may be converted into or exchanged for a prescribed amount of common stock or other equity security of the same or a different issuer within a particular period of time at a specified price or formula. A convertible security entitles the holder to receive interest paid or accrued on debt or the dividend paid on preferred stock until the convertible security matures or is redeemed, converted or exchanged. Before conversion, convertible securities have characteristics similar to nonconvertible income securities in that they ordinarily provide a stable stream of income with generally higher yields than those of common stocks of the same or similar issuers, but lower yields than comparable nonconvertible securities. The value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors also may have an effect on the convertible security's investment value. Convertible securities rank senior to common stock in a corporation's capital structure but are usually subordinated to comparable nonconvertible securities. Convertible securities may be subject to redemption at the option of the issuer at a price established

ADDITIONAL INFORMATION (unaudited) (continued)

in the convertible security's governing instrument. Depending on the relationship of the conversion price to the market value of the underlying securities, convertible securities may trade more like equity securities than debt instruments.

The Fund may invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, non-physical commodities and/or currencies, as substitutes for direct investments the Fund can make. The Fund may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Investment Adviser to be in the best interest of the Fund, and to the extent permitted by the Investment Company Act of 1940, as amended (the "1940 Act"), to hedge various investments for risk management and speculative purposes.

The Fund may also engage in short sales of securities and may seek additional income by making secured loans of its portfolio securities.

The Fund may engage in securities lending by making secured loans of its portfolio securities amounting to not more than one-third of its total assets, thereby realizing additional income.

The Fund may invest in illiquid and restricted securities. Illiquid securities are those that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.

The Fund may invest without limitation in securities (including loans) of non-U.S. issuers, including emerging market issuers. Such securities (including loans) may be denominated in U.S. dollars, non-U.S. currencies or multinational currency units. Except as otherwise expressly noted in the Statement of Additional Information ("SAI"), all percentage limitations and ratings criteria apply at the time of purchase of securities.

The Fund may borrow an amount up to 33 1/3% of its total assets (including the amount borrowed) and may use leverage in the form of preferred shares in an amount up to 50% of the Fund's total assets (including the amount borrowed. The Fund may borrow for investment purposes and for temporary, extraordinary or emergency purposes. To the extent the Fund borrows more money than it has cash or short-term cash equivalents and invests the proceeds, the Fund will create financial leverage. The use of borrowing for investment purposes increases both investment opportunity and investment risk.

When adverse market, economic, political or currency conditions domestically or abroad occur, the Fund may temporarily invest all or a portion of its total assets in defensive investments. Such investments may include fixed-income securities, high quality money market instruments, cash and cash equivalents. To the extent the Fund takes a temporary defensive position, it may not achieve its investment objective.

The Fund is a non-diversified fund as defined in the 1940 Act, but it intends to adhere to the diversification requirements applicable to regulated investment companies ("RICs") under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund is not intended to be a complete investment program.

Tax Information

For shareholders that do not have a December 31, 2022 tax year end, this notice is for informational purposes only. For shareholders with a December 31, 2022 tax year end, please consult your tax adviser as to the pertinence of this notice. For the fiscal year ended December 31, 2022, the Fund is designating the following items with regard to earnings for the year.

Return of Capital	Long-Term Capital Gain Distribution	Ordinary Income Distribution	Total Distribution
43.08%	0.00%	56.92%	100.00%

Qualified Dividends and Corporate Dividends Received Deduction(1)	Qualified Dividend Income (15% tax rate for QDI)(2)	Interest Related Dividends(3)	U.S. Government Interest(4)	Qualifying Business Income(5)
0.45%	0.58%	42.21%	0.00%	13.58%

(1) The percentage in this column represents the amount of "Qualifying for Corporate Receivable Deduction Dividends" and is reflected as a percentage of ordinary income distributions.
(2) The percentage in this column represents the amount of "Qualifying Dividend Income" and is reflected as a percentage of "Ordinary Income Distributions." It is the intention of the Fund to designate the maximum amount permitted by law.
(3) The percentage in this column represents the amount of "Interest Related Dividends" and is reflected as a percentage of ordinary income distributions exempt from U.S. withholding tax when paid to foreign investors.
(4) "U.S. Government Interest" represents the amount of interest that was derived from direct U.S. Government obligations and distributed during the fiscal year. This amount is reflected as a percentage of total ordinary income distributions (the total of short term capital gain and net investment income distributions). Generally, interest from direct U.S. Government obligations is exempt from state income tax. However, for shareholders who are residents of California, Connecticut and New York, the statutory threshold requirements were not satisfied to permit exemption of these amounts from state income.
(5) The percentage of this column represents that amount of ordinary dividend income that qualified for 20% Business Income Deduction.

The information reported herein may differ from the information and distributions taxable to the shareholder for the calendar year ended December 31, 2022. Complete information will be computed and reported with your 2022 Form 1099-DIV.

ADDITIONAL INFORMATION (unaudited) (continued)

Additional Portfolio Information

The Investment Adviser and its affiliates manage other accounts, including registered and private funds and individual accounts. Although investment decisions for the Fund are made independently from those of such other accounts, the Investment Adviser may, consistent with applicable law, make investment recommendations to other clients or accounts that may be the same or different from those made to the Fund, including investments in different levels of the capital structure of a company, such as equity versus senior loans, or that involve taking contradictory positions in multiple levels of the capital structure. The Investment Adviser has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, this may create situations where a client could be disadvantaged because of the investment activities conducted by the Investment Adviser for other client accounts. When the Fund and one or more of such other accounts is prepared to invest in, or desire to dispose of, the same security, available investments or opportunities for each will be allocated in a manner believed by the Investment Adviser to be equitable to the Fund and such other accounts. The Investment Adviser also may aggregate orders to purchase and sell securities for the Fund and such other accounts. Although the Investment Adviser believes that, over time, the potential benefits of participating in volume transactions and negotiating lower transaction costs should benefit all accounts including the Fund, in some cases these activities may adversely affect the price paid or received by the Fund or the size of the position obtained or disposed of by the Fund.

Dividend Reinvestment Plan

Unless the registered owner of Common Shares elects to receive cash by contacting American Stock Transfer & Trust Company ("AST" or the "Plan Agent"), as agent for shareholders in administering the Plan, a registered owner will receive newly issued Common Shares for all dividends declared for Common Shares of the Fund. If a registered owner of Common Shares elects not to participate in the Plan, they will receive all dividends in cash paid by check mailed directly to them (or, if the shares are held in street or other nominee name, then to such nominee) by AST, as dividend disbursing agent.

Shareholders may elect not to participate in the Plan and to receive all dividends in cash by sending written instructions or by contacting AST, as dividend disbursing agent, at the address set forth below.

Participation in the Plan is completely voluntary and may be terminated or resumed at any time without penalty by contacting the Plan Agent before the dividend record date; otherwise such termination or resumption will be effective with respect to any subsequently declared dividend. Some brokers may automatically elect to receive cash on the shareholders' behalf and may reinvest that cash in additional Common Shares of the Fund for them. The Plan Agent will open an account for each shareholder under the Plan in the same name in which such shareholder's Common Shares are registered.

Whenever the Fund declares a dividend payable in cash, non-participants in the Plan will receive cash and participants in the Plan will receive the equivalent in Common Shares. The Common Shares will be acquired by the Plan Agent through receipt of additional unissued but authorized Common Shares from the Fund ("newly issued Common Shares"). The number of newly issued Common Shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the lesser of (i) the net asset value per Common Share determined on the Declaration Date and (ii) the market price per Common Share as of the close of regular trading on the New York Stock Exchange (the "NYSE") on the Declaration Date. The Plan Agent maintains all shareholders' accounts in the Plan and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Common Shares in the account of each Plan participant will be held by the Plan Agent on behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. The Plan Agent will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants. In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, the Plan Agent will administer the Plan on the basis of the number of Common Shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan. There will be no brokerage charges with respect to Common Shares issued directly by the Fund.

The automatic reinvestment of dividends will not relieve participants of any federal, state or local income tax that may be payable (or required to be withheld) on such dividends. Accordingly, any taxable dividend received by a participant that is reinvested in additional Common Shares will be subject to federal (and possibly state and local) income tax even though such participant will not receive a corresponding amount of cash with which to pay such taxes. Participants who request a sale of shares through the Plan

ADDITIONAL INFORMATION (unaudited) (continued)

Agent are subject to a $2.50 sales fee and pay a brokerage commission of $0.05 per share sold. The Fund reserves the right to amend or terminate the Plan. There is no direct service charge to participants in the Plan; however, the Fund reserves the right to amend the Plan to include a service charge payable by the participants. All correspondence concerning the Plan should be directed to the Plan Agent at American Stock Transfer & Trust Company, LLC 6201 15th Avenue Brooklyn, NY 11219; telephone (718) 921-8200.

Shareholder Loyalty Program

To promote loyalty and long-term alignment of interests among the Company's shareholders, the Investment Adviser offers an incentive to shareholders that buy and hold the Company's common shares for a period of at least twelve months through its Shareholder Loyalty Program (the "Program"). To participate in the Program, existing shareholders must open an account (the "Account") with the Program's administrator, Maxim Group, LLC ("Maxim"). Subsequently, if a participant makes contributions to the Account during a defined trading period to purchase shares, the Investment Adviser will make a corresponding contribution equal to 2% of the participant's contributions. For example, if a participant contributes $10,000 to the Account during a defined trading period to purchase shares, the Investment Adviser will make a corresponding contribution of $200, to purchase additional shares for the participant (the "Bonus Shares"). In addition, Program participants will not be required to pay any customary selling commissions or distribution fees on the purchase of shares under the Program. The Investment Adviser will bear the costs of brokerage fees in connection with the Program. While the portion of the Company's common shares that are acquired through the participant's contribution will vest immediately, Bonus Shares will not vest until the first anniversary of the date that the Bonus Shares were purchased. Vested shares will be held in the Account and Bonus Shares will be held in an account at Maxim for the conditional benefit of the shareholder. Under the Program, Participants must purchase a minimum of $10,000 worth of shares in the initial subscription and $5,000 in each Subsequent subscription, unless the Investment Adviser, in its sole discretion, decides to permit subscriptions for a lesser amount. If the Company's common shares are trading at a discount, Maxim will purchase common shares on behalf of participants in open-market purchases. If the Company's common shares are trading at a premium, Maxim may purchase common shares on behalf of participants in open market purchases or the Company may sell common shares to the shareholder Loyalty Program by means of a prospectus or otherwise. All dividends received on shares that are purchased under the Program will be automatically reinvested through the Program. A participant's interest in a dividend paid to the holder of a vested share will vest immediately. A participant's interest in a dividend paid to the holder of a Bonus Share will vest at the same time that the Bonus Share's vesting requirements are met. In addition, for dividends paid to holders of shares that were purchased with a participant's contributions, the Investment Adviser will take a corresponding contribution to the amount of the reinvested dividend equal to 2% of the dividend amount. Maxim maintains all shareholders' accounts in the Program and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Shares in the account of each Program participant will be held by Maxim on behalf of the Program participant, and each shareholder proxy will include those shares purchased or received pursuant to a Program. Maxim will forward all proxy solicitation materials to participants and vote proxies for shares held under the Program in accordance with the instructions of the participants. In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, Maxim will administer the Program on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Program. The Company and the Investment Adviser reserve the right to amend or terminate the Program. To help align the interests of the Investment Adviser's employees with the interests of the Company's shareholders, the Investment Adviser offers a similar program to its employees. Participants in the Program should be aware that their receipt of Bonus Shares under the Program constitutes taxable income to them. In addition, such participants owe taxes on that portion of any distribution that constitutes taxable income in respect of shares of our common stock held in their Program accounts, whether or not such shares of common stock have vested in the hands of the participants. To the extent any payments or distributions under the Program are subject to U.S. federal, state or local taxes, the Company, any participating affiliate of the Company or the agent for the Program may satisfy its tax withholding obligation by (1) withholding shares of Stock allocated to the participant's account, (2) deducting cash from the participant's account or (3) deducting cash from any other compensation the participant may receive. Program participants should consult their tax advisers regarding the tax consequences to them of participating in the Program. The Program may create an incentive for shareholders to invest additional amounts in the Company. Because the Investment Adviser's management fee is based on a percentage of the assets of the Company, the Program will result in increased net revenues to the Investment Adviser if the increase in the management fee due to the increased asset base offsets the costs associated with establishing and maintaining the Program.

ADDITIONAL INFORMATION (unaudited) (continued)

Approval of Highland Income Fund Advisory Agreement.

The Fund has retained NexPoint Asset Management, L.P. (the "Investment Adviser") to manage the assets of the Fund pursuant to an investment advisory agreement between the Investment Adviser and the Fund (the "Agreement"). The Agreement has been approved by the Fund's Board of Trustees, including a majority of the Independent Trustees. The Agreement continues in effect from year-to-year, provided that such continuance is specifically approved at least annually by the vote of holders of at least a majority of the outstanding shares of the Fund or by the Board of Trustees and, in either event, by a majority of the Independent Trustees of the Fund casting votes virtually at a meeting called for such purpose.

During a telephonic meeting with the Investment Adviser held on August 19, 2022, and separately with independent counsel on September 1, 2022, the Board of Trustees considered information bearing on the continuation of the Agreement for an additional one-year period. The Board of Trustees further discussed and considered information with respect to the continuation of the Agreement at Board meetings held telephonic on September 15-16, 2022 and in person on September 28, 2022.

On March 25, 2020, as a result of health and safety measures put in place to combat the global COVID-19 pandemic, the Securities and Exchange Commission issued an exemptive order (the "Order") pursuant to Sections 6(c) and 38(a) of the Investment Company Act of 1940, as amended (the "1940 Act"), that temporarily exempts registered investment management companies from the in-person voting requirements under the 1940 Act, subject to certain requirements, including that votes taken pursuant to the Order are ratified at the next in-person meeting. The Board determined that reliance on the Order was necessary or appropriate due to the circumstances related to current or potential effects of COVID-19. Following in person and telephonic review and discussion of the Agreement and information provided by the Adviser discussed above, at a telephonic meeting held on October 21, 2022, the Board of Trustees, including the Independent Trustees, approved the continuance of the Agreement for a one-year period commencing on November 1, 2022. As part of its review process, the Board of Trustees requested, through Fund counsel and independent legal counsel, and received from the Investment Adviser, various information and written materials, including: (1) information regarding the financial soundness of the Investment Adviser and the profitability of the Agreement to the Investment Adviser; (2) information on the advisory, legal and compliance personnel of the Investment Adviser, including ongoing updates regarding the Highland Capital Management L.P. ("HCMLP") bankruptcy; (3) information regarding the role of Skyview Group ("Skyview") as a service provider to the Investment Adviser pursuant to the services agreement between Skyview and the Investment Adviser (the "Skyview Services Agreement") to assist the Investment Adviser in providing certain services to the Fund pursuant to the Agreement and the Administration Services Agreement between the Investment Adviser and the Fund, as well as information regarding the Investment Adviser's oversight role over Skyview; (4) information on the internal compliance procedures of each of the Investment Adviser, including policies and procedures for personal securities transactions, conflicts of interest and with respect to cybersecurity, business continuity and disaster recovery; (5) comparative information showing how the Fund's fees and operating expenses compare to those of other accounts of the Investment Adviser, if any, with investment strategies similar to those of the Fund; (6) information on the investment performance of the Fund, including comparisons of the Fund's performance against that of other registered investment companies and comparable funds managed by the Investment Adviser that follow investment strategies similar to those of the Fund; (7) information regarding brokerage and portfolio transactions; and (8) information on any legal proceedings or regulatory audits or investigations affecting the Investment Adviser, including potential claims in the HCMLP bankruptcy. After the August 2022 meeting and throughout the annual contract renewal process, including at the September 15-16, 2022 and September 28, 2022 Board meetings, the Board of Trustees requested that the Investment Adviser provide additional information and written responses regarding various matters in connection with the Board of Trustee's review and consideration of the Agreement. It was further noted that throughout the process, the Board of Trustees, including separately the Independent Trustees, had also met in executive sessions to further discuss the materials and information provided.

In addition, the Board of Trustees received an independent report from FUSE Research Network ("FUSE"), an independent third-party provider of investment company data, relating to the Fund's performance and expenses compared to the performance and expenses of a group of funds deemed by FUSE to be comparable to the Fund (the "peer group"), and to a larger group of comparable funds (the "peer universe").

The Board of Trustees discussed the materials and information provided by the Investment Adviser in detail over the course of multiple meetings, including the Investment Adviser's responses to the Board of Trustees' specific written questions, comparative fee and performance information and information concerning the Investment Adviser's business and financial condition. The factors

considered and the determinations made by the Board of Trustees in connection with the approval of the renewal of the Agreement with the Investment Adviser are set forth below but are not exhaustive of all matters that were discussed by the Board of Trustees.

The Board of Trustees' evaluation process with respect to the Investment Adviser is an ongoing one. In this regard, the Board of Trustees also took into account discussions with management and information provided to the Board of Trustees at meetings of the Board of Trustees over the course of the year and in past years with respect to the services provided by the Investment Adviser to the Fund, including quarterly performance reports prepared by management containing reviews of investment results and prior presentations from the Investment Adviser with respect to the Fund. The information received and considered by the Board of Trustees in connection with the Board's determination to approve the continuance of the Agreement was both written and oral.

The Board of Trustees reviewed various factors that were discussed in a legal memorandum provided by independent counsel regarding trustee responsibilities in considering the Agreement, the detailed information provided by the Investment Adviser and other relevant information. The Board of Trustees also considered other factors (including conditions and trends prevailing generally in the economy, the securities markets, and the effect of the COVID-19 pandemic on the Fund and the industry). Some of the factors that figured particularly in the Board of Trustees' deliberations are described below, although individual Trustees may have evaluated the information presented differently from one another, giving different weights to various factors. In addition, the Board of Trustees' conclusions may be based in part on its consideration of the advisory arrangements in prior years and on the Board of Trustees' ongoing regular review of fund performance and operations throughout the year. The Board of Trustees' conclusions as to the approval of the Agreement were based on a comprehensive consideration of all information provided to the Board of Trustees without any single factor being dispositive in and of itself.

Throughout the process, the Board of Trustees had the opportunity to ask questions of and request additional information from the Investment Adviser. The Board of Trustees was assisted by legal counsel for the Trust and the Independent Trustees were also separately assisted by independent legal counsel throughout the process. The Board of Trustees also met separately without representatives of the Investment Adviser present. The Independent Trustees were advised by and met in executive sessions with their independent legal counsel at which no representatives of management were present to discuss the proposed continuation of the Agreement.

The nature, extent, and quality of the services to be provided by the Investment Adviser.

The Board of Trustees considered the Investment Adviser's services as investment manager to the Fund.

The Board of Trustees considered the portfolio management services to be provided by the Investment Adviser under the Agreement and the activities related to portfolio management, including use of technology, research capabilities and investment management staff. The Board of Trustees also considered the relevant experience and qualifications of the personnel providing advisory services, including the background and experience of the members of the Fund's portfolio management team. The Board of Trustees reviewed the management structure, assets under management and investment philosophies and processes of the Investment Adviser, including with respect to liquidity management. The Board of Trustees also reviewed and discussed information regarding the Investment Adviser's compliance policies, procedures and personnel, including compensation arrangements, and with respect to valuation, cybersecurity, business continuity and disaster recovery. The Board of Trustees also considered the Investment Adviser's risk management and monitoring processes. The Board of Trustees took into account the terms of the Agreement and considered that, the Investment Adviser, subject to the direction of the Board of Trustees, is responsible for providing advice and guidance with respect to the Fund and for managing the investment of the assets of the Fund. The Board of Trustees also took into account that the scope of services provided to the Fund and the undertakings required of the Investment Adviser in connection with those services, including with respect to its own and the Fund's compliance programs, had expanded over time as a result of regulatory, market and other developments. The Board of Trustees also considered operational, staffing and organizational changes with respect to the Investment Adviser over the prior year, including in connection with the transitions of certain shared services arrangements and the fact that there were no material operational or compliance issues with respect to the Fund or decrease in the level and quality of services provided to the Fund as a result. The Board of Trustees also considered the Investment Adviser's legal and regulatory history. The Board of Trustees also considered the Investment Adviser's current litigation matters related to the HCMLP bankruptcy and took into account the Investment Adviser's representation that such matters would not impact the quality and level of services the Investment Adviser will provide to the Fund under the Agreement.

The Investment Adviser's services in coordinating and overseeing the activities of the Fund's other service providers, as well of the services provided by Skyview to the Investment Adviser under the Skyview Services Agreement, were also

considered. The Board of Trustees also evaluated the expertise and performance of the personnel of the Investment Adviser who performed services for the Fund throughout the year. They also considered the quality of the Investment Adviser's compliance oversight program with respect to the Fund's service providers. The Board of Trustees also considered both the investment advisory services and the nature, quality and extent of any administrative and other non-advisory services, including shareholder servicing and distribution support services that are provided to the Fund and its shareholders by the Investment Adviser and its affiliates, as well as considered the services provided by Skyview to the Investment Adviser under the Skyview Services Agreement. The Board of Trustees noted that the level and quality of services to the Fund by the Investment Adviser and its affiliates had not been materially impacted by the HCMLP bankruptcy and took into account the Investment Adviser's representations that the level and quality of the services provided by the Investment Adviser and their affiliates, as well as of those services provided by Skyview to the Investment Adviser under the Skyview Services Agreement, would continue to be provided to the Fund at the same or higher level and quality.

The Board of Trustees also considered the significant risks assumed by the Investment Adviser in connection with the services provided to the Fund, including entrepreneurial risk and ongoing risks including investment, operational, enterprise, litigation, regulatory and compliance risks with respect to the Fund. The Board of Trustees also noted various cost savings initiatives that had been implemented by the Investment Adviser with respect to the Fund and the other funds in the Highland complex over the years. The Board of Trustees considered the Investment Adviser's financial condition and financial wherewithal. The Board of Trustees also considered the financial condition and operations of the Investment Adviser during the COVID-19 pandemic and noted that there had been no material disruption of the Investment Adviser's services to the Fund and that the Investment Adviser had continued to provide the same level, quality and extent of services to the Fund.

The Board of Trustees also noted that on a regular basis it receives and reviews information from the Fund's Chief Compliance Officer (CCO) regarding the Fund's compliance policies and procedures established pursuant to Rule 38a-1 under the 1940 Act. The Board of Trustees also took into account the CCO's ongoing reports concerning the CCO's oversight of the risk assessment processes.

In considering the nature, extent, and quality of the services provided by the Investment Adviser, the Board of Trustees also took into account its knowledge of the Investment Adviser's management and the quality of the performance of its duties, through discussions and reports and interactions during the preceding year and in past years.

The Board of Trustees concluded that the Investment Adviser had the quality and depth of personnel and investment methods essential to performing its duties under the Agreement, and that the nature and the quality of such advisory services supported the approval of the Agreement.

The Investment Adviser's historical performance.

In considering the Fund's performance, the Board of Trustees noted that it reviews at its regularly scheduled meetings information about the Fund's performance results. The Board of Trustees considered the performance of the Fund as described in the quarterly and other reports provided by management over the course of the year. The Board of Trustees noted that the Investment Adviser reviewed with the Board of Trustees on at least a quarterly basis detailed information about the Fund's performance results, portfolio composition and investment strategies. The Board of Trustees reviewed the historical performance of the Fund over various time periods and reflected on previous discussions regarding matters bearing on the Investment Adviser's performance at its meetings throughout the year. The Board of Trustees discussed the historical performance of the Fund and considered the relative performance of the Fund and its portfolio management team as compared to that of the Fund's peer group as selected by FUSE, as well as comparable indices. Among other data, the Board of Trustees also received data with respect to the Fund's leverage, discounts and distribution rates as compared to its peer group.

The Board of Trustees reviewed and considered the FUSE report, which provided a statistical analysis comparing the Fund's investment performance, expenses and fees to those of comparable funds for various periods ended June 30, 2022 and management's discussion of the same, including the effect of current market conditions on the Fund's more-recent performance. The Board of Trustees also received a review of the data contained in the FUSE report from representatives of FUSE. The Board of Trustees noted that while it found the data provided by FUSE, the independent third-party data provider, generally useful, it recognized its limitations, including in particular that the data may vary depending on the end date selected and the results of the performance comparisons may vary depending on the selection of the peer group. The Board of Trustees also took into account management's discussion of the category in which the Fund was placed for comparative purposes, including any differences between the Fund's investment strategy and the strategy of the funds in the Fund's respective category, as well as compared to the peer group selected by FUSE. The Board of Trustees also took into account its discussions with management over the course of

the year regarding factors that contributed to the performance of the Fund, including presentations with the Fund's portfolio managers.

Among other data relating specifically to the Fund's performance, the Board took note of the peer group of tactical allocation funds and FUSE's explanation of the same that a peer group of tactical allocation funds better reflects the Fund's objective of seeking to provide a high level of current income through investment in a highly diverse set of securities and using a wide array of strategies.

The Board of Trustees then considered that the Fund had outperformed its benchmark, the Credit Suisse Leveraged Loan USD Index, as well as its peer group median for the one-, three-, five-, and ten-year periods ended June 30, 2022. The Board also took into account management's discussion of the Fund's performance, including its recent performance differences in the Fund's strategy from the funds in its peer group. The Board also noted management discussion of actions previously taken and potential further actions to be taken to address the Fund's discount.

The Board of Trustees concluded that the Fund's overall performance and other relevant factors supported the continuation of the Agreement with respect to the Fund for an additional one-year period.

The costs of the services to be provided by the Investment Adviser and the profits to be realized by the Investment Adviser and its affiliates from the relationship with the Fund.

The Board of Trustees also gave consideration to the fees payable under the Agreement, the expenses the Investment Adviser incur in providing advisory services and the profitability to the Investment Adviser from managing the Fund, including: (1) information regarding the financial condition of the Investment Adviser and regarding profitability from the relationship with the Fund; (2) information regarding the total fees and payments received by the Investment Adviser for its services and, with respect to the Investment Adviser, whether such fees are appropriate given economies of scale and other considerations; (3) comparative information showing (a) the fees payable under the Agreement versus the investment advisory fees of certain registered investment companies and comparable funds that follow investment strategies similar to those of the Fund and (b) the expense ratios of the Fund versus the expense ratios of certain registered investment companies and comparable funds that follow investment strategies similar to those of the Fund; and (4) information regarding the total fees and payments received and the related amounts waived and/or reimbursed by the Investment Adviser for administrative services with respect to the Fund under separate agreements and whether such fees are appropriate. The Board of Trustees took into account the management fee structure, including that management fees for the Fund were based on the Fund's total managed assets.

Among other data, the Board of Trustees considered that the Fund's total net expenses were higher than its peer group median and that the Fund's net management fees (the Fund's actual advisory fee plus actual administrative fee) were lower than those of its peer group median. The Board of Trustees also took into account management's discussion of the Fund's expenses.

The Board of Trustees also considered the so-called "fallout benefits" to the Investment Adviser with respect to the Fund, such as the reputational value of serving as Investment Adviser to the Fund, potential fees paid to the Investment Adviser's affiliates by the Fund or portfolio companies for services provided, including administrative services provided to the Fund by the Investment Adviser pursuant to separate agreements, the benefits of scale from investment by the Fund in affiliated funds, and the benefits of research made available to the Investment Adviser by reason of brokerage commissions (if any) generated by the Fund's securities transactions. The Board of Trustees concluded that the benefits received by the Investment Adviser and its affiliates were reasonable in the context of the relationship between the Investment Adviser and the Fund.

After such review, the Board of Trustees determined that the profitability to the Investment Adviser and its affiliates from their relationship with the Fund was not excessive.

The extent to which economies of scale would be realized as the Fund grows and whether fee levels reflect these economies of scale for the benefit of shareholders.

The Board of Trustees also considered the effect of the Fund's growth in assets under management on its fees. The Board of Trustees noted that breakpoints recently have been added to the Fund's advisory fee schedule. The Board of Trustees also took into account the Adviser's discussion of the fee structure, including that the Fund also benefits from a waiver of a portion of its advisory and administration fees, which the Investment Adviser believes can be more effective than breakpoints at controlling overall costs borne by shareholders. The Board of Trustees also noted the FUSE report, which compared fees among peers, and included the Fund's contractual fee schedule at different asset levels. The Board of Trustees noted that the Fund's contractual advisory fee is lower than its peer group at all asset levels. The Board of Trustees noted that, if the Fund's assets increase over time, The Board of Trustees also generally noted that, if the Fund's assets increase over time, the Fund may realize other economies of scale if assets increase proportionally more than certain other fixed expenses. The Board of Trustees

ADDITIONAL INFORMATION (unaudited) (continued)

concluded that the fee structure is reasonable, and with respect to the Investment Adviser, should result in a sharing of economies of scale in view of the information provided. The Board of Trustees determined to continue to review the ways and extent to which economies of scale might be shared between the Investment Adviser, on the one hand, and shareholders of the Fund, on the other.

Conclusion.

Following a further discussion of the factors above, it was noted that in considering the approval of the Agreement, no single factor was determinative to the decision of the Board of Trustees. Rather, after weighing all factors and conside rations, including those discussed above, the Board of Truste es, including separately, the Independent Trustees, unanimously agreed that the Agreement, including the advis ory fee to be paid to the Investment Adviser, is fair and reas onable to the Fund in light of the services that the Investment Adviser provides, the expenses that it incurs and the reasonably foreseeable asset levels of the Fund.

ADDITIONAL INFORMATION (unaudited) (continued)

December 31, 2022 **Highland Income Fund**

Trustees and Officers

The Board provides broad oversight of the operations and affairs of the Fund and protects the interests of shareholders. The Board has overall responsibility to manage and control the business affairs of the Fund, including the complete and exclusive authority to establish policies regarding the management, conduct and operation of the Fund's business. The names and birth dates of the Trustees and officers of the Fund, the year each was first elected or appointed to office, their principal business occupations during the last five years, the number of funds overseen by each Trustee and other directorships they hold are shown below. The business address for each Trustee and officer of the Fund is c/o NexPoint Asset Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201.

The "NexPoint Fund Complex," as referred to herein consists of: each series of NexPoint Funds I ("NFI"), each series of NexPoint Funds II ("NFII"), Highland Global Allocation Fund ("GAF"), Highland Income Fund ("HFRO"), NexPoint Real Estate Strategies Fund ("NRESF") and NexPoint Capital, Inc. (the "BDC"), a closed-end management investment company that has elected to be treated as a business development company under the 1940 Act.

Name and Date of Birth	Position(s) with the Fund	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Fund Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
			Independent Trustees			
Dr. Bob Froehlich (4/28/1953)	Trustee	Trustee since December 2013; 3 year term (expiring at 2023 annual meeting).	Retired.	8	Director of KC Concessions, Inc. (since January 2013); Director of American Sports Enterprise, Inc. (since January 2013); Chairman and owner, Kane County Cougars Baseball Club (since January 2013); Director of The Midwest League of Professional Baseball Clubs, Inc. (from January 2013 to December 2021); Director of Kane County Cougars Foundation, Inc. (since January 2013); Director of Galen Robotics, Inc. (since August 2016); Chairman and Director of FC Global Realty, Inc. (from May 2017 to June 2018); Chairman; Director of First Capital Investment Corp. (from March 2017 to March 2018); Director and Special Advisor to Vault Data, LLC (since February 2018); and Director of American Association of Professional Baseball, Inc. (since February 2021).	Significant experience in the financial industry; significant managerial and executive experience; significant experience on other boards of directors, including as a member of several audit committees.

ADDITIONAL INFORMATION (unaudited) (continued)

Name and Date of Birth	Position(s) with the Fund	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Fund Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
			Independent Trustees			
Ethan Powell (6/20/1975)	Trustee; Chairman of the Board	Trustee since December 2013; Chairman of the Board since December 2013; 3 year term (expiring at 2025 annual meeting).	Principal and CIO of Brookmont Capital Management, LLC since May 2020; CEO, Chairman and Founder of Impact Shares LLC since December 2015; Trustee/ Director of the NexPoint Fund Complex from June 2012 until July 2013 and since December 2013; and Director of Kelly Strategic Management since August 2021.	8	Trustee of Impact Shares Funds I Trust	Significant experience in the financial industry; significant executive experience including past service as an officer of funds in the NexPoint Fund Complex; significant administrative and managerial experience.
Bryan A. Ward (2/4/1955)	Trustee	Trustee since inception in 2006; 3 year term (expiring at 2025 annual meeting).	Business Development Banker, CrossFirst Bank since January 2023 (President-Dallas from October 2020 until January 2023 and Senior Advisor from April 2019 until October 2022), Private Investor, BW Consulting, LLC since 2014; and Anderson Consulting/Accenture 1991-2013.	8	None.	Significant experience on this and/ or other boards of directors/ trustees, Audit Committee Chair; significant managerial and executive experience; significant experience as a management consultant.

ADDITIONAL INFORMATION (unaudited) (continued)

Name and Date of Birth	Position(s) with the Fund	Term of Office[1] and Length of Time Served	Principal Occupation(s) During Past Five Years	Number of Portfolios in the NexPoint Fund Complex Overseen by the Trustee	Other Directorships/ Trusteeships Held During the Past Five Years	Experience, Qualifications, Attributes, Skills for Board Membership
			Independent Trustees			
Dorri McWhorter (6/30/1973)	Trustee	Trustee since May 2022; 3 year term (expiring at 2023 annual meeting).	President & CEO, YMCA of Metropolitan Chicago (2021-Present); Chief Executive Officer, YWCA Metropolitan Chicago (2013-2021).	8	Board Director of William Blair Funds (since 2019); Board Director of Skyway Concession Company, LLC (since 2018); Board Director of Illinois CPA Society (2017-2022); Board Director of Lifeway Foods, Inc. (since 2020); Board Director of Green Thumb Industries, Inc. (February 2022 to October 2022); Member of Financial Accounting Standards Advisory Council (since 2021); Board Director of LanzaTech Global, Inc. (since 2023).	Significant managerial and executive experience, including experience as president and chief executive officer; significant background and experience in financial accounting; significant experience on other boards of directors, including for other registered investment companies.
			Interested Trustee			
John Honis (6/16/1958)	Trustee	Trustee since July 2013; 3 year term (expiring at 2024 annual meeting).	President of Rand Advisors, LLC (August 2013 - August 2022); President of Valience Group, LLC since July 2021.	8	Manager of Turtle Bay Resort, LLC (August 2011 – December 2018)	Significant experience in the financial industry; significant managerial and executive experience, including experience as president, chief executive officer or chief restructuring officer of five telecommunication firms; experience on other boards of directors.

1 On an annual basis, as a matter of Board policy, the Governance and Compliance Committee reviews each Trustee's performance and determines whether to extend each such Trustee's service for another year. The Board adopted a retirement policy wherein the Governance and Compliance Committee shall not recommend the continued service as a Trustee of a Board member who is older than 80 years of age at the time the Governance and Compliance Committee reports its findings to the Board.

ADDITIONAL INFORMATION (unaudited) (concluded)

Name and Date of Birth	Position(s) with the Fund	Term of Office and Length of Time Served	Principal Occupation(s) During Past Five Years Officers
			Officers
Dustin Norris (1/6/1984)	Executive Vice President	Indefinite Term; Executive Vice President since April 2019.	Head of Distribution and Chief Product Strategist at NexPoint since March 2019; President of NexPoint Securities, Inc. since April 2018; Head of Distribution at NexPoint from November 2017 until March 2019; Chief Product Strategist at NexPoint from September 2015 to March 2019; Officer of the NexPoint Fund Complex since November 2012.
Frank Waterhouse (4/14/1971)	Treasurer, Principal Accounting Officer, Principal Financial Officer and Principal Executive Officer	Indefinite Term; Treasurer since May 2015; Principal Accounting Officer since October 2017; Principal Executive Officer and Principal Financial Officer since April 2021.	Chief Financial Officer of Skyview Group since February 2021; Chief Financial Officer and Partner of NexPoint Asset Management, L.P. ("NexPoint") from December 2011 and March 2015, respectively, to February 2021; Treasurer of the NexPoint Fund Complex since May 2015; Principal Financial Officer October 2017 to February 2021; Principal Executive Officer February 2018 to February 2021.
Will Mabry (7/2/1986)	Assistant Treasurer	Indefinite Term; Assistant Treasurer since April 2021.	Director, Fund Analysis of Skyview Group since February 2021. Prior to his current role at Skyview Group, Mr. Mabry served as Senior Manager – Fund Analysis, Manager – Fund Analysis, and Senior Fund Analyst for HCMLP.
Stephanie Vitiello (6/21/1983)	Secretary, Chief Compliance Officer and Anti-Money Laundering Officer	Indefinite Term; Secretary since April 2021; Chief Compliance Officer and Anti-Money Laundering Officer since November 2021.	Chief Compliance Officer, Anti-Money Laundering Officer and Counsel of Skyview Group since February 2021. Prior to her current role at Skyview Group, Ms. Vitiello served as Managing Director – Distressed, Assistant General Counsel, Associate General Counsel and In- House Counsel for HCMLP.
Rahim Ibraham (8/17/1989)	Assistant Secretary	Indefinite Term; Assistant Secretary since November 2021.	Counsel and Compliance Manager at Skyview Group since March 2022. Prior to his current role at Skyview Group, Mr. Ibrahim served as a Compliance Analyst for Skyview Group from May 2021 to March 2022; Compliance Associate for Loring, Wolcott & Coolidge Trust, LLC from October 2019 until May 2021; Corporate Paralegal at Maples Group from April 2018 to October 2019; Associate Engagement Specialist-Compliance at Eze Software Group from June 2017 to April 2018.

IMPORTANT INFORMATION ABOUT THIS REPORT

Investment Adviser
NexPoint Asset Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201

Transfer Agent
American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Underwriter
NexPoint Securities, Inc.
300 Crescent Court, Suite 700
Dallas, TX 75201

Custodian
Bank of New York Mellon
240 Greenwich Street
New York, NY 10286

Independent Registered Public Accounting Firm
Cohen & Company, Ltd.
1350 Euclid Ave., Suite 800
Cleveland, OH 44115

Fund Counsel
K&L Gates LLP
1 Lincoln Street
Boston, MA 02111

This report has been prepared for shareholders of Highland Global Allocation Fund (the “Fund”). As of January 1, 2021, paper copies of the Fund’s shareholder reports will no longer be sent by mail. Instead, the reports will be made available on https://www.nexpointassetmgmt.com/literature/, and you will be notified and provided with a link each time a report is posted to the website. You may request to receive paper reports from the Fund or from your financial intermediary free of charge at any time. For additional information regarding how to access the Fund’s shareholder reports, or to request paper copies by mail, please call shareholder services at 1-800-357-9167.

A description of the policies and procedures that the Fund uses to determine how to vote proxies relating to their portfolio securities, and the Fund’s proxy voting records for the most recent 12-month period ended June 30, are available (i) without charge, upon request, by calling 1-800-357-9167 and (ii) on the Securities and Exchange Commission’s website at http://www.sec.gov.

The Fund files its complete schedules of portfolio holdings with the Securities and Exchange Commission for the first and third quarters of each fiscal year as an exhibit to its report on Form N-PORT within sixty days after the end of the period. The Fund’s Form N-PORT are available on the Commission’s website at http://www.sec.gov and also may be reviewed and copied at the Commission’s Public Reference Room in Washington, DC. Information on the Public Reference Room may be obtained by calling 1-800-SEC-0330. Shareholders may also obtain the Form N-PORT by visiting the Fund’s website at www.nexpointassetmgmt.com.

The Statement of Additional Information includes additional information about the Fund’s Trustees and is available upon request without charge by calling 1-800-357-9167.

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NEXPOINT
ADVISORS

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Highland Income Fund

Annual Report, December 31, 2022

www.nexpointassetmgmt.com

HFRO-AR-1222

Item 2. Code of Ethics.

(a) Highland Income Fund (the "Registrant"), as of the end of the period covered by this report, has adopted a code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party.

(b) Not applicable.

(c) There have been no amendments, during the period covered by this report, to a provision of the code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, and that relates to any element of the code of ethics description.

(d) The Registrant has not granted any waiver, including any implicit waiver, from a provision of the code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, that relates to one or more of the items set forth in paragraph (b) of this Item's instructions.

(e) Not applicable.

(f) The Registrant's code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions is filed herewith as Exhibit (a)(1).

Item 3. Audit Committee Financial Expert.

As of the end of the period covered by the report, the Registrant's Board of Trustees (the "Board") has determined that Bryan A. Ward, a member of the Audit & Qualified Legal Compliance Committee of the Board (the "Audit Committee"), is an audit committee financial expert as defined by the Securities and Exchange Commission (the "SEC") in Item 3 of Form N-CSR. Mr. Ward is "independent" as defined by the SEC for purposes of this Item 3 of Form N-CSR.

Item 4. Principal Accountant Fees and Services.

Audit Fees

(a) The aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the Registrant's annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years are $155,000 for the fiscal year ended December 31, 2021 and $162,750 for the fiscal year ended December 31, 2022.

Audit-Related Fees

(b) The aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit of the Registrant's financial statements and are not reported under paragraph (a) of this Item are $0 for the fiscal year ended December 31, 2021 and $0 for the fiscal year ended December 31, 2022.

Tax Fees

(c) The aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning are $14,000 for the fiscal year ended December 31, 2021 and $14,000 for the fiscal year ended December 31, 2022. The nature of the services related to assistance on the Registrant's tax returns and excise tax calculations.

All Other Fees

(d) The aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this Item are $0 for the fiscal year ended December 31, 2021 and $0 for the fiscal year ended December 31, 2022.

(e)(1) Disclose the Audit Committee's pre-approval policies and procedures described in paragraph (c)(7) of Rule 2-01 of Regulation S-X:

The Audit Committee shall:

(a) have direct responsibility for the appointment, compensation, retention and oversight of the Registrant's independent auditors and, in connection therewith, to review and evaluate matters potentially affecting the independence and capabilities of the auditors; and

(b) review and pre-approve (including associated fees) all audit and other services to be provided by the independent auditors to the Registrant and all non-audit services to be provided by the independent auditors to the Registrant's investment adviser or any entity controlling, controlled by or under common control with the investment adviser (an "Adviser Affiliate") that provides ongoing services to the Registrant, if the engagement relates directly to the operations and financial reporting of the Registrant; and

(c) establish, to the extent permitted by law and deemed appropriate by the Audit Committee, detailed pre-approval policies and procedures for such services; and

(d) review and consider whether the independent auditors' provision of any non-audit services to the Registrant, the Registrant's investment adviser or an Adviser Affiliate not pre-approved by the Audit Committee are compatible with maintaining the independence of the independent auditors.

(e)(2) The percentage of services described in each of paragraphs (b) through (d) of this Item that were approved by the Audit Committee pursuant to paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X are as follows:

(b) 100%

(c) 100%

(d) 100%

(f) The percentage of hours expended on the principal accountant's engagement to audit the Registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees was less than fifty percent.

(g) The aggregate non-audit fees billed by the Registrant's accountant for services rendered to the Registrant, and rendered to the Registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and an Adviser Affiliate that provides ongoing services to the Registrant for each of the last two fiscal years of the Registrant was $0 for the fiscal year ended December 31, 2021 and $0 for the fiscal year ended December 31, 2022.

(h) The Registrant's Audit Committee has considered whether the provision of non-audit services that were rendered to the Registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and an Adviser Affiliate that provides ongoing services to the Registrant that were not pre-approved pursuant to paragraph (c)(7)(ii) of Rule 2-01 of Regulation S-X is compatible with maintaining the principal accountant's independence.

Item 5. Audit Committee of Listed Registrants.

(a) The Registrant has a separately-designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). It is composed of the following Trustees, each of whom is not an "interested person" as defined in the 1940 Act:

Item 6. Investments.

(a) Schedule of Investments in securities of unaffiliated issuers as of the close of the reporting period is included as part of the Annual Report to shareholders filed under Item 1 of this form.

(b) Not applicable.

Item 7. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies.

PROXY VOTING POLICY

Purpose and Scope

The purpose of these voting policies and procedures (the "Policy") is to set forth the principles and procedures by which NexPoint Asset Management, L.P. (the "Company") votes or gives consents with respect to the securities owned by Clients for which the Company exercises voting authority and discretion.[1] For avoidance of doubt, this includes any proxy and any shareholder vote or consent, including a vote or consent for a private company or other issuer that does not involve a proxy. These policies and procedures have been designed to help ensure that votes are cast in the best interests of Clients in accordance with the Company's fiduciary duties and Rule 206(4)-6 under the Investment Advisers Act of 1940 (the "Advisers Act").

This Policy applies to securities held in all Client accounts (including Retail Funds and other pooled investment vehicles) as to which the Company has explicit or implicit voting authority. Implicit voting authority exists where the Company's voting authority is implied by a general delegation of investment authority without reservation of proxy voting authority to the Client.

If the Company has delegated voting authority to an investment sub-adviser with respect to any Retail Fund, such sub-adviser will be responsible for voting all proxies for such Retail Funds in accordance with the sub-adviser's proxy voting policies. The Compliance Department, to provide oversight over the proxy voting by sub-advisers and to ensure that votes are executed in the best interests of the Retail Funds, shall (i) review the proxy voting policies and procedures of each Retail Fund sub-adviser to confirm that they comply with Rule 206(4)-6, both upon engagement of the sub-adviser and upon any material change to the sub-adviser's proxy voting policies and procedures, and (ii) require each such sub-adviser to provide quarterly certifications that all proxies were voted pursuant to the sub-adviser's policies and procedures or to describe any inconsistent votes.

General Principles

The Company and its affiliates engage in a broad range of activities, including investment activities for their own accounts and for the accounts of various Clients and providing investment advisory and other services to Clients. In the ordinary course of conducting the Company's activities, the interests of a Client may conflict with the interests of the Company, other Clients and/or the Company's affiliates and their clients. Any conflicts of interest relating to the voting of proxies, regardless of whether actual or perceived, will be addressed in accordance with these policies and procedures. The guiding principle by which the Company votes all proxies is to vote in the best interests of each Client by maximizing the economic value of the relevant Client's holdings, taking into account the relevant Client's investment horizon, the contractual obligations under the relevant advisory agreements or comparable documents and all other relevant facts and circumstances at the time of the vote. The Company does not permit voting decisions to be influenced in any manner that is contrary to, or dilutive of, this guiding principle.

Voting Procedures

Third-Party Proxy Advisors

The Company may engage a third-party proxy advisor ("Proxy Advisor") to provide proxy voting recommendations with respect to Client proxies. Proxy Advisor voting recommendation guidelines are generally designed to increase investors' potential financial gain. When considering whether to retain or continue retaining any particular Proxy Advisor, the Compliance Department will ascertain, among other things, whether the Proxy Advisor has the capacity and competency to adequately analyze proxy issues. In this regard, the Compliance Department will consider, among other things: the adequacy and quality of the Proxy Advisor's staffing and personnel; the robustness of its policies and procedures regarding its ability to (a) ensure that its proxy voting recommendations are based on current and accurate information and (b) identify and address any conflicts of interest and any other considerations that the Compliance Department determines would be appropriate in considering the nature and quality of the services provided by the Proxy Advisor. To identify and address any conflicts that may arise on the part of the Proxy Advisor, the Compliance Department will ensure that the Proxy Advisor notifies the Compliance Department of any relevant business changes or changes to its policies and procedures regarding conflicts.

Third-Party Proxy Voting Services

The Company may utilize a third-party proxy voting service ("Proxy Voting Service") to monitor holdings in Client accounts for purposes of determining whether there are upcoming shareholder meetings or similar corporate actions and to execute Client proxies on behalf of the Company pursuant to the Company's instructions, which shall be given in a manner consistent with this Policy. The Compliance Department will oversee each Proxy Voting Service to ensure that proxies have been voted in a manner consistent with the Company's instructions.

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[1] In any case where a Client has instructed the Company to vote in a particular manner on the Client's behalf, those instructions will govern in lieu of parameters set forth in the Policy.

Monitoring

Subject to the procedures regarding Nonstandard Proxy Notices described below, the Compliance Department of the Company shall have responsibility for monitoring Client accounts for proxy notices. Except as detailed below,

if proxy notices are received by other employees of the Company, such employees must promptly forward all proxy or other voting materials to the Compliance Department.

Portfolio Manager Review and Instruction

From time to time, the settlement group of the Company may receive nonstandard proxy notices, regarding matters including, but not limited to, proposals regarding corporate actions or amendments ("Nonstandard Proxy Notices") with respect to securities held by Clients. Upon receipt of a Nonstandard Proxy Notice, a member of the settlement group (the "Settlement Designee") shall send an email notification containing all relevant information to

the Portfolio Manager(s) with responsibility for the security and *[.com]*. Generally, the relevant Portfolio Manager(s) shall deliver voting instructions for Nonstandard Proxy Notices by replying to the email notice sent to the Portfolio Manager(s) and *[.com]* by the Settlement Designee or by sending voting instructions to *[.com] and [.com]*. Any conflicts for Nonstandard Proxy Notices should also be disclosed to the Compliance Department. In the event a Portfolio Manager orally conveys voting instructions to the Settlement Designee or any other member of the Company's settlement group, that Settlement Designee or member of the Company's settlement group shall respond to the original notice email sent to [.com] detailing the Portfolio Manager(s) voting instructions.

With regard to standard proxy notices, on a weekly basis, the Compliance Department will send a notice of upcoming proxy votes related to securities held by Clients and the corresponding voting recommendations of the Proxy Advisor to the relevant Portfolio Manager(s). Upon receipt of a proxy notice from the Compliance Department, the Portfolio Manager(s) will review and evaluate the upcoming votes and recommendations. The Portfolio Managers may rely on any information and/or research available to him or her and may, in his or her discretion, meet with members of an issuer's management to discuss matters of importance to the relevant Clients and their economic interests. Should the Portfolio Manager determine that deviating from the Proxy Advisor's recommendation is in a Client's best interest, the Portfolio Manager shall communicate his or her voting instructions to the Compliance Department.

In the event that more than one Portfolio Manager is responsible for making a particular voting decision and such Portfolio Managers are unable to arrive at an agreement as to how to vote with respect to a particular proposal, they should consult with the applicable Chief Compliance Officer (the "CCO") for guidance.

Voting

Upon receipt of the relevant Portfolio Managers' voting instructions, if any, the Compliance Department will communicate the instructions to the Proxy Voting Service to execute the proxy votes.

Supplemental Information of Issuers

In the event that the Company becomes aware that an issuer has filed with the Securities and Exchange Commission (the "SEC") supplemental information in response to a Proxy Advisor's voting recommendation, sufficiently in advance of the submission deadline which would reasonably be expected to affect the Company's voting determination, the Compliance Department will review such supplemental information and provide the supplemental information to the relevant Portfolio Manager(s). The Portfolio Manager shall communicate to the Compliance Department whether or not the previously provided voting instructions should be changed, and the Compliance Department document the extent to which the supplemental information was considered and/or impacted the voting.

Non-Votes

It is the general policy of the Company to vote or give consent on all matters presented to security holders in any vote, and these policies and procedures have been designated with that in mind. However, the Company reserves the right to abstain on any particular vote if, in the judgment of the CCO, or the relevant Portfolio Manager, the effect on the relevant Client's economic interests or the value of the portfolio holding is insignificant in relation to the Client's portfolio, if the costs associated with voting in any particular instance outweigh the benefits to the relevant Clients or if the circumstances make such an abstention or withholding otherwise advisable and in the best interests of the relevant Clients not to vote. Such determination may apply in respect of all Client holdings of the securities or only certain specified Clients, as the Company deems appropriate under the circumstances. As examples, a Portfolio Manager may determine: (a) not to recall securities on loan if, in his or her judgment, the matters being voted upon are not material events affecting the securities and the negative consequences to Clients of disrupting the securities lending program would outweigh the benefits of voting in the particular instance or (b) not to vote proxies relating to certain foreign securities if, in his or her judgment, the expense and administrative inconvenience outweighs the benefits to Clients of voting the securities.

Conflicts of Interest

The Company's Compliance Department is responsible for monitoring voting decisions for any conflicts of interest, regardless of whether they are actual or perceived. All voting decisions contrary to the recommendation of a Proxy Advisor require a mandatory conflicts of interest review by the Compliance Department, which will include a consideration of whether the Company or any Portfolio Manager or other person recommending or providing input on how to vote has an interest in the vote that may present a conflict of interest.

In addition, all Company investment professionals are expected to perform their tasks relating to the voting of proxies in accordance with the principles set forth above, according the first priority to the best interest of the relevant Clients. If at any time a Portfolio Manager or any other investment professional becomes aware of a potential or actual conflict of interest regarding any particular voting decision, he or she must contact the Compliance Department promptly and, if in connection with a proxy that has yet to be voted, prior to such vote. If any investment professional is pressured or lobbied, whether from inside or outside the Company, with respect to any particular voting decision, he or she should contact the Compliance Department promptly. The CCO will use his or her best judgment to address any such conflict of interest and ensure that it is resolved in accordance with his or her independent assessment of the best interests of the relevant Clients.

In the event of a conflict, the Company may choose to address such conflict by: (i) voting in accordance with the Proxy Advisor's recommendation; (ii) the CCO determining how to vote the proxy (if the CCO approves deviation from the Proxy Advisor's recommendation, then the CCO shall document the rationale for the vote); (iii) "echo voting" or "mirror voting" the proxy in the same proportion as the votes of other proxy holders that are not Clients; or (iv) with respect to Clients other than Retail Funds, notifying the affected Client of the material conflict of interest and seeking a waiver of the conflict or obtaining such Client's voting instructions. Where the Compliance Department deems appropriate, third parties may be used to help resolve conflicts. In this regard, the CCO or his or her delegate shall have the power to retain fiduciaries, consultants or professionals to assist with voting decisions and/or to delegate voting or consent powers to such fiduciaries, consultants or professionals.

Where a conflict of interest arises with respect to a voting decision for a Retail Fund, the Company shall disclose the conflict and the rationale for the vote taken to the Retail Fund's Board of Directors/Trustees at the next regularly scheduled quarterly meeting. The Compliance Department will maintain a log documenting the basis for the decision and will furnish the log to the Board of Trustees.

Material Conflicts of Interest

The following relationships or circumstances are examples of situations that may give rise to a material conflict of interest for purposes of this Policy. This list is not exclusive or determinative; any potential conflict (including payments of the types described below but less than the specified threshold) should be identified to the Company's Compliance Department:

(i) The issuer is a Client of the Company, or of an affiliate, accounting for more than 5% of the Company's or affiliate's annual revenues.

(ii) The issuer is an entity that reasonably could be expected to pay the Company or its affiliates more than $1 million through the end of the Company's next two full fiscal years.

(iii) The issuer is an entity in which a "Covered Person" (as defined in the Company's Policies and Procedures Designed to Detect and Prevent Insider Trading and to Comply with Rule 17j-1 of the Investment Company Act of 1940, as amended (the "Code of Ethics")) has a beneficial interest contrary to the position held by the Company on behalf of Clients.

(iv) The issuer is an entity in which an officer or partner of the Company or a relative of any such person is or was an officer, director or employee, or such person or relative otherwise has received more than $150,000 in fees, compensation and other payment from the issuer during the Company's last three fiscal years; provided, however, that the Compliance Department may deem such a relationship not to be a material conflict of interest if the Company representative serves as an officer or director of the issuer at the direction of the Company for purposes of seeking control over the issuer.

(v) The matter under consideration could reasonably be expected to result in a material financial benefit to the Company or its affiliates through the end of the Company's next two full fiscal years (for example, a vote to increase an investment advisor y fee for a Retail Fund advised by the Company or an affiliate).

(vi) Another Client or prospective Client of the Company, directly or indirectly, conditions future engagement of the Company on voting proxies in respect of any Client's securities on a particular matter in a particular way.

(vii) The Company holds various classes and types of equity and debt securities of the same issuer contemporaneously in different Client portfolios.

(viii) Any other circumstance where the Company's duty to serve its Clients' interests, typically referred to as its "duty of loyalty," could be compromised.

Notwithstanding the foregoing, a conflict of interest described above shall not be considered material for the purposes of this Policy in respect of a specific vote or circumstance if:

The securities in respect of which the Company has the power to vote account for less than 1% of the issuer's outstanding voting securities, but only if: (i) such securities do not represent one of the 10 largest holdings of such issuer's outstanding voting securities and (ii) such securities do not represent more than 2% of the Client's holdings with the Company.

The matter to be voted on relates to a restructuring of the terms of existing securities or the issuance of new securities or a similar matter arising out of the holding of securities, other than common equity, in the context of a bankruptcy or threatened bankruptcy of the issuer.

Recordkeeping

Following the submission of a proxy vote, the Fund will maintain a report of the vote and all relevant documentation.

The Fund shall retain records relating to the voting of proxies and the Company shall conduct due diligence, including on Proxy Voting Services and Proxy Advisors, as applicable, to ensure the following records are adequately maintained by the appropriate party:

(i) Copies of this Policy and any amendments thereto.

(ii) A current copy of the Proxy Advisor's voting guidelines, as amended.

(iii) A copy of each proxy statement that the Company receives regarding Client securities, including any supplemental information an issuer files with the SEC that the Company becomes aware of. The Company may rely on a third party to make and retain, on the Company's behalf, a copy of a proxy statement, provided that the Company has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request.

(iv) Records of each vote cast by the Company on behalf of Clients. The Company may satisfy this requirement by relying on a third party to make and retain, on the Company's behalf, a record of the vote cast, provided that the Company has obtained an undertaking from the third party to provide a copy of the record promptly upon request.

(v) A copy of any documents created by the Company that were material to making a decision how to vote or that memorializes the basis for that decision.

(vi) A copy of each written request for information on how the Company voted proxies on behalf of the Client, and a copy of any written response by the Company to any (oral or written) request for information on how the Company voted.

These records shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the Company's fiscal year during which the last entry was made in the records, the first two years in an appropriate office of the Company.[2]

Enforcement of this Policy

It shall be the responsibility of the Compliance Department to handle or coordinate the enforcement of this Policy. The Compliance Department will periodically sample proxy voting records to ensure that proxies have been voted in accordance with this Policy, with a particular focus on any proxy votes that require additional analysis (e.g., proxies voted contrary to the recommendations of a Proxy Advisor).

If the Compliance Department determines that a Proxy Advisor or Proxy Voting Service may have committed a material error, the Compliance Department will investigate the error, taking into account the nature of the error, and seek to determine whether the Proxy Advisor or Proxy Voting Service is taking reasonable steps to reduce similar errors in the future.

In addition, no less frequently than annually, the Compliance Department will review the adequacy of this Policy to ensure that it has been implemented effectively and to confirm that this Policy continues to be reasonably designed to ensure that proxies are voted in the best interest of Clients.

Disclosures to Clients and Investors

As a matter of policy, the Company does not disclose how it expects to vote on upcoming proxies. Additionally, the Company does not disclose the way it voted proxies to unaffiliated third parties without a legitimate need to know such information.

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[2] If the Company has essentially immediate access to a book or record (on the Company's proprietary system or otherwise) through a computer located at an appropriate office of the Company, then that book or record will be considered to be maintained at an appropriate office of the Company. "Immediate access" to books and records includes that the Company has the ability to provide promptly to Securities and Exchange Commission (the "SEC") examination staff hard copies of the books and records or access to the storage medium. The party responsible for the applicable books and records as described above shall also be responsible for ensuring that those books and records for the first two years are either physically maintained in an appropriate office of the Company or that the Company otherwise has essentially immediate access to the required books and records for the first two years.

Item 8. Portfolio Managers of Closed-End Management Investment Companies.

(a)(1) Identification of Portfolio Manager(s) or Management Team Members and Description of Role of Portfolio Manager(s) or Management Team Members

The Registrant's portfolio manager, who is primarily responsible for the day-to-day management of the Registrant's portfolio, is James Dondero.

James Dondero — Mr. Dondero is the founder and principal of NexPoint Asset Management, LP ("NPA"), a Dallas-based alternative investment firm. Mr. Dondero has over 30 years of experience investing across the alternative landscape. In that time, he established a number of integrated businesses to manage investments in real estate, private equity, and high-yield and structured credit, among other areas. Mr. Dondero holds various leadership roles across the NPA businesses; he serves as a portfolio manager for several funds and is an officer and director at NPA's publicly traded REITs. Additionally, Mr. Dondero holds director positions at several companies within financial services, real estate, and other industries. He is the chairman of NexBank Capital, Inc. and a director of SeaOne Holdings, LLC. A dedicated philanthropist, Mr. Dondero actively contributes to initiatives in education, veterans' affairs, and community and economic development, and has been instrumental in supporting a number of civic and cultural institutions in the Dallas-Fort Worth area. He is a member of the Southern Methodist University Cox School of Business Executive Board and the George W. Bush Presidential Center Executive Advisory Council. Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He received certification as a Certified Managerial Accountant (CMA) and is a holder of the right to use the Chartered Financial Analyst (CFA) designation.

(a)(2) Other Accounts Managed by Portfolio Manager(s) or Management Team Member and Potential Conflicts of Interest

The following table provides information about funds and accounts, other than the Registrant, for which the Registrant's portfolio manager is primarily responsible for the day-to-day portfolio management as of December 31, 2022.

James Dondero

Type of Accounts	Total # of Accounts Managed	Total Assets (millions)	# of Accounts Managed with Performance-Based Advisory Fee	Total Assets with Performance-Based Advisory Fee (millions)
Registered Investment Companies:	7	$ 1,793	1	$ 55
Other Pooled Investment Vehicles:	3	$ 5,397	4	$ 5,397
Other Accounts:	—	$ —	—	$ —

Potential Conflicts of Interests

NexPoint Asset Management, L.P. ("NAM" or the "Adviser") and/or its general partner, limited partners, officers, affiliates and employees provide investment advice to other parties and manage other accounts and private investment vehicles similar to the Registrant. For the purposes of this section, the term "Highland" shall include the Adviser and its affiliated investment advisors, and all affiliates listed on its Form ADV, as filed via an amendment with the SEC January 20th, 2022 (CRD No. 149653).

In connection with such other investment management activities, the Adviser and/or its general partner, limited partners, officers, affiliates and employees may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Registrant's monies, in a particular security or strategy. In addition, the Adviser and such other persons will determine the allocation of funds from the Registrant and such other accounts to investment strategies and techniques on whatever basis they consider appropriate or desirable in their sole and absolute discretion.

Highland has built a professional working environment, a firm-wide compliance culture and compliance procedures and systems designed to protect against potential incentives that may favor one account over another. Highland has adopted policies and procedures that address the allocation of investment opportunities, execution of portfolio transactions, personal trading by employees and other potential conflicts of interest that are designed to ensure that all client accounts are treated equitably over time. Nevertheless, Highland furnishes advisory services to numerous clients in addition to the Registrant, and Highland may, consistent with applicable law, make investment recommendations to other clients or accounts (including accounts that have performance or higher fees paid to Highland or in which portfolio managers have a personal interest in the receipt of such fees) that may be the same as or different from those made to the Registrant. In addition, Highland, its affiliates and any of their partners, directors, officers, stockholders or employees may or may not have an interest in the securities whose purchase and sale the Adviser recommends to the Registrant. Actions with respect to securities of the same kind may be the same as or different from the action that the Adviser, or any of its affiliates, or any of their partners, directors, officers, stockholders or employees or any member of their families may take with respect to the same securities. Moreover, the Adviser may refrain from rendering any advice or services concerning securities of companies of which any of the Adviser's (or its affiliates') partners, directors, officers or employees are directors or officers, or companies as to which the Adviser or any of its affiliates or partners, directors, officers and employees of any of them has any substantial economic interest or possesses material non-public information.

The Adviser, its affiliates or their partners, directors, officers or employees similarly serve or may serve other entities that operate in the same or related lines of business, including accounts managed by an investment adviser affiliated with the Adviser. Accordingly, these individuals may have obligations to investors in those entities or funds or to other clients, the fulfillment of which might not be in the best interests of the Registrant. As a result, the Adviser will face conflicts in the allocation of investment opportunities to the Registrant and other funds and clients. In order to enable such affiliates to fulfill their fiduciary duties to each of the clients for which they have responsibility, the Adviser will endeavor to allocate investment opportunities in a fair and equitable manner, pursuant to policies and procedures adopted by the Adviser and its advisory affiliates that are designed to manage potential conflicts of interest, which may, subject to applicable regulatory constraints, involve pro rata co-investment by the funds and such other clients or may involve a rotation of opportunities among the funds and such other clients. The Registrant will only make investments in which the Adviser or an affiliate hold an interest to the extent permitted under the 1940 Act and SEC staff interpretations or pursuant to the terms and conditions of the exemptive order received by certain advisers and funds affiliated with the Registrant, dated April 19, 2016. For example, exemptive relief is not required for the Registrant to invest in syndicated deals and secondary loan market transactions in which the Adviser or an affiliate has an interest where price is the only negotiated point. The order applies to all "Investment Companies," including future closed-end investment companies registered under the 1940 Act that are managed by affiliated advisers, which includes the Registrant. The Registrant, therefore, may in the future invest in accordance with the terms and conditions of the exemptive order. To mitigate any actual or perceived conflicts of interest, allocation of limited offering securities (such as IPOs and registered secondary offerings) to principal accounts that do not include third party investors may only be made after all other client account orders for the security have been filled. However, there can be no assurance that such
policies and procedures will in every case ensure fair and equitable allocations of investment opportunities, particularly when

considered in hindsight.

Conflicts may arise in cases when clients and/or the Adviser and other affiliated entities invest in different parts of an issuer's capital structure, including circumstances in which one or more clients own private securities or obligations of an issuer and other clients may own public securities of the same issuer. In addition, one or more clients may invest in securities, or other financial instruments, of an issuer that are senior or junior to securities, or financial instruments, of the same issuer that are held by or acquired for, one or more other clients. For example, if such issuer encounters financial problems, decisions related to such securities (such as over the terms of any workout or proposed waivers and amendments to debt covenants) may raise conflicts of interests. In such a distressed situation, a client holding debt securities of the issuer may be better served by a liquidation of the issuer in which it may be paid in full, whereas a client holding equity securities of the issuer might prefer a reorganization that holds the potential to create value for the equity holders. In the event of conflicting interests within an issuer's capital structure, Highland generally will pursue the strategy that Highland believes best reflects what would be expected to be negotiated in an arm's length transaction, but in all instances with due consideration being given to Highland's fiduciary duties to each of its accounts (without regard to the nature of the accounts involved or fees received from such accounts). This strategy may be recommended by one or more Highland investment professionals. A single person may make decisions with respect to more than one part of an issuer's capital structure. Highland personnel board members may still make recommendations to the applicable investment professional(s). A portfolio manager with respect to any applicable Highland registered investment company clients ("Retail Accounts") will make an independent determination as to which course of action he or she determines is in the best interest of the applicable Retail Accounts. Highland may use external counsel for guidance and assistance. The Adviser and its affiliates have both subjective and objective procedures and policies in place designed to manage potential conflicts of interest involving clients so that, for example, investment opportunities are allocated in a fair and equitable manner among the Registrant and such other clients. An investment opportunity that is suitable for multiple clients of the Adviser and its affiliates may not be capable of being shared among some or all of such clients due to the limited scale of the opportunity or other factors, including regulatory restrictions imposed by the 1940 Act. There can be no assurance that the Adviser's or its affiliates' efforts to allocate any particular investment opportunity fairly among all clients for whom such opportunity is appropriate will result in an allocation of all or part of such opportunity to the Registrant. Not all conflicts of interest can be expected to be resolved in favor of the Registrant.

Another type of conflict may arise if one client account buys a security and another client account sells or shorts the same security. Currently, such opposing positions are generally not permitted within the same account without prior trade approval by the Adviser's Chief Compliance Officer. However, a portfolio manager may enter into opposing positions for different clients to the extent each such client has a different investment objective and each such position is consistent with the investment objective of the applicable client. In addition, transactions in investments by one or more affiliated client accounts may have the effect of diluting or otherwise disadvantaging the values, prices or investment strategies of other client accounts.

Because certain client accounts may have investment objectives, strategies or legal, contractual, tax or other requirements that differ (such as the need to take tax losses, realize profits, raise cash, diversification, etc.), an affiliated adviser may purchase, sell or continue to hold securities for certain client accounts contrary to other recommendations. In addition, an affiliated adviser may be permitted to sell securities or instruments short for certain client accounts and may not be permitted to do so for other affiliated client accounts.

As a result of the Fund's arrangements with NexPoint, there may be times when NexPoint, the Adviser or its affiliates have interests that differ from those of the Fund's shareholders, giving rise to a conflict of interest. The Fund's officers serve or may serve as officers, directors or principals of entities that operate in the same or a related line of business as the Fund does, or of investment funds managed by the Adviser or its affiliates. Similarly, the Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund or its shareholders. For example, the Fund's officers have, and will continue to have, management responsibilities for other investment funds, accounts or other investment vehicles

managed or sponsored by the Adviser and its affiliates. The Fund's investment objective may overlap, in part or in whole, with the investment objective of such affiliated investment funds, accounts or other investment vehicles. As a result, those individuals may face conflicts in the allocation of investment opportunities among the Registrant and other investment funds or accounts advised by or affiliated with the Adviser. The Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, the Fund can offer no assurance that such opportunities will be allocated to it fairly or equitably in the short-term or over time.

In addition, it is anticipated that a portion of the Registrant's assets will be represented by real estate investment trusts ("REITs"), asset backed securities and/or collateralized loan obligations ("CLOs") sponsored, organized and/or managed by the Adviser and its affiliates or its historical affiliates. The Adviser will monitor for conflicts of interest in accordance with its fiduciary duties and will provide the independent trustees of the Registrant with an opportunity to periodically review the Registrant's investments in such REITs, asset-backed securities and/or CLOs and assure themselves that continued investment in such securities remains in the best interests of the Registrant and its shareholders. The Adviser may effect client cross-transactions where it causes a transaction to be effected between the Registrant and another client advised by the Adviser or any of its affiliates. The Adviser may engage in a client cross-transaction involving the Registrant any time that the Adviser believes such transaction to be fair to the Registrant and the other client of the Adviser or its affiliates. As further described below, the Adviser may effect principal transactions where the Registrant may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, in each case in accordance with applicable law, which may include the Adviser obtaining the consent and approval of the Registrant prior to engaging in any such principal transaction between the Registrant and the Adviser or its affiliates.

The Adviser may direct the Registrant to acquire or dispose of investments in cross trades between the Registrant and other clients of the Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, to the extent permitted by the 1940 Act and SEC staff interpretations, the Registrant may make and/or hold an investment, including an investment in securities, in which the Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Registrant may enhance the profitability of the Adviser's own investments in such companies.

(a)(3) **Compensation Structure of Portfolio Manager(s) or Management Team Members**

NAM's financial arrangements with its portfolio managers, its competitive compensation and its career path emphasis at all levels reflect the value senior management places on key resources. Compensation may include a variety of components and may vary from year to year based on a number of factors, including the pre-tax relative performance of a portfolio manager's underlying account, the pre-tax combined performance of the portfolio manager's underlying accounts, and the pre-tax relative performance of the portfolio manager's underlying accounts measured against other employees. Portfolio managers are compensated generally based on their investment performance. The portfolio managers and other investment professionals are ranked based on the alpha generated by their portfolio versus their target index benchmark. Their investment performance is evaluated both versus a target index benchmark return and also compared to the returns of their peers at NAM and its affiliates. Other attributes which may be considered in the evaluation process are communication, teamwork, attitude and leadership.

The target indices for the Registrant's portfolio managers are the Morningstar Bank Loan Fund Category and CS Leveraged Loan Index.

NAM is owned by Highland Capital Management Services, Inc., a Delaware corporation ("HCM Services") and its general partner, Strand Advisors XVI, Inc., of which Mr. James Dondero is the sole stockholder. HCM Services is controlled by Mr. Dondero and Mr. Mark Okada by virtue of their respective share ownership. Mr. Dondero does not receive compensation based upon investment performance of the funds for which he serves as portfolio manager and instead shares in the profits of NAM.

The principal components of compensation include a base salary, a discretionary bonus and various retirement benefits.

Base compensation. Generally, portfolio managers receive base compensation based on their seniority and/or their position with NAM, which may include the amount of assets supervised and other management roles within NAM. Base compensation is determined by taking into account current industry norms and market data to ensure that NAM pays a competitive base compensation.

Discretionary compensation. In addition to base compensation, portfolio managers may receive discretionary compensation, which can be a substantial portion of total compensation. Discretionary compensation can include a discretionary cash bonus paid to recognize specific business contributions and to ensure that the total level of compensation is competitive with the market.

Because each person's compensation is based on his or her individual performance, NAM does not have a typical percentage split among base salary, bonus and other compensation. Senior portfolio managers who perform additional management functions may receive additional compensation in these other capacities. Compensation is structured such that key professionals benefit from remaining with NAM.

(a)(4) Disclosure of Securities Ownership

The following table sets forth the dollar range of equity securities beneficially owned by the portfolio managers in the Registrant as of December 31, 2022.

Name of Portfolio Managers	Dollar Ranges of Equity Securities Beneficially Owned by Portfolio Managers
James Dondero	Over $1,000,000

(b) Not applicable.

Item 9. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers.

Period[1]	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
January 1, 2022 to January 31, 2022	635,201	11.0189	635,201	12,001,130
February 1, 2022 to February 29, 2022	475,820	11.4852	475,820	6,536,238
March 1, 2022 to March 31, 2022	559,084	11.6910	559,084	—
April 1, 2022 to April 31, 2022	—	—	—	—
May 1, 2022 to May 31, 2022	—	—	—	—
June 1, 2022 to June 30, 2022	—	—	—	—
July 1, 2022 to July 31, 2022	—	—	—	—
August 1, 2022 to August 31, 2022	—	—	—	—
September 1, 2022 to September 31, 2022	—	—	—	—
October 1, 2022 to October 31, 20222	—	—	—	—
November 1, 2022 to November 31, 2022	—	—	—	—
December 1, 2022 to December 31, 2022	—	—	—	—
Total	**1,670,105**	**11.3768**	**1,670,105**	**—**

(1) On October 13, 2021, the Board authorized the repurchase of $40 million of the Company's common shares over a six-month period.

Item 10. Submission of Matters to a Vote of Security Holders.

There have been no material changes to the procedures by which the shareholders may recommend nominees to the Registrant's Board.

Item 11. Controls and Procedures.

Assessment of the Registrant's Control Environment

(a) Evaluation of Disclosure Controls and Procedures.

The Registrant maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Registrant's filings under the Securities Exchange Act of 1934 (the "Exchange Act") and the 1940 Act is recorded, processed, summarized and reported within the periods specified in the rules and forms of the Securities and Exchange Commission. Such information is accumulated and communicated to the Registrant's management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. The Registrant's management, including the principal executive officer and principal financial officer, recognizes that any set of controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

The Registrant's principal executive and principal financial officers, or persons performing similar functions, have concluded that the Registrant's disclosure controls and procedures (as defined in Rule 30a-3(c) under the 1940 Act (17 CFR 270.30a-3 (c)) are effective, as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph, based on their evaluation of these controls and procedures required by Rule 30a-3(b) under the 1940 Act (17 CFR 270.30a-3(b)) and Rules 13a-15(b) or 15d-15(b) under the Securities Exchange Act of 1934, as amended (17 CFR 240.13a-15(b) or 240.15d-15(b)).

(b) There were no changes in the Registrant's internal control over financial reporting (as defined in Rule 30a-3(d) under the 1940 Act (17 CFR 270.30a-3(d)) that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting.

Item 12. Disclosure of Securities Lending Activities for Closed-End Management Investment Companies.

(a)

(1) Gross income from securities lending activities: $46,353

(2) All fees and/or compensation for securities lending activities and related services: $0

(3) Aggregate fees/compensation: $0

(4) Net income from securities lending activities: $46,353

(b) "The Registrant's most recent fiscal year ended December 31, 2021, The Bank of New York ("BNY") served as the Registrant's securities lending agent."

As a securities lending agent, BNY is responsible for the implementation and administration of the Registrant's securities lending program. Pursuant to its respective Securities Lending Agreement ("Securities Lending Agreement") with the Registrant, BNY, as a general matter, performs various services, including the following:

- Locating borrowers;
  - Monitoring daily the value of the loaned securities and collateral (i.e. the collateral posted by the party borrowing);
  - Negotiation of loan terms;
  - Selection of securities to be loaned;
  - Recordkeeping and account servicing;
  - Monitoring of dividend activity and material proxy votes relating to loaned securities, and;
  - Arranging for return of loaned securities to the registrant at loan termination.

Item 13. Exhibits.

(a)(1) The Code of Ethics, or any amendment thereto, that is the subject of disclosure required by Item 2 is attached hereto.

(a)(2) Certification pursuant to Rule 30a-2(a) under the 1940 Act and Section 302 of the Sarbanes-Oxley Act of 2002 are attached hereto.

(a)(3) Not applicable.

(a)(4)(i) Not applicable.

(a)(4)(ii) Not applicable.

(b) Certification pursuant to Rule 30a-2(b) under the 1940 Act and Section 906 of the Sarbanes-Oxley Act of 2002 are attached hereto.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HIGHLAND INCOME FUND

By (Signature and Title): /s/ Frank Waterhouse
Frank Waterhouse
Principal Executive Officer, Principal Financial Officer, Principal Accounting Officer and Treasurer

Date: March 10, 2023

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, this report has been signed below by the following person(s) on behalf of the Registrant and in the capacities and on the dates indicated.

By (Signature and Title): /s/ Frank Waterhouse
Frank Waterhouse
Principal Executive Officer, Principal Financial Officer, Principal Accounting Officer and Treasurer

Date: March 10, 2023

EXHIBIT 6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2023

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from ________ to ________

Commission File Number 001-32921

NexPoint Diversified Real Estate Trust
(Exact Name of Registrant as Specified in Its Charter)

Delaware **(State or other Jurisdiction of Incorporation or Organization)**	**80-0139099** **(I.R.S. Employer Identification No.)**
300 Crescent Court, Suite 700, Dallas, Texas **(Address of Principal Executive Offices)**	**75201** **(Zip Code)**

(214) 276-6300

(Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Shares, par value $0.001 per share	NXDT	New York Stock Exchange
5.50% Series A Cumulative Preferred Shares, par value $0.001 per share ($25.00 liquidation preference per share)	NXDT-PA	New York Stock Exchange

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	☐	Accelerated Filer	☐
Non-Accelerated Filer	☒	Smaller reporting company	☒
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 14, 2023, the registrant had 37,813,729.99 common shares, par value $0.001 per share, outstanding.

NEXPOINT DIVERSIFIED REAL ESTATE TRUST

Form 10-Q
Quarter Ended September 30, 2023

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Cautionary Statement Regarding Forward-Looking Statements

This quarterly report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks and uncertainties. In particular, statements relating to our liquidity and capital resources, our performance and results of operations contain forward-looking statements. Furthermore, all of the statements regarding future financial performance (including market conditions and demographics) are forward-looking statements. We caution investors that any forward-looking statements presented in this quarterly report are based on management's current beliefs and assumptions made by, and information currently available to, management. When used, the words "anticipate," "believe," "expect," "intend," "may," "might," "estimate," "project," "should," "will," "would," "result," "could," "future," "continue," "if," the negative version of these words and similar expressions that do not relate solely to historical matters are intended to identify forward-looking statements. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

Forward-looking statements are subject to risks, uncertainties and assumptions and may be affected by known and unknown risks, trends, uncertainties and factors that are beyond our control. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected. We caution you therefore against relying on any of these forward-looking statements.

Some of the risks and uncertainties that may cause our actual results, performance, liquidity or achievements to differ materially from those expressed or implied by forward-looking statements include, among others, the following:

- Unfavorable changes in economic conditions and their effects on the real estate industry generally and our operations and financial condition, including inflation, rising interest rates, tightening monetary policy or recession, which may limit our ability to access funding and generate returns for shareholders;

- Our loans and investments expose us to risks similar to and associated with real estate investments generally;

- Commercial real estate-related investments that are secured, directly or indirectly, by real property are subject to delinquency, foreclosure and loss, which could result in losses to us;

- Risks associated with the ownership of real estate, including dependence on tenants and compliance with laws and regulations related to ownership of real property;

- Risks associated with our investment in diverse issuers, industries and investment forms and classes, both in real estate and in non-real estate sectors, including common equity, preferred equity securities, options or other derivatives, short sale contracts, secured loans of securities, reverse repurchase agreements, structured finance securities, below investment grade senior loans, bonds, convertible instruments, joint ventures, and emerging markets;

- Fluctuations in interest rate and credit spreads, could reduce our ability to generate income on our loans and other investments, which could lead to a significant decrease in our results of operations, cash flows and the market value of our investments;

- The use of leverage to finance our investments;

- Risks associated with our loans and investments in debt instruments including, senior loans, mezzanine loans, collateralized loan obligations ("CLOs"), and structured finance securities;

- Our loans and investments are concentrated in terms of type of interest, geography, asset types, industry and sponsors and may continue to be so in the future;

- We have a substantial amount of indebtedness which may limit our financial and operating activities and may adversely affect our ability to incur additional debt to fund future needs;

- We have limited operating history as a standalone company and may not be able to operate our business successfully, find suitable investments, or generate sufficient revenue to make or sustain distributions to our shareholders;

- We may not replicate the historical results achieved by other entities managed or sponsored by affiliates of NexPoint Advisors, L.P. ("NexPoint" or our "Sponsor"), members of the NexPoint Real Estate Advisors X, L.P. (our "Adviser") management team or their affiliates.

- We are dependent upon our Adviser and its affiliates to conduct our day-to-day operations; thus, adverse changes in their financial health or our relationship with them could cause our operations to suffer;

- Our Adviser and its affiliates face conflicts of interest, including significant conflicts created by our Adviser's compensation arrangements with us, including compensation which may be required to be paid to our Adviser if our advisory agreement is terminated, which could result in decisions that are not in the best interests of our shareholders;

- We pay substantial fees and expenses to our Adviser and its affiliates, which payments increase the risk that you will not earn a profit on your investment;

- If we fail to qualify as a real estate investment trust (a "REIT") for U.S. federal income tax purposes, cash available for distributions to be paid to our shareholders could decrease materially, which would limit our ability to make distributions to our shareholders; and

- Any other risks included under Part I, Item 1A, "Risk Factors," of our Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on March 31, 2023.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. They are based on estimates and assumptions only as of the date of this quarterly report. We undertake no obligation to update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events or other changes, except as required by law.

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and par value amounts)

	September 30, 2023 (Unaudited)	December 31, 2022
ASSETS		
Consolidated Real Estate Investments		
Land	$ 47,708	$ 47,708
Buildings and improvements	198,190	174,469
Intangible lease assets	10,979	10,979
Construction in progress	24,928	39,731
Furniture, fixtures, and equipment	362	354
Total Gross Consolidated Real Estate Investments	282,167	273,241
Accumulated depreciation and amortization	(17,673)	(7,158)
Total Net Consolidated Real Estate Investments	264,494	266,083
Investments, at fair value ($540,161 and $576,419 with related parties, respectively)	714,186	754,910
Equity method investments ($7,200 and $7,272 with related parties, respectively)	67,585	70,656
Life insurance policies, at fair value	—	67,711
Cash and cash equivalents	3,713	13,360
Restricted cash	34,121	35,289
Accounts receivable, net	1,853	1,903
Prepaid and other assets	9,726	6,441
Accrued interest and dividends	4,706	4,302
Deferred tax asset, net	651	2,247
TOTAL ASSETS	$ 1,101,035	$ 1,222,902
LIABILITIES AND SHAREHOLDERS' EQUITY		
Liabilities:		
Mortgages payable, net	$ 142,561	$ 144,414
Notes payable, net ($20,000 and $0 with related party, respectively)	35,000	24,250
Prime brokerage borrowing	1,760	2,624
Accounts payable and other accrued liabilities	9,207	13,865
Income tax payable	—	10,720
Accrued real estate taxes payable	3,389	254
Accrued interest payable	1,206	1,115
Security deposit liability	414	416
Prepaid rents	843	1,273
Intangible lease liabilities, net	4,913	6,027
Due to affiliates	112	112
Total Liabilities	$ 199,405	$ 205,070

Shareholders' Equity:

Preferred shares, $0.001 par value: 4,800,000 shares authorized; 3,359,593 shares issued and outstanding	3	3
Common shares, $0.001 par value: unlimited shares authorized; 37,682,699 and 37,171,807 shares issued and outstanding, respectively	38	37
Additional paid-in capital	1,005,364	999,845
Accumulated earnings (loss)	(103,775)	17,947
Total Shareholders' Equity	901,630	1,017,832
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 1,101,035	$ 1,222,902

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)
(in thousands, except per share amounts)
(Unaudited)

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023
Revenues			
Rental income	$ 5,404	$ 4,603	$ 15,541
Interest income ($573, $1,472 and $1,890 with related parties, respectively)	1,863	1,836	5,632
Dividend income ($4,853, $6,371 and $17,717 with related parties, respectively)	5,000	34,306	19,809
Other income	97	18	128
Total revenues	12,364	40,763	41,110
Expenses			
Property operating expenses	1,527	1,756	5,553
Property management fees	191	166	553
Real estate taxes and insurance	1,360	1,502	4,057
Advisory and administrative fees	3,469	2,939	8,707
Property general and administrative expenses	833	858	2,601
Corporate general and administrative expenses	1,685	1,938	5,433
Conversion expenses	—	—	1,444
Depreciation and amortization	3,820	3,561	10,928
Total expenses	12,885	12,720	39,276
Operating income (loss)	(521)	28,043	1,834
Interest expense	(4,173)	(2,541)	(11,397)
Equity in income (losses) of unconsolidated equity method ventures ($286, $(1,155) and $498 with related parties, respectively)	(369)	(1,581)	(23)
Change in unrealized gains (losses) ($(82,240), $(43,785) and $(98,248) with related parties, respectively)	(61,626)	(78,238)	(89,598)
Realized gains (losses)	(939)	2,846	(718)
Net income (loss) before income taxes	(67,628)	(51,471)	(99,902)
Income tax expense	(330)	(7,516)	(1,444)
Net income (loss)	(67,958)	(58,987)	(101,346)
Net (income) loss attributable to preferred shareholders	(1,155)	(1,155)	(3,465)
Net income (loss) attributable to common shareholders	$ (69,113)	$ (60,142)	$ (104,811)
Weighted average common shares outstanding - basic	37,187	37,172	37,177
Weighted average common shares outstanding - diluted	37,187	37,172	37,177

Earnings (loss) per share - basic	$	(1.86) $	(1.62)	$	(2.82)
Earnings (loss) per share - diluted	$	(1.86) $	(1.62)	$	(2.82)

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF OPERATIONS (Predecessor Basis)
(in thousands)
(Unaudited)

	For the Six Months Ended June 30, 2022
Investment income:	
Income:	
Dividends from unaffiliated issuers	$ 60,178
Dividends from affiliated issuers	15,025
Interest from unaffiliated issuers	991
Interest from affiliated issuers	3,002
Total income	79,196
Expenses:	
Investment advisory	6,279
Income tax expense	2,000
Legal fees	987
Interest expense and commitment fees	696
Conversion expense	471
Accounting services fees	334
Insurance	185
Reports to shareholders	136
Trustees fees	109
Audit and tax preparation fees	77
Transfer agent fees	72
Pricing fees	68
Registration fees	56
Other	322
Total operating expenses	11,792
Net investment income	67,404
Preferred dividend expenses	(2,310)
Net realized and unrealized gain (loss) on investments	
Realized gain on:	
Investments from unaffiliated issuers	28,893
Securities sold short	253
Net change in unrealized gain on:	
Investments from unaffiliated issuers	(43,752)
Investments from affiliated issuers	76,346
Net realized and unrealized gain on investments	61,740
Total increase in net assets resulting from operations	$ 126,834

Appx. 000206

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See Notes to Consolidated Financial Statements

Appx. 000207

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(in thousands, except share and per share amounts)
(Unaudited)

	Preferred Shares		Common Shares				
Three Months Ended September 30, 2023	**Number of Shares**	**Amount**	**Number of Shares**	**Amount**	**Additional Paid-in Capital**	**Accumulated Earnings (Loss)**	**Total**
Balances, June 30, 2023	3,359,593	$ 3	37,171,807	$ 37	$ 1,000,281	$ (28,992)	$ 971,329
Stock-based compensation expense	—	—	—	—	477	—	477
Shares issued to Advisor for admin and advisory fees	—	—	14,589	—	156	—	156
Net loss attributable to common shareholders	—	—	—	—	—	(69,113)	(69,113)
Net income attributable to preferred shareholders	—	—	—	—	—	1,155	1,155
Common share dividends declared ($0.15 per share)	—	—	496,303	1	4,450	(5,670)	(1,219)
Preferred share dividends declared ($0.34375 per share)	—	—	—	—	—	(1,155)	(1,155)
Balances, September 30, 2023	3,359,593	$ 3	37,682,699	$ 38	$ 1,005,364	$ (103,775)	$ 901,630

Nine Months Ended September 30, 2023	Preferred Shares Number of Shares	Preferred Shares Amount	Common Shares Number of Shares	Common Shares Amount	Additional Paid-in Capital	Accumulated Earnings (Loss)	Total
Balances, December 31, 2022	3,359,593	$ 3	37,171,807	$ 37	$ 999,845	$ 17,947	$ 1,017,832
Stock-based compensation expense	—	—	—	—	913	—	913
Shares issued to Advisor for admin and advisory fees	—	—	14,589	—	156	—	156
Net loss attributable to common shareholders	—	—	—	—	—	(104,811)	(104,811)
Net income attributable to preferred shareholders	—	—	—	—	—	3,465	3,465
Common share dividends declared ($0.45 per share)	—	—	496,303	1	4,450	(16,911)	(12,460)
Preferred share dividends declared ($1.03125 per share)	—	—	—	—	—	(3,465)	(3,465)
Balances, September 30, 2023	3,359,593	$ 3	37,682,699	$ 38	$ 1,005,364	$ (103,775)	$ 901,630

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS (Predecessor Basis)
(in thousands, except share amounts)
(Unaudited)

	For the Six Months Ended June 30, 2022
Increase (decrease) in net assets operations:	
Net investment income	$ 67,404
Preferred dividend expenses	(2,310)
Accumulated net realized gain (loss) on investments, securities sold short, written options, futures contracts, and foreign currency transactions	29,146
Net change in unrealized appreciation on investments, securities sold short, written options contracts and translation of assets and liabilities denominated in foreign currency	32,594
Net increase from operations	126,834
Distributions declared to common shareholders:	
Distribution	(11,139)
Total distributions declared to common shareholders:	(11,139)
Increase in net assets from operations and distributions	115,695
Share transactions:	
Value of distributions reinvested	1,425
Proceeds from sale of shares	1,288
Net increase from shares transactions	2,713
Total increase in net assets	118,408
Net assets	
Beginning of period	911,208
End of period	$ 1,029,616
Change in Common Shares	
Issued for distribution reinvested	92
Net increase in common shares	92

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY
(in thousands, except share and per share amounts)
(Unaudited)

	Preferred Shares		Common Shares				
Three Months Ended September 30, 2022	**Number of Shares**	**Amount**	**Number of Shares**	**Amount**	**Additional Paid-in Capital**	**Accumulated Earnings (Loss)**	**Total**
Balances, June 30, 2022	3,359,593	$ 3	37,171,807	$ 37	$ 998,557	$ 114,271	$ 1,112,868
Costs associated with Business Change	—	—	—	—	(92)	—	(92)
Net loss attributable to common shareholders	—	—	—	—	—	(60,142)	(60,142)
Net income attributable to preferred shareholders	—	—	—	—	—	1,155	1,155
Common stock dividends declared ($0.15 per share)	—	—	—	—	—	(5,577)	(5,577)
Preferred stock dividends declared ($0.34375 per share)	—	—	—	—	—	(1,155)	(1,155)
Balances, September 30, 2022	3,359,593	$ 3	37,171,807	$ 37	$ 998,465	$ 48,552	$ 1,047,057

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(Unaudited)

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	For the Nine Months Ended September 30,	For the Three Months Ended September 30,
	2023	2022
Cash flows from operating activities		
Net loss	$ (101,346)	$ (58,987)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	10,928	3,643
Amortization of intangible lease assets and liabilities	(912)	(371)
Amortization of deferred financing costs	441	(25)
Paid-in-kind interest	(3,444)	(1,016)
Realized (gain) loss	718	(2,846)
Net change in unrealized (gain) loss on investments held at fair value ($98,248 and $(43,785) with related parties, respectively)	89,598	78,238
Equity in income (losses) of unconsolidated ventures ($498 and $(1,155) with related parties, respectively)	23	1,581
Distributions of earnings from unconsolidated ventures ($570 and $110 with related parties, respectively)	3,048	1,692
Stock-based compensation expense	913	—
Cash paid for life settlement premiums	(3,355)	(3,022)
Changes in operating assets and liabilities, net of effects of acquisitions:		
Deferred tax asset	1,596	—
Income tax payable	(10,720)	—
Real estate taxes payable	3,135	—
Operating assets	(4,210)	(3,795)
Operating liabilities	(4,887)	9,459
Net cash provided by (used in) operating activities:	(18,474)	24,551
Cash flows from investing activities		
Proceeds from asset redemptions	—	10,872
Distributions from CLO investments	—	18,100
Proceeds from sale of investments	29,490	—
Purchases of investments ($4,034 and $(9,925) with related parties, respectively)	(3,579)	(9,925)
Contributions to equity method investments	—	(1,382)
Additions to consolidated real estate investments	(8,926)	(1,317)
Acquisitions of consolidated real estate investments	—	(26,500)
Proceeds from life settlement policy maturities	2,999	—
Cash from deconsolidation of investment	(3,993)	—
Net cash provided by (used in) investing activities	15,991	(10,152)
Cash flows from financing activities		
Proceeds received from notes payable	20,000	13,250

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Mortgage payments	(1,773)	(591)
Prime brokerage borrowing	11,892	2,567
Credit facilities payments	(8,999)	(9,500)
Prime brokerage payments	(12,756)	(92)
Deferred financing costs paid	(771)	(379)
Dividends paid to preferred shareholders	(3,465)	(1,155)
Dividends paid to common shareholders	(12,460)	(5,577)
Net cash used in financing activities:	(8,332)	(1,477)
Net decrease in cash, cash equivalents and restricted cash	(10,815)	12,922
Cash, cash equivalents and restricted cash, beginning of period	48,649	50,776
Cash, cash equivalents and restricted cash, end of period	$ 37,834	$ 63,698
Supplemental Disclosure of Cash Flow Information		
Interest paid	$ 11,306	$ 2,722
Income tax paid	$ 13,700	$ —
Supplemental Disclosure of Noncash Activities		
Non-cash dividend payment	$ 4,462	$ —
Fair value assets acquired from the sale of consolidated investments*	$ 68,500	$ —
Non-cash advisory fee payment	$ 156	$ —

*For more information about this transaction, refer to Note 10. Life Settlement Portfolio

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CASH FLOWS (Predecessor Basis)
(in thousands)

(Unaudited)

	For the Six Months Ended June 30,
	2022
Cash flows from operating activities:	
Net increase in net assets resulting from operations	$ 126,834
Adjustments to reconcile net increase in net assets resulting from operations to net cash provided by operating activities:	
Purchases of investment securities from unaffiliated issuers	(350,369)
Purchases of investment securities from affiliated issuers	(105,674)
Proceeds from the disposition of investment securities from unaffiliated issuers	428,007
Proceeds from the disposition of investment securities from affiliated issuers	2,135
Purchases of securities sold short	(177)
Amortization (accretion) of premiums	(171)
Net realized (gain) loss on investments from unaffiliated issuers	(28,893)
Net realized (gain) loss on securities sold short	(253)
Net change in unrealized depreciation on unaffiliated investments	43,752
Net change in unrealized appreciation on investments in affiliated investments	(76,346)
Changes in operating assets and liabilities	
Dividends and interest receivable	741
Due from custodian	192
Prepaid expenses and other assets	(1,583)
Reclaim receivable	1,250
Foreign tax reclaim receivable	(1,274)
Due to broker	(1,695)
Payable for administrative fees	(11)
Payable for investment advisory fees	49
Due to custodian	(110)
Payable for interest expense and commitment fees	82
Accrued expenses and other liabilities	(150)
Net cash provided by operating activities	36,336
Cash flows from financing activities:	
Payments on notes payable	(26,500)
Distributions paid in cash	(9,714)
Proceeds from shares sold	1,288
Proceeds from dividend reinvestment	(44)
Net cash used in financing activities	(34,970)
Net increase in cash	1,366
Cash, cash equivalents and restricted cash:	
Beginning of period	2,678

End of period	$	4,044

Supplemental disclosure of cash flow information

Reinvestment of distributions	$	1,425
Cash paid during the period for interest expense and commitment fees	$	614

See Notes to Consolidated Financial Statements

NEXPOINT DIVERSIFIED REAL ESTATE TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

NexPoint Diversified Real Estate Trust (the "Company", "we", "us", or "our") was formed in Delaware and has elected to be taxed as a real estate investment trust (a "REIT"). Substantially all of the Company's business is conducted through NexPoint Diversified Real Estate Trust Operating Partnership, L.P. (the "OP"), the Company's operating partnership. The Company conducts its business (the "Portfolio") through the OP and its wholly owned taxable REIT subsidiaries ("TRSs"). The Company's wholly owned subsidiary, NexPoint Diversified Real Estate Trust OP GP, LLC (the "OP GP"), is the sole general partner of the OP. As of September 30, 2023, there were 2,000 partnership units of the OP (the "OP Units") outstanding, of which 100.0% were owned by the Company.

On July 1, 2022 (the "Deregistration Date"), the Securities and Exchange Commission (the "SEC") issued an order pursuant to Section 8(f) of the Investment Company Act of 1940 (the "Investment Company Act") declaring that the Company has ceased to be an investment company under the Investment Company Act (the "Deregistration Order"). The issuance of the Deregistration Order enabled the Company to proceed with full implementation of its new business mandate to operate as a diversified REIT that focuses primarily on investing in various commercial real estate property types and across the capital structure, including but not limited to equity, mortgage debt, mezzanine debt and preferred equity (the "Business Change").

The Company is externally managed by NexPoint Real Estate Advisors X, L.P. (the "Adviser"), through an agreement dated July 1, 2022, amended on October 25, 2022 and April 11, 2023, (the "Advisory Agreement"), by and among the Company and the Adviser for an initial three-year term that will expire on July 1, 2025 and successive one-year terms thereafter unless earlier terminated. The Adviser manages the day-to-day operations of the Company and provides investment management services. The Company had no employees as of September 30, 2023. All of the Company's investment decisions are made by the Adviser, subject to general oversight by the Adviser's investment committee and our board of trustees (the "Board"). The Adviser is wholly owned by NexPoint Advisors, L.P. (the "Sponsor" or "NexPoint").

As a diversified REIT, the Company's primary investment objective is to provide both current income and capital appreciation. The Company seeks to achieve this objective through the Business Change. Target underlying property types primarily include, but are not limited to, single-family rentals, multifamily, self-storage, life science, office, industrial, hospitality, net lease and retail. The Company may, to a limited extent, hold, acquire or transact in certain non-real estate securities.

2. Summary of Significant Accounting Policies

Readers of this Quarterly Report on Form 10-Q ("Quarterly Report") should refer to the audited financial statements and notes to consolidated financial statements of the Company for the year ended December 31, 2022, which are included in our 2022 Annual Report on Form 10-K ("2022 Annual Report"), filed with the United States Securities and Exchange Commission (SEC) and also available on our website (nxdt.nexpoint.com), since we have omitted from this Quarterly Report certain footnote disclosures which would substantially duplicate those contained in such audited financial statements. You should also refer to Note 2, Summary of Significant Accounting Policies, in the notes to consolidated financial statements in our 2022 Annual Report for further discussion of our significant accounting policies and estimates. Information contained on, or accessible through, our website is not incorporated by reference into and does not constitute a part of this Quarterly Report or any other report or documents we file or furnish with the SEC.

Income Taxes

As a REIT for U.S. federal income tax purposes, the Company may deduct earnings distributed to stockholders against the income generated by our REIT operations. The Company continues to be subject to income taxes on the income of its taxable REIT subsidiaries. Our consolidated net loss before income taxes was $67.6 million for the three months ended September 30, 2023 and $99.9 million for the nine months ended September 30, 2023. The Company's consolidated balance sheet as of September 30, 2023 consists of a $2.2 million net deferred tax asset at NHF TRS, LLC and a $1.5 million net deferred tax liability at NREO TRS, Inc. for a consolidated net Deferred Tax asset of $0.7 million.

The Company's tax provision for interim periods is determined using an estimate of its annual current and deferred effective tax rates, adjusted for discrete items. Our effective tax rates for the three and nine months ended September 30,

2023 were (0.49)% and (1.45)%, respectively. Our effective tax rate differs from the U.S. federal statutory corporate tax rate of 21.0% primarily due to our REIT operations generally not being subject to federal income taxes.

3. Business Change

As discussed in Note 1, on the Deregistration Date, the SEC issued an order pursuant to Section 8(f) of the Investment Company Act declaring that the Company has ceased to be an investment company under the Investment Company Act. The issuance of the Deregistration Order enabled the Company to proceed with full implementation of the Business Change. Upon the Deregistration Order, the Company discontinued the use of guidance in FASB ASC 946. To effectuate this change, the fair values of the Company's investments became the July 1, 2022 cost basis. The change also required the consolidation of several investments that were previously not required to be consolidated under FASB ASC 946.

4. Investments in Real Estate Subsidiaries

The Company conducts its operations through the OP, which owns several real estate properties through single asset limited liability companies that are special purpose entities ("SPEs"). The Company consolidates the SPEs that it controls as well as any VIEs where it is the primary beneficiary. All of the properties the SPEs own are consolidated in the Company's consolidated financial statements. The assets of each entity can only be used to settle obligations of that particular entity, and the creditors of each entity have no recourse to the assets of other entities or the Company.

As of September 30, 2023, the Company, through the OP, owned four properties through SPEs. The following table represents the Company's ownership in each property by virtue of its 100% ownership of the SPEs that directly own the title to each property as of September 30, 2023:

Property Name		Location	Year Acquired	Effective Ownership Percentage at September 30, 2023
White Rock Center		Dallas, Texas	2013	100 %
5916 W Loop 289		Lubbock, Texas	2013	100 %
Cityplace Tower		Dallas, Texas	2018	100 %
NexPoint Dominion Land, LLC	(1)	Plano, Texas	2022	100 %

(1) NexPoint Dominion Land, LLC owns 100% of 21.5 acres of undeveloped land in Plano, Texas.

5. Consolidated Real Estate Investments

As of September 30, 2023, the major components of the Company's investments in real estate held by SPEs the Company consolidates, which are included in "Consolidated Real Estate Investments" on the Consolidated balance sheet, were as follows (in thousands):

Operating Properties	Land	Buildings and Improvements	Intangible Lease Assets	Intangible Lease Liabilities	Construction in Progress	Furniture, Fixtures, and Equipment	Totals
White Rock Center	$ 1,315	$ 10,345	$ 1,921	$ (101)	$ —	$ 5	$ 13,485
5916 W Loop 289	1,081	2,938	—	—	—	—	4,019
Cityplace Tower	18,812	184,907	9,058	(6,669)	24,928	357	231,393
NexPoint Dominion Land, LLC	26,500	—	—	—	—	—	26,500
	47,708	198,190	10,979	(6,770)	24,928	362	275,397
Accumulated depreciation and amortization	—	(11,295)	(6,155)	1,857	—	(223)	(15,816)
Total Operating Properties	$ 47,708	$ 186,895	$ 4,824	$ (4,913)	$ 24,928	$ 139	$ 259,581

As of December 31, 2022, the major components of the Company's investments in real estate held by SPEs the Company consolidates, which are included in "Consolidated Real Estate Investments" on the Consolidated balance sheet, were as follows (in thousands):

Operating Properties	Land	Buildings and Improvements	Intangible Lease Assets	Intangible Lease Liabilities	Construction in Progress	Furniture, Fixtures, and Equipment	Totals
White Rock Center	$ 1,315	$ 10,314	$ 1,921	$ (101)	$ —	$ 5	$ 13,454
5916 W Loop 289	1,081	2,939	—	—	—	—	4,020
Cityplace Tower	18,812	161,216	9,058	(6,669)	39,731	349	222,497
NexPoint Dominion Land, LLC	26,500	—	—	—	—	—	26,500
	47,708	174,469	10,979	(6,770)	39,731	354	266,471
Accumulated depreciation and amortization	—	(4,114)	(2,863)	743	—	(181)	(6,415)
Total Operating Properties	$ 47,708	$ 170,355	$ 8,116	$ (6,027)	$ 39,731	$ 173	$ 260,056

Depreciation expense was $2.8 million and $7.2 million for the three and nine months ended September 30, 2023, respectively. Amortization expense related to the Company's intangible lease assets was $0.8 million and $3.3 million for the three and nine months ended September 30, 2023, respectively. Amortization expense related to the Company's intangible lease liabilities was $0.4 million and $1.1 million for the three and nine months ended September 30, 2023, respectively. The net amount amortized as an increase to rental revenue for capitalized above and below-market lease intangibles was $0.3 million and $0.9 million for the three and nine months ended September 30, 2023, respectively.

Acquisitions

There were no acquisitions by the Company for the nine months ended September 30, 2023.

6. Debt

Cityplace Debt

The Company has debt on its real estate property pursuant to a Loan Agreement, originally dated August 15, 2018 and subsequently amended (the "Loan Agreement"). The debt is limited recourse to the Company and encumbers the property. The debt had an original maturity of September 8, 2022, and the Company deferred the maturity date with the lender to May 8, 2023, with the possibility to extend for an additional four months to September 8, 2023 provided certain metrics were met. On May 8, 2023, the lender agreed to defer the maturity of the Cityplace debt by four months to September 8, 2023. Also on May 8, 2023, the parties to the Loan Agreement agreed to convert the index upon which the interest rate is based to the one-month secured overnight financing rate ("SOFR") effective as of the first interest period beginning on or after May 8, 2023. On September 8, 2023, the lender agreed to defer the maturity of the Cityplace debt by six months to March 8, 2024. The debt restructuring per the terms of the Twelfth Omnibus Amendment Agreement is considered a debt modification. The purpose of the deferral was to allow for continued discussions around refinancing the debt. Management recognizes that finding an alternative source of funding is necessary to repay the debt by the maturity date. Management is evaluating multiple options to fund the repayment of the $142.9 million principal balance outstanding as of September 30, 2023, including refinancing the debt, securing additional equity or debt financing, selling a portion of the portfolio, or any combination thereof. Management believes that there is sufficient time before the maturity date and that the Company has sufficient access to capital to ensure the Company is able to meet its obligations as they become due. Due to the short term nature of the debt, the fair value of the debt is approximately the outstanding balance. The below table contains summary information related to the mortgages payable (dollars in thousands):

	Outstanding principal as of September 30, 2023	Interest Rate	Maturity Date
Note A-1	$ 101,535	7.69 %	3/8/2024
Note A-2	22,211	11.69 %	3/8/2024
Note B-1	12,782	7.69 %	3/8/2024
Note B-2	3,173	11.69 %	3/8/2024
Mezzanine Note 1	2,796	11.69 %	3/8/2024
Mezzanine Note 2	399	11.69 %	3/8/2024
Mortgages payable	142,896		
Deferred financing costs, net	(335)		
Mortgages payable, net	$ 142,561		

The weighted average interest rate of the Company's debt related to its Cityplace investment was 8.5% as of September 30, 2023 and 7.3% as of December 31, 2022.

The Loan Agreement contains customary events of default, including defaults in the payment of principal or interest, defaults in compliance with the covenants contained in the documents evidencing the loan, defaults in payments under any other security instrument covering any part of the property, whether junior or senior to the loan, and bankruptcy or other insolvency events. As of September 30, 2023, the Company believes it is in compliance with all covenants.

Notes Payable

On August 9, 2022, the Company borrowed approximately $13.3 million from the seller, Gabriel Legacy, LLC to finance its acquisition of 21.5 acres of land in Plano, Texas held through NexPoint Dominion Land, LLC, a wholly owned subsidiary of the OP. Due to the short term nature of the note, the fair value of the note is approximately the outstanding balance. The note bears interest at an annual rate equal to the WSJ Prime Rate and matures on August 8, 2025.

Credit Facility

On January 8, 2021, the Company entered into a $30.0 million credit facility (the "Credit Facility") with Raymond James Bank, N.A. and drew the full balance. The Credit Facility, as amended, would have matured on November 6, 2023, (see Note 16 for information regarding the extension of the maturity date of the Credit Facility) and as of September 30, 2023, bore interest at the one-month SOFR plus 4.25%. During the nine months ended September 30, 2023, the Company paid down $9.0 million on the Credit Facility. As of September 30, 2023, the Credit Facility had an outstanding balance of $2.0 million. Due to the short term nature of the debt, the fair value of the debt is approximately the outstanding balance. Management believes that the Company has sufficient access to capital to ensure the Company is able to meet its obligations as they become due.

Revolving Credit Facility

On May 22, 2023, the Company entered into a $20.0 million revolving credit facility (the "NexBank Revolver") with NexBank, in the initial principal balance of $20.0 million, with the option for the Company to receive additional disbursements thereunder up to a maximum of $50.0 million. As of September 30, 2023, the NexBank Revolver bears interest at one-month SOFR plus 3.50% and matures on May 20, 2024, with the option to extend the maturity by one year, twice. Due to the short term nature of the debt, the fair value of the debt is approximately the outstanding balance. As of September 30, 2023, the NexBank Revolver had an outstanding balance of $20.0 million.

Deferred Financing Costs

The Company defers costs incurred in obtaining financing and amortizes the costs over the terms of the related loans using the straight-line method, which approximates the effective interest method. Deferred financing costs, net of amortization, are recorded as a reduction from the related debt on the Company's consolidated balance sheet. Upon

repayment of or in conjunction with a material change in the terms of the underlying debt agreement, any unamortized costs are charged to loss on extinguishment of debt and modification costs.

Prime Brokerage Borrowing

Effective July 2, 2022, the Company entered a prime brokerage account with Jefferies to hold securities owned by the Company. The Company from time to time borrows against the value of these securities. As of September 30, 2023, the Company had a margin balance of approximately $1.8 million outstanding with Jefferies bearing interest at the Overnight Bank Funding Rate plus 0.50%. Securities with a fair value of approximately $6.9 million are pledged as collateral against this margin balance. This arrangement has no stated maturity date. Due to the floating interest rate nature of the debt, the fair value of the debt is approximately the outstanding balance.

Schedule of Debt Maturities

The aggregate scheduled maturities, including amortizing principal payments, of total debt for the next five calendar years subsequent to September 30, 2023 are as follows (in thousands):

	Mortgages Payable	Notes Payable	Prime Brokerage Borrowing	Total
2023	$ —	$ 2,000	$ —	$ 2,000
2024	142,896	20,000	—	162,896
2025	—	13,250	—	13,250
2026	—	—	—	—
2027	—	—	—	—
Thereafter	—	—	1,760	1,760
Total	$ 142,896	$ 35,250	$ 1,760	$ 179,906

7. Variable Interest Entities

As of September 30, 2023, the Company does not consolidate the investments below as it does not have a controlling financial interest in these investments:

Entities	Instrument	Asset Type	Percentage Ownership as of September 30, 2023	Relationship as of September 30, 2023
Unconsolidated Entities:				
NexPoint Storage Partners, Inc.	Common stock	Self-storage	53.0 %	VIE
NexPoint Storage Partners Operating Company, LLC	LLC interest	Self-storage	29.7 %	VIE
Perilune Aero Equity Holdings One, LLC	LLC interest	Aircraft	16.4 %	VIE
SFR WLIF III, LLC	LLC interest	Single-family rental	20.0 %	VIE
NexPoint Real Estate Finance Operating Partnership, L.P.	LP interest	Mortgage	16.0 %	VIE
VineBrook Homes Operating Partnership, L.P.	LP interest	Single-family rental	11.1 %	VIE
NexPoint SFR Operating Partnership, L.P.	LP interest	Single-family rental	30.8 %	VIE
IQHQ Holdings, LP	LP interest	Life science	1.1 %	VIE
NexAnnuity Holdings, Inc.	Preferred Shares	Annuities	100.0 % (1)	VIE

(1) The Company owns 100% of the preferred stock of NexAnnuity Holdings, Inc., but it does not own any of the outstanding common stock of NexAnnunity Holdings, Inc.

Consolidated VIEs

The Company did not have any consolidated VIEs for the period ended September 30, 2023.

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8. Equity Method Investments

Below is a summary of the Company's equity method investments as of September 30, 2023 (dollars in thousands):

Investee Name	Instrument	Asset Type	NXDT Percentage Ownership		Investment Basis		Share of Investee's Net Assets (1)	Basis Difference (2)	Share of Earnings (Loss)
Sandstone Pasadena Apartments, LLC	LLC interest	Multifamily	50.0 %		$ 11,815		$ (9,590)	$ 21,405	$ (14)
AM Uptown Hotel, LLC	LLC interest	Hospitality	60.0 %	(3)	24,336		21,334	3,002	(111)
SFR WLIF III, LLC	LLC interest	Single-family rental	20.0 %		7,200		7,466	(266)	447
Las Vegas Land Owner, LLC	LLC interest	Land	77.0 %	(4)	12,312		12,312	—	—
Perilune Aero Equity Holdings One, LLC	LLC interest	Aircraft	16.4 %	(7)	11,922		9,990	1,932	1,081
Claymore Holdings, LLC	LLC interest	N/A	50.0 %	(5)	—	(6)	—	—	—
Allenby, LLC	LLC interest	N/A	50.0 %	(5)	—	(6)	—	—	—
					$ 67,585		$ 41,512	$ 26,073	$ 1,403

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Below is a summary of the Company's equity method investments as of December 31, 2022 (dollars in thousands):

Investee Name	Instrument	Asset Type	NXDT Percentage Ownership	Investment Basis	Share of Investee's Net Assets (1)		Basis Difference (2)	Share of Earnings (Loss)
Sandstone Pasadena Apartments, LLC	LLC interest	Multifamily	50.0 %	$ 13,013	$ —		$ 13,013	$ (217)
AM Uptown Hotel, LLC	LLC interest	Hospitality	60.0 % (3)	27,136	21,334		5,802	(227)
SFR WLIF III, LLC	LLC interest	Single-family rental	20.0 %	7,272	7,466		(194)	280
Las Vegas Land Owner, LLC	LLC interest	Land	77.0 % (4)	12,312	12,312		—	—
Perilune Aero Equity Holdings One, LLC	LLC interest	Aircraft	16.4 % (7)	10,923	8,751		2,172	665
Claymore Holdings, LLC	LLC interest	N/A	50.0 % (5)	— (6)	—		—	—
Allenby, LLC	LLC interest	N/A	50.0 % (5)	— (6)	—		—	—
				$ 70,656	$ 49,863	$—	$ 20,793	$ 501

Below is a summary of the Company's investments as of September 30, 2023 that qualify for equity method accounting for which the Company has elected to account for using the fair value option. Amounts are included in "investments, at fair value" on the consolidated balance sheet.

Investee Name	Instrument	Asset Type	NXDT Percentage Ownership	Fair Value
NexPoint Real Estate Finance Operating Partnership, L.P.	LP interest	Mortgage	16.0 % (7)	$ 79,658
NexPoint Real Estate Finance, Inc.	Common stock	Mortgage	12.2 % (7)	34,356
VineBrook Homes Operating Partnership, L.P.	LP interest	Single-family rental	11.1 % (7)	146,419
NexPoint Storage Partners, Inc.	Common stock	Self-storage	53.0 % (3)	69,484
NexPoint Storage Partners Operating Company, LLC	LLC interest	Self-storage	29.7 %	37,863
NexPoint SFR Operating Partnership, L.P.	LP interest	Single-family rental	30.8 %	49,568
NexPoint Hospitality Trust	Common stock	Hospitality	45.4 %	9,500
LLV Holdco, LLC	LLC interest	Land	26.8 %	3,267
				$ 430,115

(1) Represents the Company's percentage share of net assets of the investee per the investee's books and records.
(2) Represents the difference between the basis at which the investments in unconsolidated ventures are carried by the Company and the Company's proportionate share of the equity method investee's net assets. To the extent

that the Company's cost basis is different from the basis reflected at the joint venture level, the basis difference is generally amortized over the lives of the related assets and liabilities, and such amortization is included in the Company's share of equity in earnings of the joint venture.

(3) The Company owns greater than 50% of the outstanding common equity but is not deemed by the Company to be the primary beneficiary (for a VIE) or have a controlling financial interest of the investee and as such, accounts for the investee using the equity method.

(4) The Company owns 100% of Las Vegas Land Owner, LLC which owns 77% of a joint venture that owns an 8.5 acre tract of land (the "Tivoli North Property"). Through a tenants in common arrangement, the Company shares control and as such accounts for this investment using the equity method.

(5) The Company has a 50% non-controlling interest in Claymore Holdings, LLC ("Claymore") and Allenby, LLC, ("Allenby"). The Company has determined it is not the primary beneficiary and does not consolidate these entities.

(6) The Company has elected the fair value option with respect to these investments. The basis in these investments is their September 30, 2023 fair value.

(7) The Company owns less than 20% of the investee but has significant influence due to members of the management team serving on the board of the investee or its parent and as such, accounts for the investee using the equity method.

Significant Equity Method Investments

The table below presents the unaudited summary balance sheets for the Company's significant equity method investments as of September 30, 2023 (dollars in thousands). NexPoint Real Estate Finance, Inc. ("NREF"), NexPoint Storage Partners, Inc. ("NSP") and VineBrook Homes Trust, Inc. ("VineBrook") do not prepare standalone financials for their operating companies as all operations and investments are owned through their operating companies and are consolidated by the corporate entities. As such, only the financial information for NREF, NSP and VineBrook are presented below.

	NREF	VineBrook	NSP
ASSETS			
Investments	$ 6,814,871	$ 2,500	$ —
Real estate assets	58,563	3,359,816	1,205,678
Cash and cash equivalents	10,977	34,115	12,746
Other assets	1,942	208,109	191,441
TOTAL ASSETS	$ 6,886,353	$ 3,604,540	$ 1,409,865
LIABILITIES AND SHAREHOLDERS' EQUITY			
Liabilities:			
Debt	$ 1,212,740	$ 2,487,524	$ 890,508
Other liabilities	5,239,450	148,345	402,928
Total Liabilities	6,452,190	2,635,869	1,293,436
Redeemable noncontrolling interests in the operating company	89,148	482,149	211,082
Noncontrolling interests in consolidated VIEs	—	12,786	—
Total Shareholders' Equity	345,015	473,736	(94,653)
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 6,886,353	$ 3,604,540	$ 1,409,865

The table below presents the unaudited summary statement of operations for the nine months ended September 30, 2023 for the Company's significant equity method investments (dollars in thousands).

	NREF	VineBrook	NSP
Revenues			
Rental income	$ 3,057	$ 259,121	$ 83,851
Net interest income	12,971	—	1,527
Other income	—	4,362	6,154
Total revenues	16,028	263,483	91,532
Expenses			
Total expenses	16,950	368,968	103,968
Gain (loss) on sales of real estate	—	(65,108)	(8,276)
Other income (expense)	1,727	(43,130)	(77,006)
Unrealized gain (loss) on derivatives	—	6,297	—
Total comprehensive income (loss)	$ 805	$ (207,426)	$ (97,718)

9. Fair Value of Derivatives and Financial Instruments

The inputs or methodology used for valuing securities are not necessarily an indication of the risk associated with investing in those securities. The table below summarizes the inputs used to value the Company's assets carried at fair value on a recurring basis as of September 30, 2023 (in thousands):

		Fair Value			
	Cost Basis	Level 1	Level 2	Level 3	Total
Assets					
Bond	$ 17	$ —	$ 22	$ —	$ 22
CLO	34,958	—	563	18,251	18,814
Common stock	311,789	41,605	—	180,873	222,478
Convertible notes	46,260	—	—	43,448	43,448
LLC interest	66,492	—	—	41,148	41,148
LP interest	324,494	—	79,658	195,987	275,645
Preferred Shares	66,955	—	—	66,955	66,955
Rights and warrants	3,937	—	3,751	—	3,751
Senior loan	41,428	—	58	41,867	41,925
	$ 896,330	$ 41,605	$ 84,052	$ 588,529	$ 714,186

The table below summarizes the inputs used to value the Company's assets carried at fair value on a recurring basis as of December 31, 2022 (in thousands):

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	Cost Basis	Fair Value			
		Level 1	Level 2	Level 3	Total
Assets					
Bond	$ 17	$ —	$ 20	$ —	$ 20
CLO	34,958	—	563	6,412	6,975
Common stock	325,275	53,872	—	234,667	288,539
Convertible notes	54,802	—	—	50,828	50,828

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Life settlement	64,267	—	—	67,711	67,711
LLC interest	66,492	—	—	60,836	60,836
LP interest	321,026	—	77,370	223,141	300,511
Rights and warrants	3,947	—	3,794	—	3,794
Senior loan	43,399	—	66	43,341	43,407
	$ 914,183	$ 53,872	$ 81,813	$ 686,936	$ 822,621

The table below sets forth a summary of changes in the Company's Level 3 assets (assets measured at fair value using significant unobservable inputs) for the nine months ended September 30, 2023 (in thousands):

	December 31, 2022	Contributions/ Purchases	Paid in-kind dividends	Redemptions/ Conversions	Return of capital	Realized gain/(loss)	Unrealized gain/(loss)	September 30, 2023
CLO	$ 6,412	$ —	$ —	$ —	$ —	$ —	$ 11,839	$ 18,251
Common stock	234,667	—	—	—	—	—	(53,794)	180,873
Convertible notes	50,828	(8,542)	—	—	—	—	1,162	43,448
Life settlement	67,711	3,355	—	(67,506)	—	(1,101)	(2,459)	—
LLC interest	60,836	70,222	—	(68,500)	—	(1,722)	(19,688)	41,148
LP interest	223,141	3,467	—	—	—	—	(30,621)	195,987
Preferred Shares	—	68,500	455	(2,000)	—	—	—	66,955
Senior loan	43,341	—	2,989	(4,971)	—	11	497	41,867
Total	$ 686,936	$ 137,002	$ 3,444	$ (142,977)	$ —	$ (2,812)	$ (93,064)	$ 588,529

The following is a summary of the significant unobservable inputs used in the fair valuation of assets categorized within Level 3 of the fair value hierarchy as of September 30, 2023.

Category	Valuation Technique	Significant Unobservable Inputs	Input Value(s) (Arithmetic Mean)				Fair Value
CLO	Discounted Net Asset Value	Discount		70%			$ **18,251**
Common Stock	Market Approach	Unadjusted Price/MHz-PoP	$0.10	—	$0.90	$(0.48)	**180,873**
	Discounted Cash Flow	Discount Rate	7.75%	—	12.50%	(10.2)%	
		Market Rent (per sqft)	$4.91	—	$24.98	$(14.95)	
		RevPAR	$95.00	—	$203.00	$(127.78)	
		Capitalization Rates	5.38%	—	10%	(8.88)%	
	NAV Approach	Discount Rate		10.00%			
	Multiples Analysis	Multiple of EBITDA	1.00x	—	4.25x	(2.43)x	
	Recent Transaction	Implied Enterprise Value from Transaction Price ($mm)		$841.00			
		N/A	$25.31	—	$28.00	$(26.66)	
		Offer Price per Share		$1.10			
Convertible Notes	Discounted Cash Flow	Discount Rate	8.00%	—	10.25%	(9.13)%	**43,448**
	Option Pricing Model	Volatilty	25.00%	—	60.00%	(47.86)%	
LLC Interest	Discounted Cash Flow	Discount Rate	7.75%	—	30.00%	(14.06)%	**41,148**
		Market Rent (per sqft)	$4.91	—	$24.98	$(14.95)	
		Capitalization Rate		5.375%			
LP Interest	Discounted Cash Flow	Capitalization Rate	3.90%	—	6.90%	5.51%	**195,987**
		Discount Rate	10%	—	20.0%	(15)%	
	Recent Transaction	Price per Share		$22.88			
Preferred Shares	Recent Transaction	Cost ($mm)		$66.955			**66,955**
Senior Loan	Discounted Cash Flow	Discount Rate	12.30%	—	20.00%	(16.15)%	**41,867**
Total							$ **588,529**

10. Life Settlement Portfolio

As of June 30, 2023, the Company, through one of its TRSs, owned 100% of the outstanding equity and debt of Specialty Financial Products, Ltd. ("SFP"), an Ireland domiciled private company with limited liability and a Designated Activity Company. At the proposal of NexAnnuity Asset Management, L.P. ("NexAnnuity"), an affiliate of the Adviser, SFP was formed for the purpose of entering into acquisitions of U.S. life settlement policies approved by NexAnnuity and funded by the issuance of debt securities, or the Structured Note purchased by the Company. SFP utilizes proceeds from maturing life settlement contracts to repay the Structured Note and to further invest in life settlement contracts. On June 30, 2023, as the Company owned the outstanding ordinary shares of and Structured Note issued by SFP, the Company consolidated SFP in its entirety. On September 1, 2023, the Company, through one of its TRSs, entered into a contribution agreement to transfer the Structured Note in SFP and all its rights, title and interests to a related party NexAnnuity Holdings, Inc. ("NHI") and its wholly owned subsidiaries. The Company also transferred all of its ordinary shares in SFP to a separate share trustee. In exchange, the Company was issued 68,500 shares of Class A Preferred Stock in NHI. As a result, the Company now holds none of the outstanding equity and debt of SFP, and SFP no longer meets the requirements for consolidation under ASC 810 – Consolidation. The Company will have no continuing involvement with SFP. As such, SFP has been deconsolidated herein as of September 1, 2023. The Class A Preferred Stock in NexAnnuity Holdings, Inc. is accounted for as an investment in an equity security. However, management has elected to account for the investment using the fair value option and presented it as Investments, at fair value. The fair value of the Class A Preferred Stock is its original issue price of $1,000 per share due to the recent nature of the transaction. Dividends on the Class A Preferred Stock are cumulative and are payable quarterly on March 31, June 30, September 30, and December 31 at an annual rate of 8.0% for years one through seven, 9.5% for years eight through ten, 11.0% for years eleven through thirteen, and 12.0% for years fourteen through sixteen and thereafter.

The transfer of the Structured Note qualified as a sale under ASC 860 – Transfers and Servicing as (1) the transfer legally isolated the transferred assets from the transferor, (2) the transferee has the right to pledge or exchange the transferred assets and no condition both constrains the transferee's right to pledge or exchange the assets and provides more than a trivial benefit to the transferor, and (3) the transferor does not maintain effective control over the transferred assets.

11. Shareholders' Equity

Common Shares

As of September 30, 2023, the Company had 37,682,699 common shares, par value $0.001 per share, issued and outstanding. 510,891.75 shares were issued during the nine months ended September 30, 2023.

During the nine months ended September 30, 2023, the Company paid a distribution of $0.15 per share on its common shares on March 31, 2023 to shareholders of record on March 15, 2023, June 30, 2023 to shareholders of record on June 15, 2023 and September 29, 2023 to shareholders of record on August 14, 2023. The dividend paid on September 29, 2023 consisted of a combination of cash and shares, with the cash component of the dividend (other than cash paid in lieu of fractional shares) comprising 20% of the dividend, with the balance being paid in the Company's common shares.

Preferred Shares

On January 8, 2021, the Company issued 3,359,593 5.50% Series A Cumulative Preferred Shares, par value $0.001 per share, liquidation preference $25.00 per share ("Series A Preferred Shares") with an aggregate liquidation preference of approximately $84.0 million. The Series A Preferred Shares were issued as part of the consideration for an exchange offer for a portion of the Company's common shares. The Series A Preferred Shares are callable beginning on December 15, 2023 at a price of $25 per share. The Company may exercise its call option at the Company's discretion. As a result, these are included in permanent equity.

During the nine months ended September 30, 2023, the Company declared three distributions on its Series A Preferred Shares, each in the amount of $0.34375 per share, which were paid to holders of Series A Preferred Shares on March 31, 2023 to shareholders of record on March 24, 2023, on June 30, 2023 to shareholders of record on June 23, 2023 and on September 30, 2023 to shareholders of record on September 25, 2023.

Dividends on the Series A Preferred Shares are cumulative from their original issue date at the annual rate of 5.5% of the $25 per share liquidation preference and are payable quarterly on March 31, June 30, September 30, and December 31 of each year, or in each case on the next succeeding business day.

Long Term Incentive Plan

On January 30, 2023, the Company's shareholders approved a long-term incentive plan (the "2023 LTIP") and the Company subsequently filed a registration statement on Form S-8 registering 2,545,000 common shares, par value $0.001 per share, which the Company may issue pursuant to the 2023 LTIP. The 2023 LTIP authorizes the compensation committee of the Board to provide equity-based compensation in the form of share options, appreciation rights, restricted shares, restricted share units, performance shares, performance units and certain other awards denominated or payable in, or otherwise based on, the Company's common shares or factors that may influence the value of the Company's common shares, plus cash incentive awards, for the purpose of providing the Company's trustees, officers and other key employees (and those of the Adviser and the Company's subsidiaries), and potentially certain nonemployees who perform employee-type functions, incentives and rewards for performance (the "participants").

Restricted Share Units. Under the 2023 LTIP, restricted share units may be granted to the participants and typically vest over a three to five-year period for officers, employees and certain key employees of the Adviser and annually for trustees. The most recent grant of restricted share units to officers, employees and certain key employees of the Adviser will vest over a four-year period. Beginning on the date of grant, restricted share units earn dividends that are payable in cash on the vesting date. On April 4, 2023, pursuant to the 2023 LTIP, the Company granted 37,313 restricted share units to its trustees, on April 4, 2023, the Company granted 566,169 restricted share units to its officers and other employees of the Adviser. The following table includes the number of restricted share units granted, vested, forfeited and outstanding as of September 30, 2023:

	2023	
	Number of Units	**Weighted Average Grant Date Fair Value**
Outstanding January 1, 2023	—	$ —
Granted	603,482	10.45
Vested	—	—
Forfeited	—	—
Outstanding September 30, 2023	603,482	$ 10.45

The following table contains information regarding the vesting of restricted share units under the 2023 LTIP for the next five calendar years subsequent to September 30, 2023:

	Shares Vesting	
	April	**Total**
2023	—	—
2024	178,856	178,856
2025	141,542	141,542
2026	141,542	141,542
2027	141,542	141,542
Total	603,482	603,482

As of September 30, 2023, the Company had issued no common shares under the 2023 LTIP. For the three and nine months ended September 30, 2023, the Company recognized approximately $0.5 million and $0.9 million, respectively, of equity-based compensation expense related to grants of restricted share units. As of September 30, 2023, the Company had recognized a liability of approximately $0.2 million related to dividends earned on restricted share units that are payable in cash upon vesting.

12. Earnings (Loss) Per Share

Basic earnings (loss) per share is computed by dividing net income (loss) attributable to common shareholders by the weighted average number of the Company's common shares outstanding and excludes any unvested restricted share units issued pursuant to the 2023 LTIP.

Diluted earnings (loss) per share is computed by adjusting basic earnings per share for the dilutive effect of the assumed vesting of restricted share units. During periods of net loss, the assumed vesting of restricted share units is anti-dilutive and is not included in the calculation of earnings (loss) per share.

The following table sets forth the computation of basic and diluted earnings (loss) per share (in thousands, except per share amounts):

		Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Numerator for loss per share:			
Net income (loss) attributable to common shareholders		$ (69,113)	$ (104,811)
Denominator for loss per share:			
Weighted average common shares outstanding		37,187	37,177
Denominator for basic and diluted loss per share		37,187	37,177
Weighted average unvested restricted share units		603	398
Denominator for diluted loss per share	(1)	37,187	37,177
Loss per weighted average common share:			
Basic		$ (1.86)	$ (2.82)
Diluted		$ (1.86)	$ (2.82)

(1) For the three and nine months ended September 30, 2023, excludes approximately 397,900 and 603,482 shares, related to assumed vesting of RSUs as the effect would be anti-dilutive.

13. Related Party Transactions

Advisory and Administrative Fees

Prior to the Deregistration Date, the Company was party to an investment advisory agreement (the "Former Advisory Agreement") with an affiliate of the Adviser (the "Former Adviser") pursuant to which the Former Adviser provided investment advisory services to the Company and certain of its subsidiaries. The Company's contractual fee under the Former Advisory Agreement was an annual fee, payable monthly, in an amount equal to 1.00% an amount (the "Former Managed Assets") equal to the total assets of the Company, including any form of investment leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred stock or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Company's investment objectives and policies, and/or (iv) any other means. The Former Adviser was permitted to waive a portion of its fees.

Prior to the Deregistration Date, the Company was also party to an administration services agreement (the "Administration Services Agreement") pursuant to which the Former Adviser previously performed administrative functions for us in connection with our operation as a closed-end investment company. For its services, the Former Adviser received an annual fee, payable monthly, in an amount equal to 0.20% of the average weekly value of the Former Managed Assets.

In connection with the Business Change and effective on the Deregistration Date, the Company terminated its investment advisory agreement and its administrative services agreement with the Former Adviser and entered into the Advisory Agreement with the Adviser, a subsidiary of NexPoint. The Company also terminated the investment advisory agreements between NexPoint and its wholly owned subsidiaries, NexPoint Real Estate Opportunities, LLC ("NREO") and NexPoint Real Estate Capital, LLC, effective on the Deregistration Date. Pursuant to the Advisory Agreement, subject to the overall supervision of our Board, the Adviser manages the day-to-day operations of the Company, and provides investment management services.

As of September 30, 2023, as consideration for the Adviser's services under the Advisory Agreement, we pay our Adviser an annual fee (the "Advisory Fee") of 1.00% of Managed Assets and an annual fee (the "Administrative Fee" and, together with the Advisory Fee, the "Fees") of 0.20% of the Company's Managed Assets (defined below).

On April 11, 2023, we entered into an amendment to the Advisory Agreement whereby the monthly installment of the Fees shall be paid in cash unless the Adviser elects, in its sole discretion, to receive all or a portion of the monthly installment of the Fees in common shares of the Company, subject to certain restrictions including that in no event shall the common shares issued to the Adviser under the Advisory Agreement exceed five percent of the number of common shares or five percent of the voting power of the Company outstanding prior to the first such issuance (the "Share Cap") and that in no event shall the common shares issued to the Adviser under the Advisory agreement exceed 6,000,000 common shares; provided, however, that the Share Cap will not apply if the Company's shareholders have approved issuances in excess of the Share Cap. At the Company's annual meeting of shareholders, the Company's shareholders did not approve issuances in excess of the Share Cap. During the three and nine months ended September 30, 2023, we issued 14,588.75 and 14,588.75 common shares, respectively, to the Advisor in payment of the Fees in an amount of $0.16 million and $0.16 million, respectively .

Under the Advisory Agreement, "Managed Assets" means an amount equal to the total assets of the Company, including any form of leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing to purchase or develop real estate or other investments, borrowing through a credit facility, or the issuance of debt securities), (ii) the issuance of preferred shares or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the Company's investment objectives and policies, and/or (iv) any other means. In the event the Company holds collateralized mortgage-backed securities ("CMBS") where the Company holds the controlling tranche of the securitization and is required to consolidate under GAAP all assets and liabilities of a specific CMBS trust, the consolidated assets and liabilities of the consolidated trust will be netted to calculate the allowable amount to be included as Managed Assets. In addition, in the event the Company consolidates another entity it does not wholly own as a result of owning a controlling interest in such entity or otherwise, Managed Assets will be calculated without giving effect to such consolidation and instead such entity's assets, leverage, expenses, liabilities and obligations will, on a pro rata basis consistent with the Company's percentage ownership, be considered those of the Company for purposes of calculation of Managed Assets. The Adviser computes Managed Assets as of the end of each fiscal quarter and then computes each installment of the Fees as promptly as possible after the end of the month with respect to which such installment is payable.

Revolving Credit Facility

On May 22, 2023, the Company entered into the NexBank Revolver pursuant to which the Company in the initial principal amount of $20.0 million, with the option for the Company to receive additional disbursements thereunder up to a maximum of $50.0 million, and bears interest at one-month SOFR plus 3.50% and matures on May 20, 2024. The Company drew the $20.0 million on May 22, 2023. The fair value of the revolving credit facility is equal to its carrying value as the Company has the ability to repay the outstanding principal at par value at any time. As of September 30, 2023, the NexBank Revolver had an outstanding balance of $20.0 million.

Reimbursement of Expenses; Expense Cap

The Company is required to pay directly or reimburse the Adviser for all of the documented "operating expenses" (all out-of-pocket expenses of the Adviser in performing services for us, including but not limited to the expenses incurred by the Adviser in connection with any provision by the Adviser of legal, accounting, financial, due diligence, investor relations or other services performed by the Adviser that outside professionals or outside consultants would otherwise perform and our pro rata share of rent, telephone, utilities, office furniture, equipment, machinery or other office, internal and overhead expenses of the Adviser required for our operations) and any and all expenses (other than underwriters'

discounts) paid or to be paid by us in connection with an offering of our securities, including, without limitation, our legal, accounting, printing, mailing and filing fees and other documented offering expenses (collectively, "Offering Expenses"), paid or incurred by the Adviser or its affiliates in connection with the services it provides to us pursuant to the Advisory Agreement. Direct payment of operating expenses by us together with reimbursement of operating expenses to the Adviser, plus compensation expenses relating to equity awards granted under a long-term incentive plan and all other corporate general and administrative expenses of the Company, including the Fees payable under the Advisory Agreement, could not exceed 1.5% (the "Expense Cap") of Managed Assets, calculated as of the end of each quarter, for the twelve-month period which followed the Company's receipt of the Deregistration Order; provided, however, that this limitation did not apply to Offering Expenses, legal, accounting, financial, due diligence and other service fees incurred in connection with extraordinary litigation and mergers and acquisitions or other events outside the ordinary course of our business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of certain real estate-related investments; provided, further, in the event the Company consolidated another entity that it does not wholly own as a result of owning a controlling interest in such entity or otherwise, expenses would have been calculated without giving effect to such consolidation and instead such entity's expenses would have been, on a pro rata basis consistent with the Company's percentage ownership, be considered those of the Company for purposes of calculation of expenses. On occasion, the Adviser may waive additional fees to the extent assets are invested in certain affiliated investments. The Adviser may, at its discretion and at any time, waive its right to reimbursement for eligible out-of-pocket expenses paid on the Company's behalf. Once waived, these expenses are considered permanently waived and become non-recoupable in the future. The Expense Cap expired on June 30, 2023.

The Advisory Agreement has an initial term of three years that will expire on July 1, 2025, and successive additional one-year terms thereafter unless earlier terminated. We have the right to terminate the Advisory Agreement on 30 days' written notice upon the occurrence of a cause event (as defined in the Advisory Agreement). The Advisory Agreement can be terminated by us or the Adviser without cause upon the expiration of the then-current term with at least 180 days' written notice to the other party prior to the expiration of such term. The Adviser may also terminate the agreement with 30 days' written notice if we have materially breached the agreement and such breach has continued for 30 days before we are given such notice. In addition, the Advisory Agreement will automatically terminate in the event of Advisers Act Assignment (as defined in the Advisory Agreement) unless we provide written consent. A termination fee will be payable to the Adviser by us upon termination of the Advisory Agreement for any reason, including non-renewal, other than a termination by us upon the occurrence of a cause event or due to an Advisers Act Assignment. The termination fee will be equal to three times the Fees earned by the Adviser during the twelve month period immediately preceding the most recently completed calendar quarter prior to the effective termination date; provided, however, if the Advisory Agreement is terminated prior to the one year anniversary of the date of the Advisory Agreement, the Fees earned during such period will be annualized for purposes of calculating the Fees.

For the three and nine months ended September 30, 2023, the Company incurred Administrative Fees and Advisory Fees of $3.5 million and $10.7 million, which excludes $0 and $2.0 million, respectively, in fees that were waived to comply with the Expense Cap. Should the Fees and expenses and any other items subject to the Expense Cap have been less than the 1.5% limit for the twelve-month period subsequent to the Deregistration Date, some or all of the deferred expenses could be recouped by the Adviser up to the Expense Cap. No Advisory Fees were recouped by the Adviser as of September 30, 2023.

Guaranties of NexPoint Storage Partners, Inc. Debt

On September 14, 2022, the Company entered into guaranties (the "BS Guaranties") for the benefit of JPMorgan Chase Bank, National Association ("JPM") and any additional or subsequent lenders from time to time (collectively, "BS Lender") under a loan agreement (the "BS Loan Agreement"), pursuant to which the Company guaranteed certain obligations of the borrowers ("BS Borrower") under the BS Loan Agreement. The Company, through its ownership in NSP, owns an indirect interest in BS Borrower and entered into the BS Guaranties as a condition of BS Lender lending to BS Borrower under the BS Loan Agreement. Pursuant to the BS Guaranties, the Company guaranteed certain carrying obligations, including interest payments, of BS Borrower and certain recourse obligations of BS Borrower pertaining to exculpation or indemnification of BS Lender. The BS Guaranties also provide that the Company may be required to repay principal amounts upon the occurrence of certain events, including certain action or inaction by BS Borrower, but does not provide for a full guarantee of repayment in all circumstances. The BS Loan Agreement provides for a single initial advance of the loan in the amount of $221.8 million to BS Borrower on the closing date, and provides BS Borrower the right to request additional advances in connection with subsequently acquired properties. Amounts outstanding under the BS Loan Agreement are due and payable on March 9, 2024 which date may, at the option of BS Borrower, be extended for an additional six months upon the satisfaction of certain terms and conditions. Borrowings outstanding under the BS Loan

Agreement are secured by mortgages on real property owned by one or more of the borrowers comprising BS Borrower and bear interest at the one-month SOFR, subject to a floor of 0.5%, plus an applicable spread of approximately 4.0% with respect to approximately $184.9 million of initial principal thereunder and approximately 5.4% with respect to approximately $36.9 million of initial principal thereunder.

On December 8, 2022 and in connection with a restructuring of NSP, the Company, together with NREF, Highland Opportunities and Income Fund ("HFRO") and NexPoint Real Estate Strategies Fund (collectively, the "Co-Guarantors"), as guarantors, entered into a Sponsor Guaranty Agreement in favor of Extra Space Storage, LP ("Extra Space") pursuant to which the Company and the Co-Guarantors guaranteed obligations of NSP with respect to NSP's newly created Series D Preferred Stock and two promissory notes in an aggregate principal amount of approximately $64.2 million issued to Extra Space. The guaranties by the Company and the Co-Guarantors are capped at $97.6 million, which cap amount will be reduced as the guaranteed obligations of NSP are paid. Each of the Company and the Co-Guarantors generally guaranteed the foregoing obligations of NSP up to the cap amount on a pro rata basis with respect to its percentage ownership of NSP's common stock. On February 15, 2023, NSP paid down approximately $15.0 million of these promissory notes, resulting in an aggregate principal amount of approximately $49.2 million. As of September 30, 2023, the maximum liability of the Company under the guaranties was approximately $71.0 million. The Company has not recorded a contingent liability due to NSP being current on all debt and preferred dividend payments and in compliance with all debt compliance provisions of the Sponsor Guaranty Agreement. As of September 30, 2023, the Company owns approximately 53.0% of the total outstanding shares of common stock of NSP.

Separately, on September 14, 2022, the Company entered into a Guaranty Agreement (Recourse Obligations), dated September 14, 2022 (the "CMBS Guaranty") for the benefit of JPM and any additional or subsequent lenders from time to time (collectively, the "CMBS Lender") under a loan agreement (the "CMBS Loan Agreement"), by and among the borrowers thereunder (collectively, "CMBS Borrower") and the CMBS Lender. The Company, through its ownership in NSP, owns an indirect interest in CMBS Borrower and entered into the CMBS Guaranty as a condition of CMBS Lender lending to CMBS Borrower under the CMBS Loan Agreement. Pursuant to the CMBS Guaranty, the Company guaranteed certain recourse obligations of CMBS Borrower pertaining to exculpation or indemnification of CMBS Lender. The CMBS Guaranty also provides that the Company may be required to repay principal amounts upon the occurrence of certain events, including certain action or inaction by CMBS Borrower, but does not provide for a full guarantee of repayment in all circumstances. The CMBS Loan Agreement provides for a loan of $356.5 million to CMBS Borrower. Amounts outstanding under the CMBS Loan Agreement are due and payable on September 9, 2024 which date may, at the option of CMBS Borrower, be extended for three successive one-year terms upon the satisfaction of certain terms and conditions. Borrowings outstanding under the CMBS Loan Agreement are secured by mortgages on real property owned by one or more of the borrowers comprising CMBS Borrower and bear interest at one-month SOFR plus a spread of approximately 3.6%, which will increase by 0.1% upon a second extension of the loan maturity and by an additional approximately 0.15% upon a third extension of the loan maturity.

Subsidiary Investment Management Agreement

SFP is a party to a management agreement (the "SFP IMA") with NexAnnuity pursuant to which NexAnnuity provides investment management services to SFP. Mr. Dondero serves as President of NexAnnuity, which is indirectly owned by a trust of which Mr. Dondero is the primary beneficiary. As discussed in Note 10, the Company disposed of its interest in SFP on September 1, 2023. Prior to its disposition, the Company paid $0.1 million in management fees to NexAnnuity.

In exchange for its services, the SFP IMA provides that NexAnnuity will receive a management fee (the "SFP Management Fee") paid monthly in an amount equal to 1.0% of the average weekly value of an amount equal to the total assets of SFP, including any form of leverage, minus all accrued expenses incurred in the normal course of operations, but not excluding any liabilities or obligations attributable to investment leverage obtained through (i) indebtedness of any type (including, without limitation, borrowing through a credit facility or the issuance of debt securities), (ii) the issuance of preferred stock or other preference securities, (iii) the reinvestment of collateral received for securities loaned in accordance with the investment objective, investment guidelines and policies under the SFP IMA, and/or (iv) any other means, plus any value added tax or any other applicable tax, if any, thereon. NexAnnuity may waive all or a portion of the SFP Management Fee.

Other Related Party Transactions

The Company has in the past, and may in the future, utilize the services of affiliated parties. The Company holds multiple operating accounts at NexBank an affiliate of the Adviser through common beneficial ownership. The Company's operating properties, other than undeveloped land, are managed by NexVest Realty Advisors, LLC ("NexVest"), an affiliate of the Adviser. For the nine months ended September 30, 2023, the Company through its subsidiaries has paid approximately $0.5 million in property management fees to NexVest. The property management agreement with NexVest for the retail property in Lubbock, Texas is dated January 1, 2014 and had a fixed fee of $750 per month. Effective January 1, 2023, the property management agreement was amended and the property management fee was increased to $1,200 per month. The property management agreement with NexVest for Cityplace Tower is dated August 15, 2018, and the management fee is calculated on 3% of gross revenues, with a minimum fee of $20,000 per month. The property management agreement with NexVest for the White Rock Center is dated June 1, 2013, and the management fee is calculated on 4% of gross receipts, payable monthly.

The Company is a limited guarantor and an indemnitor on one of NexPoint Hospitality Trust's ("NHTs") loans with an aggregate principal amount of $77.4 million as of September 30, 2023. NHT is a publicly traded hospitality REIT that is managed by an affiliate of the Adviser. The Company owns 45.4% of the outstanding common stock of NHT. The obligations include a customary environmental indemnity and a so-called "bad boy" guarantee, which is generally only applicable if and when the borrower directly, or indirectly through an agreement with an affiliate, joint venture partner or other third party, voluntarily files a bankruptcy or similar liquidation or reorganization action or takes other actions that are fraudulent or improper. The Company has not recorded a contingent liability as NHT is current on all debt payments and in compliance with all debt compliance provisions.

On March 31, 2022, the Company, through an unconsolidated subsidiary, borrowed approximately $13.5 million from NREF, an entity advised by an affiliate of the Adviser, to finance its acquisition of a 77.0% interest in Tivoli North Property. The bridge note bore interest at an annual rate equal to the WSJ Prime Rate plus 1.5% and had a maturity date of October 1, 2022. The Company refinanced this bridge note with PNC Bank, N.A ("PNC Bank") on August 8, 2022. The new loan had a principal amount of $13.5 million and bears interest at an annual rate of daily simple SOFR plus 3.5%. Proceeds from the note with PNC Bank were used to repay in full the financing provided by NREF on August 9, 2022. On August 8, 2023, the Company elected to extend the maturity date of this loan to January 8, 2024.

On December 8, 2022, the Company, through NREO, entered into a Contribution Agreement pursuant to which NREO contributed all of its interests in the joint ventures (the "SAFStor Ventures") with SAFStor NREA GP – I, LLC, SAFStor NREA GP – II, LLC and NREA GP – III, LLC to NexPoint Storage Partners Operating Company, LLC (the "NSP OC") in exchange for approximately 47,064 newly created Class B Units of the NSP OC, representing 14.8% of the outstanding combined classes of common units of the NSP OC (the "NSP OC Common Units") immediately after NREO's acquisition of Class B Units. The NSP OC is the operating company of NSP, of which the Company owns approximately 86,369 shares, or 53.0%, of the outstanding common stock as of September 30, 2023. In connection with the foregoing, the NSP OC acquired all of the other interests in the SAFStor Ventures from affiliates of the Adviser following which they were wholly owned by a subsidiary of the NSP OC. The SAFStor Ventures are invested, through subsidiaries, in various self-storage real estate development projects primarily located on the East Coast of the United States. As of September 30, 2023, the Company owns approximately 47,064 units, or 29.7%, of the outstanding NSP OC Common Units.

On December 23, 2022, the Company, through NREO, redeemed 2,100,000 common units of limited partnership (the "NREF OP Units") of NexPoint Real Estate Finance Operating Partnership, L.P. (the "NREF OP") for 2,100,000 shares of common stock of NREF. The NREF OP is the operating partnership of NREF, a publicly traded mortgage REIT managed by an affiliate of the Adviser.

On September 1, 2023, the Company, through one of its wholly owned TRSs, entered into a contribution agreement to transfer the Structured Note in SFP and all its rights, title and interests to related party NexAnnuity Holdings, Inc. and its wholly owned subsidiaries. The Company also transferred all of its ordinary shares in SFP to a separate share trustee. In exchange, the Company was issued 68,500 shares of Class A Preferred Stock in NexAnnuity Holdings, Inc. On September 28, 2023, the Company, through one of its wholly owned TRSs, redeemed 2,000 shares of Class A Preferred Stock in NexAnnuity Holdings, Inc.

Related Party Investments

The Company, from time to time, may invest in entities managed by affiliates of the Adviser. For the nine months ended and as of September 30, 2023, the Company has the following investments in entities managed or advised by, or directly or indirectly owned by entities managed or advised by, affiliates of the Adviser (in thousands).

Related Party	Investment	Fair Value/Carrying Value	Change in Unrealized Gain/(Loss)	Realized Gain/(Loss)	Equity in income (loss)	Interest and Dividends	Total Income
NexPoint Hospitality Trust	Common Stock	$ 9,500	$ (18,185)	$ —	$ —	$ —	$ (18,185)
NexPoint Real Estate Finance, Inc.	Common Stock	34,356	987	—	—	4,316	5,303
NexPoint Storage Partners, Inc.	Common Stock	69,484	(34,210)	—	—	—	(34,210)
NexPoint Residential Trust, Inc.	Common Stock	2,910	(1,027)	—	—	113	(914)
NexPoint SFR Operating Partnership, L.P.	Convertible Notes	21,275	468	—	—	1,411	1,879
NexPoint Hospitality Trust	Convertible Notes	22,173	694	—	—	479	1,173
NexPoint Storage Partners Operating Company, LLC	LLC Units	37,863	(18,642)	—	—	—	(18,642)
SFR WLIF III, LLC	LLC Units	7,200	—	—	498	—	498
Claymore Holdings, LLC	LLC Units	—	—	—	—	—	—
Allenby, LLC	LLC Units	—	—	—	—	—	—
VineBrook Homes Operating Partnership, L.P.	Partnership Units	146,419	(26,108)	—	—	2,866	(23,242)
NexPoint Real Estate Finance Operating Partnership, L.P.	Partnership Units	79,658	2,288	—	—	8,764 —	11,052
NexPoint SFR Operating Partnership, L.P.	Partnership Units	49,568	(4,513)	—	—	1,203 —	(3,310)
NexAnnuity Holdings, Inc.	Preferred Shares	66,955	—	—	—	455 —	455
Total		$ 547,361	$ (98,248)	$ —	$ 498	$ 19,607	$ (78,143)

On June 13, 2023, HFRO, a fund managed by an affiliate of the Adviser, loaned $11 million to NexPoint SFR Operating Partnership, L.P. (the "SFR OP") in exchange for $11 million of 7.50% convertible notes of the SFR OP (the "SFR OP Convertible Notes"). The SFR OP Convertible Notes bear interest at 7.50%, are interest only during the term of the SFR OP Convertible Note and mature on June 30, 2027. The SFR OP is a subsidiary of NexPoint Homes Trust, Inc. ("NXHT"), a single-family rental REIT managed by an affiliate of the Adviser. From August 1, 2022 through March 31,

2027, the SFR OP Convertible Notes are convertible into SFR OP Units at the election of the holder at the then-current net asset value, subject to certain required approvals and limitations, including the SFR OP's right to prohibit conversion if, among other things, conversion would negatively impact NXHT's REIT status or cause NXHT to own less than 50.0% of the SFR OP.

14. Commitments and Contingencies

Commitments

On December 8, 2022 and in connection with a restructuring of NSP, the Company, together with the Co-Guarantors, as guarantors, entered into a Sponsor Guaranty Agreement in favor of Extra Space pursuant to which the Company and the Co-Guarantors guaranteed obligations of NSP with respect to NSP's newly created Series D Preferred Stock and two promissory notes in an aggregate principal amount of approximately $64.2 million issued to Extra Space. The guaranties by the Company and the Co-Guarantors are capped at $97.6 million, which cap amount will be reduced as the guaranteed obligations of NSP are paid. Each of the Company and the Co-Guarantors generally guaranteed the foregoing obligations of NSP up to the cap amount on a pro rata basis with respect to its percentage ownership of NSP's common stock. On February 15, 2023, NSP paid down approximately $15.0 million of these promissory notes, resulting in an aggregate principal amount of approximately $49.2 million. As of September 30, 2023, the maximum liability of the Company under the guaranties was approximately $71.0 million. The Company has not recorded a contingent liability due to NSP being current on all debt and preferred dividend payments and in compliance with all debt compliance provisions of the Sponsor Guaranty Agreement. As of September 30, 2023, the Company owns approximately 53.0% of the total outstanding shares of common stock of NSP. See Note 13 for additional information.

The Company is a limited guarantor and an indemnitor on one of NHT's loans with an aggregate principal amount of $77.4 million outstanding, as of September 30, 2023. The obligations include a customary environmental indemnity and a so-called "bad boy" guarantee, which is generally only applicable if and when the borrower directly, or indirectly through an agreement with an affiliate, joint venture partner or other third party, voluntarily files a bankruptcy or similar liquidation or reorganization action or takes other actions that are fraudulent or improper. The Company has not recorded a contingent liability as NHT is current on all debt payments and in compliance with all debt compliance provisions.

Contingencies

In the normal course of business, the Company is subject to claims, lawsuits, and legal proceedings. While it is not possible to ascertain the ultimate outcome of all such matters, management believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on the consolidated balance sheets or consolidated statements of operations and comprehensive income (loss) of the Company. The Company is not involved in any material litigation nor, to management's knowledge, is any material litigation currently threatened against the Company or its properties or subsidiaries.

Environmental liabilities could have a material adverse effect on the Company's business, assets, cash flows or results of operations. As of September 30, 2023, the Company was not aware of any environmental liabilities. There can be no assurance that material environmental liabilities do not exist.

Claymore and Allenby are engaged in ongoing litigation that could result in a possible gain contingency to the Company. The probability, timing, and potential amount of recovery, if any, are unknown.

15. Operating Leases

Lessor Accounting

The following table summarizes the future minimum lease payments to the Company as the lessor under the operating lease obligations at September 30, 2023 (in thousands). These amounts do not reflect future rental revenues from renewal or replacement of existing leases. Reimbursements of operating expenses and variable rent increases are excluded from the table below.

Year:	Operating Leases
2023	$2,939
2024	9,536
2025	9,227
2026	7,911
2027	7,097
Thereafter	26,222
Total	$62,932

The following table lists the tenants where the rental revenue from the tenants during the period presented represented 10% or more of total rental income in the Company's consolidated statements of operations (in thousands):

	For the Nine Months Ended September 30,
Tenant	**Rental Income**
Hudson Advisors LLC	$2,135

16. Subsequent Events

Dividends Declared

On November 6, 2023, the Board approved a quarterly dividend of $0.15 per common share, payable on December 29, 2023 to shareholders of record on November 17, 2023. The dividend on the Company's common shares consists of a combination of cash and shares, with the cash component of the dividend (other than cash paid in lieu of fractional shares) not to exceed 20% in the aggregate, with the balance being paid in the Company's common shares. Also on November 6, 2023, the Board approved a quarterly dividend of $0.34375 per Series A Preferred Share, payable on January 2, 2024 to shareholders of record on December 22, 2023.

Issuance of Common Shares to Adviser

On October 25, 2023, the Company issued 131,031.24 common shares to the Adviser as payment of a portion of the monthly Advisory Fees pursuant to the April 11, 2023 amendment to Advisory Agreement.

Redemption of Series A Preferred Stock in NexAnnuity Holdings, Inc.

On October 24, 2023, the Company, through one of its wholly owned TRSs, redeemed 1,000 shares of Class A Preferred Stock in NHI for $1.0 million .

Credit Facility Amendment

On October 20, 2023, Raymond James Bank, N.A. agreed to amend the terms of the Credit Facility, which, among other things, extended the maturity date to October 6, 2025 and increased the credit limit to $20 million. On October 23, 2023, the Company drew $7.0 million of the available balance.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is a discussion and analysis of our financial condition and our historical results of operations. The following should be read in conjunction with our financial statements and accompanying notes included herein and with our annual report on Form 10-K for the year ended December 31, 2022 (our "Annual Report"), filed with the Securities and Exchange Commission (the "SEC") on March 31, 2023. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those projected, forecasted, or expected in these forward-looking statements as a result of various factors, including, but not limited to, those discussed below and elsewhere in this quarterly report. See "Cautionary Statement Regarding Forward-Looking Statements" in this report and "Risk Factors" in Part I, Item 1A, "Risk Factors" of our Annual Report.

Overview

As of September 30, 2023, our Portfolio consisted primarily of debt and equity investments in the single-family rental, self-storage, office, hospitality, life science and multifamily sectors. Substantially all of our business is conducted through the OP. The OP GP is the sole general partner of the OP and is owned 100% by the Company. As of September 30, 2023, there were 2,000 OP Units outstanding, of which 100% were owned by us.

On July 1, 2022, or the Deregistration Date, the SEC issued the Deregistration Order pursuant to Section 8(f) of the Investment Company Act declaring that the Company has ceased to be an investment company under the Investment Company Act. The issuance of the Deregistration Order enabled the Company to proceed with full implementation the Business Change. As a result of the Business Change, we have not provided a comparison of our financial statements to prior periods in which we were operating as a registered investment company because it would not be useful to our shareholders.

As a diversified REIT, the Company's primary investment objective is to provide both current income and capital appreciation. The Company seeks to achieve this objective through the Business Change. Target underlying property types primarily include, but are not limited to, single-family rentals, multifamily, self-storage, life science, office, industrial, hospitality, net lease and retail. The Company may, to a limited extent, hold, acquire or transact in certain non-real estate securities. We are externally managed by the Adviser through the Advisory Agreement, by and among the Company and the Adviser. The Advisory Agreement was dated July 1, 2022, and amended on October 25, 2022 and April 11, 2023, for an initial three-year term that will expire on July 1, 2025 and successive one-year terms thereafter unless earlier terminated. The Adviser is wholly owned by our Sponsor.

We have elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). To qualify as a REIT, we must meet a number of organizational and operational requirements, including a requirement that we distribute at least 90% of our REIT taxable income to our shareholders. As a REIT, we will be subject to federal income tax on our undistributed REIT taxable income and net capital gain and to a 4% nondeductible excise tax on any amount by which distributions we pay with respect to any calendar year are less than the sum of (1) 85% of our ordinary income, (2) 95% of our capital gain net income and (3) 100% of our undistributed income from prior years. We believe we qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to qualify as a REIT. Taxable income from certain non-REIT activities is managed through one or more TRS entities and are subject to applicable federal, state, and local income and margin taxes.

The macroeconomic environment remains challenging as central banks have continued to rapidly raise interest rates. The rising rate environment, coupled with large bank failures in early 2023 and ongoing economic uncertainty, has limited credit availability to commercial real estate. Less available and more expensive debt capital has had pronounced effects on the capital markets, making property acquisitions and other investments harder to finance. Similar factors also impact the timing of and proceeds generated from asset sales and our ability to obtain debt capital.

On October 15, 2021, Marc S. Kirschner, as litigation trustee of a litigation subtrust formed in connection with the bankruptcy proceedings of Highland, a former affiliate of our Sponsor, filed a lawsuit (the "Bankruptcy Trust Lawsuit") against various persons and entities, including our Sponsor and James Dondero. In addition, on February 8, 2023, UBS Securities and its affiliate (collectively "UBS") filed a lawsuit in the Supreme Court of the State of New York, County of New York against Mr. Dondero and a number of entities currently or previously affiliated with Mr. Dondero, seeking to collect on $1.3 billion in judgments UBS obtained against entities that were managed indirectly by Highland (the "UBS Lawsuit"). Neither the Bankruptcy Trust Lawsuit nor the UBS Lawsuit include claims related to our business or our assets.

Our Sponsor and Mr. Dondero have informed us they believe the Bankruptcy Trust Lawsuit has no merit and Mr. Dondero has informed us he believes the UBS Lawsuit has no merit; we have been advised that the defendants named in each of the lawsuits intend to vigorously defend against the claims. We do not expect the Bankruptcy Trust Lawsuit or the UBS Lawsuit will have a material effect on our business, results of operations or financial condition.

On February 22, 2023, as previously disclosed, the Board formed an independent special committee to oversee a review of the potential impact to the Company of the UBS Lawsuit and the Bankruptcy Trust Lawsuit. The special committee retained Reichman Jorgensen Lehman Feldberg LLP ("Reichman Jorgensen") as independent legal counsel to advise the special committee on the review. Reichman Jorgensen has reported to the special committee that they have substantially completed their review and found no evidence that the Company engaged in any conduct that would expose it to liability from the UBS Lawsuit or the Bankruptcy Trust Lawsuit. On June 13, 2023, the special committee delivered these findings to the Board. Following the review of the special committee, we reaffirm our expectation that neither the Bankruptcy Trust Lawsuit nor the UBS Lawsuit will have a material effect on our business, results of operations or financial condition.

Macroeconomic trends, including increases in inflation and rising interest rates, may adversely impact our business, financial condition and results of operations. Inflation in the United States has recently accelerated and is currently expected to continue at an elevated level in the near-term. Rising inflation could have an adverse impact on our operating expenses and our floating rate mortgages and credit facilities, as these costs could increase at a rate higher than our rental and other revenue. There is no guarantee we will be able to mitigate the impact of rising inflation. The Federal Reserve has raised interest rates to combat inflation and restore price stability. In addition, to the extent our exposure to increases in interest rates on any of our debt is not eliminated through interest rate swaps and interest rate protection agreements, such increases will result in higher debt service costs which will adversely affect our cash flows. We cannot make assurances that our access to capital and other sources of funding will not become constrained, which could adversely affect the availability and terms of future borrowings, renewals or refinancings. Such future constraints could increase our borrowing costs, which would make it more difficult or expensive to obtain additional financing or refinance existing obligations and commitments, which could slow or deter future growth.

Components of Our Revenues and Expenses

Revenues

Rental income. Our rental income is primarily attributable to the rental revenue from our investment in Cityplace Tower, a 42-story, 1.35 million-square-foot, trophy office building acquired in 2018 as well as rental income from two retail properties. Our rental income also includes utility reimbursements, late fees, common area maintenance reimbursements, and other rental fees charged to tenants.

Interest income. Interest income includes interest earned from our debt investments.

Dividend income. Dividend income includes dividends from our equity investments.

Other income. Other income includes ancillary income earned from tenants such as non-refundable fees, parking fees, and other miscellaneous fees charged to tenants and income items.

Expenses

Property operating expenses. Property operating expenses include property maintenance costs, salary and employee benefit costs, utilities, casualty-related expenses and recoveries and other property operating costs of property owned directly or indirectly by us.

Property management fees. Property management fees include fees paid to NexVest, our property manager, for managing each property directly or indirectly owned by us (see Note 13 to our unaudited consolidated financial statements).

Real estate taxes and insurance. Real estate taxes include the property taxes assessed by local and state authorities depending on the location of each property owned directly or indirectly by us. Insurance includes the cost of commercial, general liability, and other needed insurance for each property owned directly or indirectly by us.

Advisory and administrative fees. Advisory and administrative fees include the fees paid to our Adviser pursuant to the Advisory Agreement (see Note 13 to our unaudited consolidated financial statements).

Property general and administrative expenses. Property general and administrative expenses include the costs of marketing, professional fees, general office supplies, and other administrative related costs of each property owned directly or indirectly by us.

Corporate general and administrative expenses. Corporate general and administrative expenses include, but are not limited to, audit fees, legal fees, listing fees, board of trustee fees, investor relations costs and payments of reimbursements to our Adviser for operating expenses. Corporate general and administrative expenses and the Advisory Fees and Administrative Fees paid to our Adviser will not exceed the Expense Cap for the 12 months subsequent to the Deregistration Date, calculated in accordance with the Advisory Agreement. The Expense Cap does not limit the reimbursement by us of expenses related to securities offerings paid by our Adviser. The Expense Cap also does not apply to legal, accounting, financial, due diligence, and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation, or other events outside our ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets. Additionally, in the sole discretion of the Adviser, the Adviser may elect to waive reimbursement for eligible out-of-pocket expenses paid on the Company's behalf. Once waived, such expenses are considered permanently waived and become non-recoupable in the future.

Conversion expense - Conversion expenses include the costs of the Business Change in conjunction with the Deregistration Order, which primarily include legal fees and other fees incurred in preparation for or as a direct result of the conversion. These conversion expenses are included in the consolidated statement of operations and comprehensive income (loss) as conversion expenses.

Depreciation and amortization. Depreciation and amortization costs primarily include depreciation of our real properties and amortization of acquired in-place leases on property owned directly or indirectly by us.

Other Income and Expense

Interest Expense. Interest expense primarily includes the cost of interest expense on debt, the amortization of deferred financing costs, if any, and the related impact of interest rate derivatives, if any, used to manage our interest rate risk.

Equity in Earnings (Losses) of Unconsolidated Ventures. Equity in earnings (losses) of unconsolidated ventures represents the change in our basis in equity method investments resulting from our share of the investments' income and expenses. Profit and loss from equity method investments for which we've elected the fair value option are classified in divided income, change in unrealized gains and realized gains as applicable.

Income Tax Expense. Income tax expense is primarily derived from taxable gains from asset sales and other income earned from investments held in our TRSs.

Unrealized Gain (Loss) on Investments. Unrealized gains and losses represent changes in fair value for equity method investments, CLO equity investments, bonds, common stock, convertible notes, LLC interests, LP interests, rights and warrants, and senior loans for which the fair value option has been elected.

Realized Gain (Loss) on Investments. The Company recognizes the excess, or deficiency, of net proceeds received, less the carrying value of such investments, as realized gains or losses, respectively. The Company reverses cumulative, unrealized gains or losses previously reported in its Consolidated Statements of Operations on both the Successor and Predecessor basis with respect to the investment sold at the time of the sale.

Real Estate Investments Statistics

As of September 30, 2023, the Company was invested in two retail properties and one office and hospitality property (excluding investments in undeveloped land), as listed below:

Property Name	Rentable Square Footage (in thousands)	Property Type		Date Acquired	Average Effective Monthly Occupied Rent Per Square Foot (1) as of September 30, 2023	% Occupied (2) as of September 30, 2023
White Rock Center	82,793	Retail		6/13/2013	$ 1.51	66.9 %
5916 W Loop 289	30,140	Retail		7/23/2013	$ 0.40	100.0 %
Cityplace Tower	1,353,087	Office & Hospitality	(3)	8/15/2018	$ 2.13	60.2 %
	1,466,020					

(1) Average effective monthly occupied rent per square foot is equal to the average of the contractual rent for commenced leases as of September 30, 2023, minus any tenant concessions over the term of the lease, divided by the occupied square footage of commenced leases as of September 30, 2023.
(2) Percent occupied is calculated as the rentable square footage occupied as of September 30, 2023, divided by the total rentable square footage, expressed as a percentage.
(3) Cityplace is currently under development and the Company is converting part of the property into a hotel, which was still under construction as of September 30, 2023.

Results of Operations for the Three Months Ended September 30, 2023 and June 30, 2023 and Nine Months Ended September 30, 2023

The following table sets forth a summary of our operating results for the three months ended September 30, 2023 and June 30, 2023 and nine months ended September 30, 2023 (in thousands):

	For the Three Months Ended September 30, 2023	For the Three Months Ended June 30, 2023	For the Nine Months Ended September 30 2023
Total revenues	$12,364	$13,880	$41,110
Total expenses	(12,885)	(13,853)	(39,276)
Operating income	(521)	27	1,834
Interest expense	(4,173)	(3,762)	(11,397)
Equity in income (losses) of unconsolidated ventures	(369)	422	(23)
Income tax expense	(330)	(308)	(1,444)
Change in unrealized gains (losses)	(61,626)	(9,332)	(89,598)
Realized gains (losses)	(939)	(914)	(718)
Net income (loss)	(67,958)	(13,867)	(101,346)
Net income (loss) attributable to preferred shareholders	(1,155)	(1,155)	(3,465)
Net income (loss) attributable to common shareholders	$ (69,113)	$ (15,022)	$ (104,811)

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The change in our net income (loss) for the three months ended September 30, 2023 and June 30, 2023 and the net loss for the nine months ended September 30, 2023 primarily relates to mark-to-market losses on our investments accounted for at fair value partially offset by interest and dividends.

Revenues

Rental income. Rental income was $5.4 million and $5.4 million for the three months ended September 30, 2023 and June 30, 2023, and $15.5 million for the nine months ended September 30, 2023. There was no change between the three months ended June 30, 2023 and the three months ended September 30, 2023. Rental income primarily consists of lease revenue from our investment in Cityplace Tower.

Interest and dividends. Interest and dividends totaled $6.9 million and approximately $8.4 million for the three months ended September 30, 2023 and June 30, 2023, and $25.4 million for the nine months ended September 30, 2023. There was a decrease of $1.6 million between the three months ended June 30, 2023, and the three months ended September 30, 2023, which was primarily due to a decrease in equity dividends.

Other income. Other income was approximately $97.0 thousand and $22.0 thousand for the three months ended September 30, 2023 and June 30, 2023, and $128.0 thousand for the nine months ended September 30, 2023. There was an increase of $75.0 thousand between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to an increase in asset management fees on a property.

Expenses

Property operating expenses. Property operating expenses were $1.5 million and $2.5 million for the three months ended September 30, 2023 and June 30, 2023, and $5.6 million for the nine months ended September 30, 2023. There was a decrease of $1.0 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to a decrease in one-time repair and maintenance expenses. Property operating expenses consist primarily of expenses from our investment in Cityplace Tower.

Property management fees. Property management fees were $191.0 thousand and $191.0 thousand for the three months ended September 30, 2023 and June 30, 2023, and $553.0 thousand nine months ended September 30, 2023. There was no change between the three months ended June 30, 2023 and the three months ended September 30, 2023. Property management fees are primarily based on gross revenues derived primarily from our investment in Cityplace Tower.

Real estate taxes and insurance. Real estate taxes and insurance costs were $1.4 million and $1.3 million for the three months ended September 30, 2023 and June 30, 2023, and $4.1 million for the nine months ended September 30, 2023. There was an increase of $20.0 thousand between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to an increase in property taxes at Cityplace Tower. Real estate taxes and insurance expenses consist primarily of expenses from our investment in Cityplace Tower.

Advisory and administrative fees. For the three months ended September 30, 2023 and June 30, 2023, the Company incurred Administrative Fees and Advisory Fees of $3.5 million and $3.7 million, which excludes $0 and $2.0 million in fees that were waived to comply with the Expense Cap, and $10.7 million for the nine months ended September 30, 2023, which excludes $(2.0) million in fees that were deferred to comply with the Expense Cap. There was an increase of approximately $1.8 million between the three months ended June 30, 2023 and the three months ended September 30, 2023. The decrease in periods was primarily due to the expiration of the Expense Cap on June 30, 2023. The fees that were deferred to comply with the Expense Cap have been waived and cannot be recouped by the Adviser.

Property general and administrative expenses. Property general and administrative expenses were $0.8 million and $1.0 million for the three months ended September 30, 2023 and June 30, 2023, and $2.6 million for the nine months ended September 30, 2023. There was a decrease of approximately $0.2 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to a decrease in professional fees. Property general and administrative expenses consist primarily of expenses from our investment in Cityplace Tower.

Corporate general and administrative expenses. Corporate general and administrative expenses were $1.7 million and $2.3 million for the three months ended September 30, 2023 and June 30, 2023, and approximately $5.4 million for the nine months ended September 30, 2023. There was a decrease of approximately $0.6 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily driven by a decrease in legal fees, tax prep fees and other professional fees.

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Conversion expenses. Conversion expenses were $0.0 million and $1.3 million for the three months ended September 30, 2023 and June 30, 2023 and $1.4 million for the nine months ended September 30, 2023. There was a

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decrease of approximately $1.3 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily driven by a decrease in legal fees and audit related fees associated to the conversion of the predecessor.

Depreciation and amortization. Depreciation and amortization costs were $3.8 million and $3.6 million for the three months ended September 30, 2023 and June 30, 2023 and $10.9 million for the nine months ended September 30, 2023. There was an increase of approximately $0.2 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to a decrease in amortization of leases. Depreciation and amortization expenses consist primarily of expenses from our investment in Cityplace Tower. Due to the Business Change, the fair value of our real estate properties as of July 1, 2022 became the new cost basis for the Company. This change reset the depreciable basis of our properties as well as caused the recognition of new intangible lease assets.

Other Income and Expense

Interest expense. Interest expense was $4.2 million and approximately $3.8 million for the three months ended September 30, 2023 and June 30, 2023 and approximately $11.4 million for the nine months ended September 30, 2023. There was an increase of approximately $0.4 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily due to an increase in interest expense at Cityplace Tower attributed to an increase in interest rates and the NexBank Revolver.

Equity in income (losses) of unconsolidated ventures. Equity in income (losses) of unconsolidated ventures was $(0.4) million and $0.4 million for the three months ended September 30, 2023 and June 30, 2023 and $0.0 million for the nine months ended September 30, 2023. There was a decrease of approximately $0.8 million between the three months ended June 30, 2023 and the three months ended September 30, 2023, which was primarily driven by an increase in net income at Marriott Uptown, a 255 key upscale hotel located in Dallas, Texas which is owned by the Company.

Income tax expense. The Company has recorded income tax expense (benefit) of $0.3 million and $0.3 million for the three months ended September 30, 2023 and June 30, 2023, and $1.4 million associated with the TRSs for the nine months ended September 30, 2023. There was no change between the three months ended June 30, 2023 and the three months ended September 30, 2023. The tax expense is partially offset by the quarterly change in valuation allowance on a deferred tax asset of $(0.4) million for a net expense of $0.3 million for the three months ended September 30, 2023, that is recorded on the Consolidated Statement of Operations.

Change in unrealized gains (losses). Unrealized gains (losses) from our investments accounted for at fair value was $(61.6) million and $(9.3) million for the three months ended September 30, 2023 and June 30, 2023 and $(89.6) million for the nine months ended September 30, 2023. There was a decrease of $52.3 million between the three months ended June 30, 2023 and the three months ended September 30, 2023. The decrease is largely driven by mark-to-market losses on NSP common equity of $54.9 million and VineBrook LP interest of $20.9 million offset by mark-to-market gains on NREF OP Units of $3.7 million and mark-to-market gains on our legacy CLOs of $13.4 million.

Realized gains (losses). Realized gains (losses) were $(0.9) million and $(0.9) million for the three months ended September 30, 2023 and June 30, 2023, and $(0.7) million for the nine months ended September 30, 2023. There was a decrease of $0.0 million between the three months ended June 30, 2023 and the three months ended September 30, 2023. The decrease was primarily driven by realized losses on common stock of Elme Communities of $0.8 million, Whitestone REIT of $1.1 million, and realized losses on SFP of $1.3 million .

Non-GAAP Measurements

Net Operating Income and Same Store Net Operating Income

Net Operating Income ("NOI") is a non-GAAP financial measure of performance. NOI is used by investors and our management to evaluate and compare the performance of our properties to other comparable properties, to determine trends in earnings and to compute the fair value of our properties as NOI is calculated by adjusting net income (loss) to add back (1) interest expense, (2) Advisory Fees and Administrative Fees, (3) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income (loss) computed in accordance with GAAP, (4) corporate general and administrative expenses, (5) income tax expenses, (6) conversion

expenses, (7) non-operating property investment revenue, (8) realized and change in unrealized gains (losses) generated from non-real estate investments, and (9) equity in income (losses) of unconsolidated equity method ventures.

The cost of funds is eliminated from net income (loss) because it is specific to our particular financing capabilities and constraints. The cost of funds is also eliminated because it is dependent on historical interest rates and other costs of capital as well as past decisions made by us regarding the appropriate mix of capital, which may have changed or may change in the future. Corporate general and administrative expenses, advisory fees and administrative fees, conversion expenses, and income tax expenses are eliminated because they do not reflect continuing operating costs of the property. Depreciation and amortization expenses are eliminated because they may not accurately represent the actual change in value in our properties that result from use of the properties or changes in market conditions. While certain aspects of real property do decline in value over time in a manner that is reasonably captured by depreciation and amortization, the value of the properties as a whole have historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Equity in income (losses) of unconsolidated equity method ventures are eliminated because they do not reflect continuing operating costs of the property. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale, which will usually change from period to period. Also, expenses that are incurred upon acquisition of a property do not reflect continuing operating costs of the property owner. These gains and losses can create distortions when comparing one period to another or when comparing our operating results to the operating results of other real estate companies that have not made similarly timed purchases or sales. Non-operating property investment revenue and realized and unrealized gains (losses) from non-real estate investments are eliminated as they do not reflect continuing operating costs of the properties. We believe that eliminating these items from net income (loss) is useful because the resulting measure captures the actual ongoing revenue generated and actual expenses incurred in operating our properties as well as trends in occupancy rates, rental rates and operating costs.

However, the usefulness of NOI is limited because it excludes corporate general and administrative expenses, interest expense, Advisory Fees and Administrative Fees, conversion expenses, income tax expenses, depreciation and amortization expense, and gains and losses from the sale of operating real estate assets that are included in net income (loss) as determined under GAAP, non-operating property investment revenue and realized and change in unrealized gains and losses generated from non-real estate investments, and equity in income or losses of unconsolidated equity method ventures, all of which may be material values. NOI may fail to capture significant trends in these components of net income, which further limits its usefulness.

NOI is a measure of the operating performance of our properties but does not measure our performance as a whole. NOI is therefore not a substitute for net income (loss) as computed in accordance with GAAP. This measure should be analyzed in conjunction with net income (loss) computed in accordance with GAAP and discussions elsewhere in "—Results of Operations" regarding the components of net income (loss) that are eliminated in the calculation of NOI.

Other companies may use different methods for calculating NOI or similarly entitled measures and, accordingly, our NOI may not be comparable to similarly entitled measures reported by other companies that do not define the measure exactly as we do.

We define "Same Store NOI" as NOI for our properties that are comparable between periods and that are stabilized. Please see below for a discussion of properties included as Same Store (defined below). We view Same Store NOI as an important measure of the operating performance of our properties because it allows us to compare operating results of properties owned for the entirety of the current and comparable periods and therefore eliminates variations caused by acquisitions or dispositions from the beginning of the compared period to the end of the current period.

NOI and Same Store NOI for the Three Months Ended September 30, 2023 and June 30, 2023 and the Nine Months Ended September 30, 2023

The following table, reconciles our NOI for the three months ended September 30, 2023 and June 30, 2023 and for the nine months ended September 30, 2023 to net income (loss), the most directly comparable GAAP financial measure (in thousands):

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	For the Three Months Ended September 30	For the Three Months Ended June 30	For the Nine Months Ended September 30
	2023	2023	2023
Net loss	$ (67,958)	$ (13,867)	$ (101,346)
Adjustments to reconcile net loss to NOI:			
Advisory and administrative fees	3,469	1,660	8,707
Corporate general and administrative expenses	1,685	2,252	5,433
Conversion expenses	—	1,281	1,444
Income tax expense	330	308	1,444
Depreciation and amortization	3,820	3,584	10,928
Interest expense	4,173	3,762	11,397
Non-operating property investment revenue	(6,863)	(8,441)	(25,441)
Realized gains (losses) from non-real estate investments	939	914	718
Change in unrealized gains (losses) from non-real estate investments	61,626	9,332	89,598
Equity in income (losses) of unconsolidated equity method ventures	369	(422)	23
NOI	$ 1,590	$ 363	$ 2,905
Less Non-Same Store			
Revenues	$ (5,097)	$ (5,064)	$ (14,543)
Operating expenses	3,749	4,955	12,348
Same Store NOI	$ 242	$ 254	$ 710

Net Operating Income for Our Same Store and Non-Same Store Properties for the Three Months Ended September 30, 2023 and June 30, 2023 and the Nine Months Ended September 30, 2023

There are two properties, White Rock Center and 5916 W Loop 289, in our same store pool for the three months ended September 30, 2023 and June 30, 2023, and the nine months ended September 30, 2023 (our "Same Store" properties). Our Same Store properties exclude Cityplace Tower as of September 30, 2023 and June 30, 2023, because it was not yet stabilized. Non-Same Store properties include properties not yet stabilized.

The following table reflects the revenues, property operating expenses and NOI for the three months ended September 30, 2023 and June 30, 2023 for our Same Store and Non-Same Store properties (dollars in thousands):

	For the Three Months Ended September 30	For the Three Months Ended June 30		
	2023	2023	$ Change	% Change
Revenues				
Same Store				
Rental income	$ 404	$ 374	$ 30	8.0 %
Same Store revenues	404	374	30	8.0 %
Non-Same Store				
Rental income	5,000	5,042	(42)	(0.8)%
Other income	97	22	75	N/M
Non-Same Store revenues	5,097	5,064	33	0.7 %
Total revenues	5,502	5,438	64	1.2 %
Operating expenses				
Same Store				
Property operating expenses	34	26	9	30.8 %
Real estate taxes and insurance	79	63	16	25.4 %
Property management fees	20	19	1	5.3 %
Property general and administrative expenses	30	13	17	130.8 %
Same Store operating expenses	162	121	42	34.7 %
Non-Same Store				
Property operating expenses	1,493	2,493	(1,000)	(40.1)%
Real estate taxes and insurance	1,281	1,277	4	0.3 %
Property management fees	171	173	(2)	(1.2)%
Property general and administrative expenses	803	1,012	(209)	(20.7)%
Non-Same Store operating expenses	3,749	4,955	(1,207)	(24.4)%
Total operating expenses	3,911	5,076	(1,165)	(23.0)%
NOI				
Same Store	243	254	(13)	(5.1)%
Non-Same Store	1,349	109	1,240	N/M
Total NOI	$ 1,590	$ 363	$ 1,227	N/M

See reconciliation of net income (loss) to NOI above under "NOI and Same Store NOI for the Three Months Ended September 30, 2023 and June 30, 2023 and the Nine Months Ended September 30, 2023."

The following table reflects the revenues, property operating expenses and NOI for the nine months ended September 30, 2023 for our Same Store and Non-Same Store properties (dollars in thousands):

	For the Nine Months Ended September 30
	2023
Revenues	
Same Store	
Rental income	$ 1,126
Same Store revenues	1,126
Non-Same Store	
Rental income	14,415
Other income	128
Non-Same Store revenues	14,543
Total revenues	15,669
Operating expenses	
Same Store	
Property operating expenses	85
Real estate taxes and insurance	223
Property management fees	55
Property general and administrative expenses	53
Same Store operating expenses	416
Non-Same Store	
Property operating expenses	5,468
Real estate taxes and insurance	3,834
Property management fees	498
Property general and administrative expenses	2,548
Non-Same Store operating expenses	12,348
Total operating expenses	12,764
NOI	
Same Store	710
Non-Same Store	2,195
Total NOI	$ 2,905

See reconciliation of net income (loss) to NOI above under "NOI and Same Store NOI for the Three Months Ended September 30, 2023 and June 30, 2023 and Nine Months Ended September 30, 2023."

Same Store Results of Operations for the Three Months Ended September 30, 2023 and June 30, 2023 and the Nine Months Ended September 30, 2023

As of September 30, 2023, our Same Store properties were approximately 75.7% leased with a weighted average monthly effective occupied rent per square foot of $1.21. As of June 30, 2023, our Same Store properties were approximately 75.4% leased with a weighted average monthly effective rent per square foot of $1.21. For our Same Store

properties, we recorded the following operating results for the three months ended September 30, 2023 as compared to the three months ended June 30, 2023 and for the nine months ended September 30, 2023.

Revenues

Rental Income. Rental income was $404.5 thousand and $374.0 thousand for the three months ended September 30, 2023 and June 30, 2023, and $1.1 million for the nine months ended September 30, 2023. There was an increase of approximately $30.5 thousand between the three months ended June 30, 2023 and three months ended September 30, 2023, which was primarily related to an increase in rental revenue at White Rock Center.

Expenses

Property operating expenses. Property operating expenses were $34.5 thousand and $25.8 thousand for the three months ended September 30, 2023 and June 30, 2023, and $84.8 thousand for the nine months ended September 30, 2023. There was an increase of approximately $8.7 thousand, or approximately 30.8%, between the three months ended June 30, 2023 and the three months ended September 30, 2023. The majority of the increase is related to an increase in repair and maintenance costs.

Real estate taxes and insurance. Real estate taxes and insurance costs were $78.5 thousand and $62.8 thousand for the three months ended September 30, 2023 and June 30, 2023, and approximately $223.3 thousand for the nine months ended September 30, 2023. There was an increase of approximately $16.0 thousand, or approximately 25.4%, between the three months ended June 30, 2023 and the three months ended September 30, 2023. The majority of the increase is related to a decrease in recoverable taxes.

Property management fees. Property management fees were $19.6 thousand and $18.5 thousand for the three months ended September 30, 2023 and June 30, 2023, and approximately $55.3 thousand for the nine months ended September 30, 2023. There was an increase of approximately $1.0 thousand, or approximately 5.3%, between the three months ended June 30, 2023 and the three months ended September 30, 2023. The majority of the increase is related to an increase in gross receipts upon which property management fees are calculated.

Property general and administrative expenses. Property general and administrative expenses were $29.6 thousand and $13.5 thousand for the three months ended September 30, 2023 and June 30, 2023, and $52.8 thousand for the nine months ended September 30, 2023. There was an increase of $17.0 thousand, or approximately 130.8% between the three months ended June 30, 2023 and the three months ended September 30, 2023. The majority of the increase is related to an increase in miscellaneous legal fees.

FFO and AFFO

We believe that net income (loss), as defined by GAAP, is the most appropriate earnings measure. We also believe that funds from operations ("FFO"), as defined by the National Association of Real Estate Investment Trusts ("NAREIT") and adjusted funds from operations ("AFFO") are important non-GAAP supplemental measures of operating performance for a REIT.

Since the historical cost accounting convention used for real estate assets requires depreciation except on land, such accounting presentation implies that the value of real estate assets diminishes predictably over time. However, since real estate values have historically risen or fallen with market and other conditions, presentations of operating results for a REIT that use historical cost accounting for depreciation could be less informative. Thus, NAREIT created FFO as a supplemental measure of operating performance for REITs that excludes historical cost depreciation and amortization, among other items, from net income (loss), as defined by GAAP. FFO is defined by NAREIT as net income (loss) computed in accordance with GAAP, excluding gains or losses from real estate dispositions, plus real estate depreciation and amortization. We compute FFO attributable to common shareholders in accordance with NAREIT's definition.

AFFO makes certain adjustments to FFO in order to arrive at a more refined measure of the operating performance of our Portfolio. There is no industry standard definition of AFFO and practice is divergent across the industry. AFFO adjusts FFO to remove items such as equity based compensation expense and the amortization of deferred financing costs incurred in connection with obtaining long-term debt financing, and change in unrealized gains (losses). We believe AFFO is useful to investors as a supplemental gauge of our operating performance and is useful in comparing our operating performance with other REITs that are not as involved in the aforementioned activities.

We believe that the use of FFO and AFFO, combined with the required GAAP presentations, improves the understanding of operating results of REITs among investors and makes comparisons of operating results among such companies more meaningful. While FFO and AFFO are relevant and widely used measures of operating performance of REITs, they do not represent cash flows from operations or net income (loss) as defined by GAAP and should not be considered as an alternative or substitute to those measures in evaluating our liquidity or operating performance. FFO and AFFO do not purport to be indicative of cash available to fund our future cash requirements. Further, our computation of FFO and AFFO may not be comparable to FFO and AFFO reported by other REITs that do not define FFO in accordance with the current NAREIT definition or that interpret the current NAREIT definition or define AFFO differently than we do.

The following table reconciles our calculations of FFO and AFFO to net income (loss), the most directly comparable GAAP financial measure, for the three months ended September 30, 2023 and June 30, 2023 and nine months ended September 30, 2023 (in thousands, except per share amounts):

		For the Three Months Ended September 30, 2023	For the Three Months Ended June 30, 2023	For the Nine Months Ended September 30, 2023
Net income (loss)		$(67,958)	$(13,867)	$(101,346)
Depreciation and amortization		3,820	3,584	10,928
Realized gains (losses)		939	914	718
FFO		(63,199)	(9,369)	(89,700)
Distributions to preferred shareholders		(1,155)	(1,155)	(3,465)
FFO attributable to common shareholders		(64,354)	(10,524)	(93,165)
FFO per share - basic		$ (1.73)	$ (0.29)	$ (2.51)
FFO per share - diluted		$ (1.71)	$ (0.28)	$ (2.48)
Equity-based compensation expense		477	436	913
Amortization of deferred financing costs - long term debt		(197)	230	(441)
Change in unrealized losses		61,626	9,332	89,598
AFFO attributable to common shareholders		(2,448)	(526)	(3,095)
AFFO per share - basic		$ (0.07)	$ (0.02)	$ (0.08)
AFFO per share - diluted		$ (0.06)	$ (0.02)	$ (0.08)
Weighted average common shares outstanding - basic		37,187	37,172	$ 37,177
Weighted average common shares outstanding - diluted	(1)	37,790	37,755	37,575
Dividends declared per common share		$ 0.15	$ 0.15	$ 0.45
FFO Coverage - diluted	(2)	-11.4x	-1.85x	-5.51x
AFFO Coverage - diluted	(2)	-0.43x	-0.16x	-0.18x
Net income (loss) coverage	(2)	-12.18x	-2.49x	-6.06x

(1) The Company uses actual diluted weighted average common shares outstanding when in a dilutive position for FFO and AFFO.
(2) Indicates coverage ratio of FFO/AFFO/net income (loss) per common share (diluted) over dividends declared per common share during the period.

The three months ended September 30, 2023 and June 30, 2023 and nine months ended September 30, 2023

FFO was $(63.2) million and $(9.4) million for the three months ended September 30, 2023 and June 30, 2023 and $(89.7) million for the nine months ended September 30, 2023, which was an increase of approximately $(53.8) million between the three months ended June 30, 2023 and the three months ended September 30, 2023. The change in our FFO between the periods primarily relates to an increase in unrealized losses.

AFFO was $(2.4) million and $(0.5) million for the three months ended September 30, 2023 and June 30, 2023 and $(3.1) million for the nine months ended September 30, 2023, which was a decrease of approximately $(1.9) million between the three months ended June 30, 2023 and the three months ended September 30, 2023. The change in our AFFO between the periods primarily relates to an increase in interest expense.

Liquidity and Capital Resources

Our short-term liquidity requirements consist primarily of funds necessary to pay for debt maturities, operating expenses and other expenditures including:

- capital expenditures to continue the ongoing development of Cityplace Tower;
- interest expense and scheduled principal payments on outstanding indebtedness (see "—Obligations and Commitments" below);
- recurring maintenance necessary to maintain our properties;
- distributions necessary to qualify for taxation as a REIT;
- income taxes for taxable income generated by TRS entities;
- acquisition of additional properties or investments;
- advisory and administrative fees payable to our Adviser;
- general and administrative expenses;
- reimbursements to our Adviser; and
- property management fees.

We expect to meet our short-term liquidity requirements generally through net cash provided by operations and existing cash balances. As of September 30, 2023, we had $3.7 million of cash available to meet our short-term liquidity requirements. As of September 30, 2023, we also had $34.1 million of restricted cash held in reserve by the lender on the Cityplace debt. These reserves include escrows for property taxes and insurance, reserves for tenant improvements as well as required excess collateral.

Our long-term liquidity requirements consist primarily of funds necessary to pay for the costs of acquiring additional properties, make additional accretive investments pursuant to our investment strategy, renovations and other capital expenditures to improve our properties and scheduled debt payments and distributions. We expect to meet our long-term liquidity requirements through various sources of capital, which may include a revolving credit facility and future debt or equity issuances, existing working capital, net cash provided by operations, long-term mortgage indebtedness and other secured and unsecured borrowings, and property and non-real estate asset dispositions. However, there are a number of factors that may have a material adverse effect on our ability to access these capital sources, including the state of overall equity and credit markets, our degree of leverage, our unencumbered asset base and borrowing restrictions imposed by lenders (including as a result of any failure to comply with financial covenants in our existing and future indebtedness), general market conditions for REITs, our operating performance and liquidity, market perceptions about us and restrictions on sales of properties under the Code. The success of our business strategy will depend, in part, on our ability to access these various capital sources.

In addition to our ongoing renovation of Cityplace, our other properties will require periodic capital expenditures and renovation to remain competitive. We estimate an additional $190 million to $210 million of capital expenditures to complete the Cityplace renovation. Also, acquisitions, redevelopments, or expansions of our properties will require significant capital outlays. Long-term, we may not be able to fund such capital improvements solely from net cash provided by operations because we must distribute annually at least 90% of our REIT taxable income, determined without regard to the deductions for dividends paid and excluding net capital gains, to qualify and maintain our qualification as a REIT, and we are subject to tax on any retained income and gains. As a result, our ability to fund capital expenditures, acquisitions, or redevelopment through retained earnings long-term is limited. Consequently, we expect to rely heavily upon the availability of debt or equity capital for these purposes. If we are unable to obtain the necessary capital on favorable terms, or at all, our financial condition, liquidity, results of operations, and prospects could be materially and adversely affected.

The macroeconomic environment remains challenging as central banks have continued to rapidly raise interest rates. The rising rate environment, coupled with large bank failures in early 2023 and ongoing economic uncertainty, has limited credit availability to commercial real estate. Less available and more expensive debt capital has had pronounced effects on the capital markets, making property acquisitions and other investments harder to finance. Similar factors also impact the timing of and proceeds generated from asset sales and our ability to obtain debt capital.

We believe that our available cash, expected operating cash flows, and potential debt or equity financings will provide sufficient funds for our operations, anticipated scheduled debt service payments and dividend requirements for the twelve-month period following September 30, 2023.

Cash Flows

The following table presents selected data from our consolidated statements of cash flows for the nine months ended September 30, 2023 (in thousands):

	For the Nine Months Ended September 30
	2023
Net cash provided by (used in) operating activities	$(18,474)
Net cash provided by (used in) investing activities	15,991
Net cash provided by (used in) used in financing activities	(8,332)
Net decrease in cash, cash equivalents and restricted cash	(10,815)
Cash, cash equivalents and restricted cash, beginning of period	48,649
Cash, cash equivalents and restricted cash, end of period	$37,834

Cash flows from operating activities. During the nine months ended September 30, 2023, net cash provided by (used in) operating activities was $(18.5) million. Cash flows from operating activities was primarily driven by an income tax payment of $10.7 million.

Cash flows from investing activities. During the nine months ended September 30, 2023, net cash provided by (used in) investing activities was $16.0 million. Cash flows from investing activities was primarily driven by proceeds from the sale of several equities and senior loans.

Cash flows from financing activities. During the nine months ended September 30, 2023, net cash provided by (used in) financing activities was $(8.3) million. Cash flows from financing activities was primarily driven by notes payable borrowings of $20.0 million, offset by credit facility repayments of $9.0 million, and dividends paid to common shareholders of $16.9 million.

Debt

Mortgage Debt

As of September 30, 2023, our consolidated subsidiaries had aggregate mortgage debt outstanding to third parties of approximately $142.9 million at a weighted average interest rate of 8.5%. See Note 7 to our unaudited consolidated financial statements for additional information.

We intend to invest in additional real estate investments as suitable opportunities arise and adequate sources of equity and debt financing are available. We expect that future investments in properties, including any improvements or renovations of current or newly acquired properties, will depend on and will be financed by, in whole or in part, our existing cash, future borrowings and the proceeds from additional issuances of common shares or other securities or investment and property dispositions.

Although we expect to be subject to restrictions on our ability to incur indebtedness, we expect that we will be able to refinance existing indebtedness or incur additional indebtedness for acquisitions or other purposes, if needed. However, there can be no assurance that we will be able to refinance our indebtedness, incur additional indebtedness or access additional sources of capital, such as by issuing common shares or other debt or equity securities, on terms that are acceptable to us or at all.

Furthermore, following the completion of our renovation and development programs and depending on the interest rate environment at the applicable time, we may seek to refinance our floating rate debt into longer-term fixed rate debt at lower leverage levels.

Credit Facility

On January 8, 2021, the Company entered into the Credit Facility with Raymond James Bank, N.A. and drew the full balance. The Credit Facility, as amended, matures on November 6, 2023 and as of September 30, 2023, bore interest at the one-month SOFR plus 4.25%. During the three and nine months ended September 30, 2023, the Company paid down $3.0 million and $9.0 million, respectively on the Credit Facility. As of September 30, 2023, the Credit Facility had an outstanding balance of $2.0 million. For additional information regarding our Credit Facility, see Note 6.

Revolving Credit Facility

On May 22, 2023, the Company entered into the NexBank Revolver with NexBank , with the option for the Company to receive additional disbursements thereunder up to a maximum amount of $50.0 million. As of September 30, 2023, the NexBank Revolver bears interest at one-month SOFR plus 3.50% and matures on May 20, 2024, with the option to extend the maturity by one year, twice. As of September 30, 2023, the NexBank Revolver had an outstanding balance of $20.0 million.

Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of September 30, 2023 for the next five calendar years subsequent to September 30, 2023.

	Payments Due by Period (in thousands)							
	Total	2023	2024	2025	2026	2027	Thereafter	
Property Level Debt								
Principal payments	$ 156,146	$ —	$ 142,896	$ 13,250	$ —	$ —	$ —	
Interest expense	7,350	3,334	3,357	659	—	—	—	
Total	$ 163,496	$ 3,334	$ 146,253	$ 13,909	$ —	$ —	$ —	
Prime Brokerage Borrowing								
Principal payments	$ 1,760	$ —	$ —	$ —	$ —	$ —	$ 1,760	(1)
Interest expense	511	102	103	102	102	102	—	(1)
Total	$ 2,271	$ 102	$ 103	$ 102	$ 102	$ 102	$ 1,760	
Preferred Shares								
Dividend payments	N/A (2)	$ 1,155	$ 4,620	$ 4,620	$ 4,620	$ 4,620	N/A	(2)
Credit Facility								
Principal payments	$ 22,000	$ 2,000	$ 20,000	$ —	$ —	$ —	$ —	
Interest expense	1,152	465	687	—	—	—	—	
Total	$ 23,152	$ 2,465	$ 20,687	$ —	$ —	$ —	$ —	
Total contractual obligations and commitments	$ 188,919	$ 7,056	$ 171,663	$ 18,631	$ 4,722	$ 4,722	$ 1,760	

(1) Assumes no additional borrowings or repayments. The Prime Brokerage balance has no stated maturity date.
(2) The Series A Preferred Shares are perpetual.

Credit Facility

The Credit Facility will mature on November 6, 2023 and is subject to monthly amortization payments through the maturity date. We believe we will have adequate liquidity to pay these obligations when they come due.

Revolving Credit Facility

The NexBank Revolver will mature on May 20, 2024, with the option to extend the maturity by one year, twice, and is subject to monthly interest payments through the maturity date, with the remaining principal being due on the maturity date. We believe we will have adequate liquidity to pay these obligations when they come due.

Cityplace Debt

On May 8, 2023, we received lender consent to defer the maturity of the Cityplace debt to September 8, 2023. Also on May 8, 2023, the parties to the loan agreement agreed to convert the index upon which the interest rate is based to one-month SOFR effective as of the first interest period beginning on or after May 8, 2023. On September 8, the lender agreed

to defer the maturity of the Cityplace debt by six months to March 8, 2024. The purpose of the deferral was to allow for continued discussions around refinancing the debt. Management recognizes that finding an alternative source of funding is necessary to repay the debt by the maturity date. Management believes that there is sufficient time before the maturity date and that the Company has sufficient access to capital to ensure the Company is able to meet its obligations as they become due.

Advisory Agreement

As consideration for the Adviser's services under the Advisory Agreement, we pay our Adviser the Fees, which includes the Advisory Fee equal to 1.00% of Managed Assets and the Administrative Fee equal to 0.20% of the Company's Managed Assets. The Advisory Agreement provides that the Fees shall be paid in cash, unless the Adviser, in its sole discretion, elects to have all or a portion of the monthly installment of the Fees paid in common shares of the Company, subject to certain restrictions. For additional information, see Notes 14 and 17 to our unaudited consolidated financial statements.

We also generally reimburse our Adviser for operating or offering expenses it incurs on our behalf or in connection with the services it performs for us. Direct payment of operating expenses by us together with reimbursement of operating expenses to the Adviser, plus compensation expenses relating to equity awards granted under a long-term incentive plan and all other corporate general and administrative expenses of the Company, including the Fees payable under the Advisory Agreement, may not exceed the Expense Cap of 1.5% of Managed Assets, calculated as of the end of each quarter, for the twelve-month period following the Company's receipt of the Deregistration Order; provided, however, that this limitation will not apply to Offering Expenses, legal, accounting, financial, due diligence and other service fees incurred in connection with extraordinary litigation and mergers and acquisitions or other events outside the ordinary course of our business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of certain real estate-related investments; provided, further, in the event the Company consolidates another entity that it does not wholly own as a result of owning a controlling interest in such entity or otherwise, expenses will be calculated without giving effect to such consolidation and instead such entity's expenses will, on a pro rata basis consistent with the Company's percentage ownership, be considered those of the Company for purposes of calculation of expenses. The Adviser may, at its discretion and at any time, waive its right to reimbursement for eligible out-of-pocket expenses paid on the Company's behalf. Once waived, these expenses are considered permanently waived and become non-recoupable in the future. The Expense Cap expired on June 30, 2023.

As of September 30, 2023, a total of $3.1 million in Fees to the Adviser have been waived to comply with the Expense Cap. Should the Company's Fees and expenses subject to the Expense Cap be less than the 1.5% limit for the twelve month period subsequent to the Deregistration Date, some or all of the deferred expenses could be recouped by the Adviser up to the Expense Cap. No Advisory Fees were recouped by the Adviser as of September 30, 2023, and all such deferred fees were waived.

Income Taxes

We anticipate that we will continue to qualify to be taxed as a REIT for U.S. federal income tax purposes, and we intend to continue to be organized and to operate in a manner that will permit us to qualify as a REIT. However, we can give no assurance that we will maintain REIT qualification. To qualify as a REIT, we must meet certain organizational and operational requirements, including a requirement to distribute at least 90% of our annual "REIT taxable income", as defined by the Code, to stockholders. As a REIT, we will be subject to federal income tax on our undistributed REIT taxable income and net capital gain and to a 4% nondeductible excise tax on any amount by which distributions we pay with respect to any calendar year are less than the sum of (1) 85% of our ordinary income, (2) 95% of our capital gain net income and (3) 100% of our undistributed income from prior years. Taxable income from certain non-REIT activities is managed through a TRS and is subject to applicable federal, state, and local income and margin taxes. The Company has recorded a current income tax expense of $1.4 million associated with the TRSs for the nine months ended September 30, 2023, which is largely driven by income from the Company's legacy CLO investments and investments in debt instruments not secured by mortgages on real property. The tax expense is partially increased by the quarterly change in valuation allowance on a deferred tax asset of $1.6 million and partially offset by a return-to-provision adjustment of $1.5 million for a net expense of $1.4 million for the nine months ended September 30, 2023, that is recorded on the Consolidated Statement of Operations.

If we fail to qualify as a REIT in any taxable year, we could be subject to U.S. federal income tax on our taxable income at regular corporate income tax rates, and dividends paid to our shareholders would not be deductible by us in

computing taxable income. Any resulting corporate liability could be substantial and could materially and adversely affect our net income (loss) and net cash available for distribution to stockholders. Unless we were entitled to relief under certain Code provisions, we also would be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year in which we failed to qualify to be taxed as a REIT. As of September 30, 2023, we believe we are in compliance with all applicable REIT requirements.

We evaluate the accounting and disclosure of tax positions taken or expected to be taken in the course of preparing our tax returns to determine whether the tax positions are "more-likely-than-not" (greater than 50% probability) of being sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold would be recorded as a tax benefit or expense in the current year. Our management is required to analyze all open tax years, as defined by the statute of limitations, for all major jurisdictions, which include federal and certain states. As of September 30, 2023 and to our knowledge, we have no examinations in progress and none are expected at this time.

We recognize our tax positions and evaluate them using a two-step process. First, we determine whether a tax position is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Second, we will determine the amount of benefit to recognize and record the amount that is more likely than not to be realized upon ultimate settlement.

We had no material unrecognized tax benefit or expense, accrued interest or penalties as of September 30, 2023. We and our subsidiaries are subject to federal income tax as well as income tax of various state and local jurisdictions. The 2021, 2020 and 2019 tax years remain open to examination by tax jurisdictions to which our subsidiaries and we are subject. When applicable, we recognize interest and/or penalties related to uncertain tax positions on our consolidated statements of operations and comprehensive income (loss).

Dividends

We intend to make regular quarterly dividend payments to holders of our common shares. U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, without regard to the deduction for dividends paid and excluding net capital gains. As a REIT, we will be subject to federal income tax on our undistributed REIT taxable income and net capital gain and to a 4% nondeductible excise tax on any amount by which distributions we pay with respect to any calendar year are less than the sum of (1) 85% of our ordinary income, (2) 95% of our capital gain net income and (3) 100% of our undistributed income from prior years. We intend to make regular quarterly dividend payments of all or substantially all of our taxable income to holders of our common shares out of assets legally available for this purpose, if and to the extent authorized by our Board. Before we make any dividend payments, whether for U.S. federal income tax purposes or otherwise, we must first meet both our operating requirements and debt service on our debt payable. If our cash available for distribution is less than our taxable income, we could be required to sell assets, borrow funds or raise additional capital to make cash dividends or we may make a portion of the required dividend in the form of a taxable distribution of stock or debt securities.

We will make dividend payments based on our estimate of taxable earnings per common share, but not earnings calculated pursuant to GAAP. Our dividends and taxable income and GAAP earnings will typically differ due to items such as depreciation and amortization, fair value adjustments, differences in premium amortization and discount accretion, investments held through our TRSs, book/tax differences on income derived from partnerships, and non-deductible general and administrative expenses. Our quarterly dividends per share may be substantially different than our quarterly taxable earnings and GAAP earnings per share. Our Board declared a dividend on our common shares of $0.15 per share which was paid on September 29, 2023 to shareholders of record on August 15, 2023. Our Board declared a dividend on our Series A Preferred Shares of $0.34375 per share which was paid on September 30, 2023 to shareholders of record on September 25, 2023. We expect that dividends on our common shares, when, if and as declared by our Board, will be declared on a quarterly basis.

Through September 30, 2023, the Company has not generated sufficient cash flow from operations, as disclosed on the Consolidated Statement of Cash Flows, to cover the dividend authorized for payment on December 29, 2023. The purpose of paying the dividend partially in shares and partially in cash is to alleviate the cash outflow to the Company. The Company may revert to paying the dividend in cash at some point in the future when cash flow from operations supports such a cash dividend. However, there can be no assurance that cash flow from operations will be able to support a cash dividend in the future.

Off-Balance Sheet Arrangements

As of September 30, 2023, we had the following off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Commitments

The Company is the guarantor on three secured loans to, and dividend payments with respect to Series D Preferred Stock of NSP, an affiliate of the Adviser, with the secured loans having an aggregate principal amount of approximately $563.3 million outstanding as of September 30, 2023. NSP is current on all debt and dividend payments and in compliance with all debt compliance provisions. See Note 13 for additional information.

The Company is a limited guarantor and an indemnitor on one of NHT's loans with an aggregate principal amount of $77.4 million as of September 30, 2023. The obligations include a customary environmental indemnity and a so-called "bad boy" guarantee, which is generally only applicable if and when the borrower directly, or indirectly through an agreement with an affiliate, joint venture partner or other third party, voluntarily files a bankruptcy or similar liquidation or reorganization action or takes other actions that are fraudulent or improper. NHT is current on all debt payments and in compliance with all debt compliance provisions.

Critical Accounting Policies and Estimates

During the nine months ended September 30, 2023, there have been no material changes in our critical accounting policies and estimates from those disclosed in our Annual Report.

Inflation

The real estate market has not been directly affected by inflation in the past several years due to increases in rents nationwide. Our lease terms are generally for a period of one year or more and rental rates reset to market if renewed. The majority of our leases also contain protection provisions applicable to reimbursement billings for utilities.

Inflation may also affect the overall cost of debt, as the implied cost of capital increases. The Federal Reserve has recently started raising interest rates to combat inflation and restore price stability and is expected to continue to raising interest rates in response to or in anticipation of continued inflation concerns. We intend to mitigate these risks through long-term fixed interest rate loans and interest rate hedges.

REIT Tax Election

We have elected to be taxed as a REIT under Sections 856 through 860 of the Code. To qualify as a REIT, we must meet a number of organizational and operational requirements, including a requirement that we distribute at least 90% of our “REIT taxable income,” as defined by the Code, to our shareholders. Taxable income from certain non-REIT activities are managed through one or more TRS entities and is subject to applicable federal, state, and local income and margin taxes. The Company has recorded a current income tax expense of $1.4 million associated with the TRSs for the nine months ended September 30, 2023, which is largely driven by income from the Company’s legacy CLO investments and investments in debt investments not secured by mortgages on real property. The tax expense increased primarily as a result of the quarterly change in the valuation allowance on a deferred tax asset of $1.6 million and was partially offset by a return-to-provision adjustment of $1.5 million for a net expense of $1.4 million for the nine months ended September 30, 2023, that is recorded on the Consolidated Statement of Operations. We believe we qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to qualify as a REIT.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not required for smaller reporting companies.

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Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) and Rule 15d-15(b) under the Exchange Act, our management, including our President and Chief Financial Officer, evaluated, as of September 30, 2023, the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e) and Rule 15d-15(e). Based on that evaluation, our President and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2023, to provide reasonable assurance that information required to be disclosed by us in reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the rules and forms of the Exchange Act and is accumulated and communicated to management, including the President and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

We believe, however, that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls systems are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or error, if any, within a company have been detected.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended September 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we are party to legal proceedings that arise in the ordinary course of our business. Management is not aware of any legal proceedings of which the outcome is reasonably likely to have a material adverse effect on our results of operations or financial condition, nor are we aware of any such legal proceedings contemplated by government agencies.

Item 1A. Risk Factors

There have been no material changes to the risk factors previously disclosed under Part I, Item 1A, "Risk Factors" in our Annual Report.

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds and Issuer Purchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

Resignation

On November 9, 2023 (the "Separation Date"), Matt Goetz resigned from his position as Senior VP-Investments and Asset Management of the Company. Mr. Goetz's resignation is not a result of any disagreement with the Company on any matter relating to its operations, policies or practices.

In connection with his resignation from the Company and its affiliates, Mr. Goetz and the Company, the Adviser, NexPoint Advisors, L.P. ("NREA"), NexPoint Residential Trust, Inc. ("NXRT"), NexPoint Real Estate Advisors, L.P., NREF, NexPoint Real Estate Advisors VII, L.P., VineBrook, and NexPoint Real Estate Advisors V, L.P. entered into a Separation Agreement, dated November 9, 2023 (the "Separation Agreement"). Pursuant to the Separation Agreement, NREA will subsidize Mr. Goetz's COBRA premium for a period of twelve months and 11,300 restricted share units granted to Mr. Goetz by the Company will immediately vest as of the Separation Date and will settle on the original scheduled vesting dates, subject to Mr. Goetz's continued compliance with existing restrictive covenants. In addition, pursuant to the Separation Agreement, 11,453 restricted stock units granted to Mr. Goetz by NXRT, 72,675 restricted stock units granted to Mr. Goetz by NREF and 4,279 restricted stock units granted to Mr. Goetz by VineBrook will immediately vest as of the Separation Date and will settle on the original scheduled vesting dates, subject to Mr. Goetz's continued compliance with existing restrictive covenants. The approximate value of the restricted share units of the Company that are vesting on the Separation Date is $113,000 and the approximate value of the aggregate restricted stock units of the Company, NXRT, NREF and VineBrook that are vesting on the Separation Date is $2 million.

The Severance Agreement additionally contains, among other things, mutual non-disparagement provisions and a mutual release of claims by Mr. Goetz and the Company.

In connection with the Separation Agreement, Mr. Goetz, the Company, NXRT, NREF and VineBrook entered into a vesting agreement pursuant to which, among other things, the award agreements between Mr. Goetz and the Company relating to his restricted share unit grants were amended to account for his separation and accelerated vesting of a portion of his outstanding restricted share unit grants pursuant to the Separation Agreement.

The foregoing summary of the Separation Agreement does not purport to be complete and is qualified in its entirety by reference to the Separation Agreement, a copy of which is filed as Exhibit 10.4 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

Item 6. Exhibits

EXHIBIT INDEX

Exhibit Number	Description
10.1	Contribution and Assignment Agreement, dated September 1, 2023, by and between NHF TRS, LLC, NexAnnuity Holdings, Inc., NexLS Holdco, LLC and Specialty Financial Products Designated Activity Company (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed with the SEC on September 1, 2023).
10.2	Second Amended and Restated Limited Partnership Agreement of NexPoint SFR Operating Partnership, L.P. dated June 30, 2023 (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed with the SEC on June 30, 2023).
10.3*	Limited Consent and Twelfth Omnibus Amendment, dated September 8, 2023, by and among CP Tower Owner, LLC, CP Land Owner, LLC, CP Equity Owner, LLC, CP Equity Land Owner, LLC, the Company, NexPoint Real Estate Partners, LLC, Delphi CRE Funding LLC, ACORE Credit IV CLO Issuer 2018-1, LLC and ACORE Capital Mortgage, LP.
10.4*	Separation Agreement, dated November 9, 2023, by and among NexPoint Advisors, L.P., NXRT, NexPoint Real Estate Advisors, L.P., NREF, NexPoint Real Estate Advisors VII, L.P., the Company, the Adviser, VineBrook, and NexPoint Real Estate Advisors V, L.P.
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1+	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document (The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document)
101.SCH*	Inline XBRL Taxonomy Extension Schema
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.
\+ Furnished herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NEXPOINT DIVERSIFIED REAL ESTATE TRUST

Signature	Title	Date
/s/ Jim Dondero Jim Dondero	President and Trustee (Principal Executive Officer)	November 14, 2023
/s/ Brian Mitts Brian Mitts	Chief Financial Officer, Executive VP-Finance, Treasurer, Assistant Secretary and Trustee (Principal Financial Officer and Principal Accounting Officer)	November 14, 2023

EXHIBIT 7

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE TRANSITION PERIOD FROM_______ TO_______

COMMISSION FILE NUMBER: 814-01074

NexPoint Capital, Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**38-3926499** (I.R.S. Employer Identification No.)
300 Crescent Court, Suite 700 **Dallas, Texas** (Address of principal executive offices)	**75201** (Zip Code)

Registrant's telephone number, including area code (972) 628-4100

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, par value $0.001 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒.

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☐
Emerging growth company			Yes ☐ No ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

There is no established market for the registrant's shares of common stock. The registrant closed the public offering of its shares of common stock in February 14, 2018 and the final offering price was $10.75. Since the registrant closed its public offering it has continued to issue shares pursuant to its distribution reinvestment plan. The most recent price at which the registrant has issued shares pursuant to the distribution reinvestment plan was $5.72 per share. As of December 31, 2022, the Registrant had 9,677,593 shares of common stock, $0.001 par value, outstanding.

Documents Incorporated by Reference: Portions of the Registrant's Proxy Statement relating to the Registrant's 2022 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Annual Report on Form 10-K

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PART I

Item 1. Business.

Organization

NexPoint Capital, Inc. (the "Company"), which may also be referred to as "we," "us," or "our," incorporated on September 30, 2013 (inception date) as a Delaware limited liability company. The Company is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Investment Company Act of 1940, as amended (the "1940 Act"). The Company is an investment company and accordingly follows the Investment Company accounting and reporting guidance under Topic 946 of the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification, as amended ("ASC"), *Financial Services—Investment Companies*. The Company's investment objective is to generate current income and capital appreciation primarily through investments in middle-market healthcare companies, middle-market companies in non-healthcare sectors, syndicated floating rate debt of large public and nonpublic companies and collateralized loan obligations ("CLOs"). The Company has elected to be treated as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code") and intends each year to qualify and be treated as such.

The Company issued 21,739.13 LLC units to NexPoint Advisors, L.P. (the "Adviser") on May 27, 2014 (initial fund-raising date), at $9.20 per share for $200,000 in total proceeds. On June 10, 2014, the Company converted to a Delaware corporation, NexPoint Capital, Inc. As part of the conversion to a Delaware corporation, the member of the Company converted 21,739.13 LLC units into 21,739.13 shares of the Company's common stock, representing an equivalent price of $9.20 per share based on the fair value of the assets contributed by the Adviser in connection with the formation of the Company, as determined by the board of directors (the "Board") at the time of the conversion.

On September 2, 2014 (commencement of operations), in connection with a private placement of shares of our common stock to the Adviser and its affiliates, the Company issued an aggregate of approximately 1,086,954 shares of common stock at a price of $9.20 per share, which price represents the public offering price of $10.00 per share less selling commissions and dealer manager fees, for aggregate proceeds of approximately $10.0 million.

As a result of the private placement to the Adviser and its affiliates, the Company successfully satisfied the minimum offering requirement and officially commenced operations on September 2, 2014. In connection with the satisfaction of the minimum offering requirement and the commencement of our operations, the Investment Advisory Agreement became effective and the base investment advisory fee and any incentive fees, as applicable, payable to the Adviser under the Investment Advisory Agreement began to accrue. In aggregate as of December 31, 2022, the Adviser controls 2,549,002 total shares, including reinvestment of dividends, for a net amount of approximately $14.1 million.

The Company has retained the Adviser to manage certain aspects of its affairs on a day-to-day basis. NexPoint Securities, Inc. (the "Dealer Manager"), an entity under common ownership with the Adviser, served as the dealer manager of the continuous public offering prior to the termination of the offering. The Adviser and Dealer Manager are related parties and will receive fees, distributions and other compensation for services related to the continuous public offering and the investment and management of the Company's assets. The Company's continuous public offering ended on February 14, 2018.

Overview of Our Business

Our investment activities are managed by the Adviser and supervised by the Board, of which a majority of the members are independent of the Company. The Adviser has also entered into a Services Agreement with Skyview Group ("Skyview"), effective February 25, 2021, pursuant to which the Adviser will receive administrative and operational support services to enable it to provide the required advisory services to the Company. The Adviser will compensate all Adviser and Skyview personnel who provide services to the Company.

Our investment objective is to generate high current income and long-term capital appreciation. We seek to achieve our objective by using the experience of the Adviser's healthcare, credit and structured products teams to source, evaluate and structure investments, identify attractive investment opportunities that are primarily debt investments that generate high income without creating undue risk for the portfolio, make equity investments where we believe there will be attractive risk-adjusted returns that compensate for the lack of current income, and make investments in debt and equity tranches of CLOs that deliver income and high relative value. We will focus on companies that are stable, have positive cash flow, and the ability to grow their business model.

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Our investment policy is to invest, under normal circumstances, at least 80% of our total assets in debt and equity of middle market companies, with an emphasis on healthcare companies, syndicated floating rate debt of large public and nonpublic companies, and mezzanine and equity tranches of CLOs. Middle-market companies include companies with annual revenues between $50 million and $2.5 billion and syndicated floating rate debt refers to loans and other instruments originated by a bank to a corporation that are sold off, or syndicated, to investors in pieces. We consider a healthcare company to be a company that is engaged in the design, development, production, sale, management or distribution of products, services or facilities used for or in connection with the healthcare industry. Additionally, we consider the term healthcare company to include companies that are materially impacted by the healthcare industry (such as a contractor that derives significant revenue or profit from the construction of hospitals). We may invest without limit in companies that are not in the healthcare sector.

We leverage the expertise of the Adviser with regard to distressed investing and restructuring to make opportunistic investments in distressed companies. We utilize the Adviser's credit underwriting capability to identify the types of companies we believe will provide high current income and/or long-term capital appreciation. In addition to the investments in the healthcare industry, we may invest a portion of our capital in other opportunistic investments in which the Adviser has expertise and where we believe an opportunity exists to achieve above-average risk-adjusted yields and returns. These types of opportunities may include: (1) direct lending or origination investments, (2) investments in stressed or distressed situations, (3) structured product investments, (4) equity investments and (5) other investment opportunities not typically available in other BDCs. Opportunistic investments may range from broadly syndicated deals to direct lending deals in both private and public companies and may include foreign investments. We believe this is the best approach to achieving our dual mandate of attempting to generate a high yield while also attempting to produce capital appreciation.

We seek to invest primarily in securities deemed by the Adviser to be high income generating debt investments and income generating equity securities of privately held companies in the United States. The portfolio may be concentrated primarily in senior floating rate debt securities, although we may invest without limit in securities that rank lower than senior secured instruments and may invest without limit in investments with a fixed rate of interest. We may buy syndicated loans, various tranches of CLOs and other debt instruments in the secondary market as well as originate debt so we can tailor the investment parameters more precisely to our needs. We also may invest a portion of the portfolio in equity securities that are non-income producing, when doing so will help us achieve our objective of long-term capital appreciation. We expect the size of our positions may range from $250 thousand to $5 million, although investments may be larger as our asset base increases. We may selectively make investments in amounts larger than $5 million in some of our portfolio companies. We may make smaller investments. We may also invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, commodities and/or currencies, as substitutes for direct investments the Company can make. We may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Adviser to be in the best interest of the Company, and to the extent permitted by the 1940 Act, to hedge various investments for risk management and speculative purposes. We may invest up to 15% of our net assets in entities that are excluded from registration under the 1940 Act by virtue of sections 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any CLOs, certain of which may rely on section 3(c)(1) or 3(c)(7) of the 1940 Act.

We expect that many of the securities in which we invest will be rated below investment grade by independent rating agencies or would be rated below investment grade if they were rated. These securities, which may be referred to as "junk," have predominantly speculative characteristics with respect to the issuer's capacity to pay interest and repay principal. In addition, we expect that many of our debt investments will include floating interest rates that reset on a periodic basis and typically will not require the borrowers to pay down the outstanding principal of such debt prior to maturity.

As of December 31, 2022, our investment portfolio, with a total fair value of $53.3 million, consisted of 39 positions in portfolio companies (calculated as a percentage of investments: 21.7% in first lien senior secured loans, 5.0% in second lien senior secured loans, 5.1% in corporate bonds, 0.0% in asset-backed securities, 0.3% in warrants, 36.6% in common stock, 22.5% in preferred stocks and 8.8% in LLC interests. As of December 31, 2022, the debt investments in our portfolio carry a weighted average cost price of 94.17% on par or stated value, as applicable, and our estimated gross annual portfolio yield (which represents the expected yield to be generated by us on our investment portfolio based on the composition of our portfolio as of such date), prior to leverage costs, was 3.51% based on the amortized cost of our investments. The portfolio yield does not represent an actual investment return to stockholders and does not include income from CLO equity.

Recent Developments

On January 5, 2023, the Board of the Company declared a cash distribution of $0.09 per share of the Company's common stock, par value $0.001 per share, payable on January 23, 2023, to the stockholders of record on December 31, 2022.

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Business & Investment Strategies

We focus our healthcare investments primarily on opportunities in companies we believe will benefit from the long-term changes in the healthcare industry as a result of the aging demographic of Baby Boomers, implementation of payment system reforms and advances in medical technologies. It is our belief that the changing demographic landscape in the United States, where approximately 10,000 people per day turn 65 years of age, coupled with advances in medical technologies that are enabling Americans to live longer, will produce strong growth in demand for healthcare. At the same time, changes in the U.S. healthcare reimbursement system, including the implementation of alternative payment model are creating disruption in the healthcare sector, affecting each sub-sector differently, and will produce a positive impact for some sub-sectors and a negative impact for others. We also believe some companies are better positioned to take advantage of these changes while others will consolidate with stronger players. Based on our deep understanding of the healthcare sector, we believe these developments will create a changing landscape for years to come.

Our primary areas of focus within the healthcare sector will be in the pharmaceuticals, devices, life sciences and facilities sub-sectors as we believe these will be the most significant beneficiaries of technological advances and the implementation of alternative payment models. We will also make opportunistic investments, including short sales, in other sub-sectors we believe will fare poorly during this period of transition.

However, the Adviser and its affiliates have a core competency in other, non-healthcare sectors, such as the industrials & manufacturing, chemicals & materials, energy efficiency & green fuels, climate tech & renewables and real estate. When identifying potential middle-market investments for the portfolio, we focus on the attributes listed below. It is our belief that investments exhibiting these characteristics are the best investments to allow the Company to meet its investment objective with an acceptable level of risk. The attributes discussed below are general guidelines and not all investment opportunities may exhibit each of these qualities. Each investment opportunity is analyzed on a case-by-case basis by our investment professionals and the portfolio manager:

- *Focus on growing economic sectors* - We seek companies that operate in or focus a substantial amount of their resources on economic sectors we believe will benefit from the current economic environment, including primarily the healthcare sector. Our view is that some sectors will be adversely impacted by rising rates while others will see tangible benefits. We think companies in our perceived “winning” sectors represent a better risk profile for our investments.
- *High level of inherent value* - We seek companies that have inherent value but need additional financing to implement their business plan fully and realize their full value. These businesses are typically smaller companies that cannot access traditional means of financing but have a solid business where additional investment of capital and economies of scale can unlock an outsized level of value. In some cases, we may take equity stakes in these businesses as well as debt positions to achieve our dual objectives of high current income and long-term capital appreciation.
- *Strong risk/reward characteristics* - We seek investments where we believe we are compensated for the risk assumed. An investment opportunity may become more appealing if the terms of the investment are improved such as the interest rate, or if structural protections are added to decrease our perceived risk.
- *Proven management team* - We seek companies that have proven management teams that understand the impact the upcoming regulatory and interest rate environment will have on their business. We are not seeking investments in start-up companies or companies with unproven technologies or business models or companies with relatively inexperienced management. Our view is that it will take experienced, seasoned veterans to understand and navigate the pitfalls resulting from the Federal Reserve’s actions regarding interest rates and quantitative easing as well as a potentially increasing tax environment and changes to the economy from implementation of value-based payment models. We believe these companies have a better chance of delivering value long-term to investors.
- *Strong cash flow and business models* - We seek stable and proven businesses with strong cash flow that are able to adequately service their debt load. With an increase in interest rates, we believe financing will become more expensive and only companies with steady cash flow and business models will weather the storm. Businesses that have strong infrastructure, business models and processes will be better able to service their debt.
- *Stable and proven businesses* - We seek companies that have a proven business model and strong strategic position within their industry. With the upheaval we believe will be evident in the next few years, we think growing a stable and proven business will be difficult enough. Trying to build out a new business model in a chaotic environment will be exponentially more difficult in our opinion and compensating for that level of risk will be difficult.

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Potential Competitive Strengths

We believe the breadth, depth and experience of the Adviser's senior management and investment team provides a significant advantage in sourcing, analyzing, monitoring and managing investment opportunities. As discussed above, the Adviser has entered into a Services Agreement with Skyview pursuant to which the Adviser may utilize Skyview's back office operations team that has years of experience in settling and tracking bank loan investments and its dedicated team that operates registered funds, works with third party service providers, interacts with portfolio managers to provide timely information and portfolio statistics, and has experience interacting with legal counsel, auditors, other third-party service providers and the Board.

We believe the long-term investment horizon we are afforded through the BDC structure will allow us flexibility to find the investments that will deliver the highest value to our investors. Unlike a typical private equity or venture fund, we are not required to return capital once a liquidity event is realized in an underlying investment. Because of the permanent capital vehicle structure, we believe we can offer an institutional-type strategy focused on the healthcare sector with institutional management capabilities to investors.

The Adviser and its affiliates have significant experience investing in the healthcare sector, across all sectors, all asset classes and in structured products. The Adviser and its affiliates' investments have spanned the range from large capitalization companies that are publicly traded to small, privately held companies and to distressed companies that have been successfully turned around. We believe the Adviser and its affiliates' expertise in underwriting credit across all sectors will give us an advantage in identifying and investing in the best middle-market companies in direct lending situations, syndicated loans and CLOs.

Investment Criteria/Guidelines

We believe there are currently, and will continue to be, significant investment opportunities in middle-market companies and larger private companies, particularly in the healthcare sector and particularly in income producing securities, in the United States. Additionally, we believe there continues to be attractive investment opportunities in the syndicated floating rate debt and CLO markets.

Target businesses will typically exhibit some or all of the following characteristics:

- exposure to healthcare sub-sectors we believe will benefit from implementation of alternative payment models;
- exposure to non-healthcare sub-sectors we believe will benefit from a rising interest rate environment and the Federal Reserve's policies in response to rising rates;
- a U.S. base of operations;
- an experienced management team executing a long-term growth strategy;
- discernable downside protection through recurring revenue or strong tangible asset coverage;
- defensible niche product/service;
- products and services with distinctive competitive advantages or other barriers to entry;
- stable and predictable free cash flows;
- existing indebtedness that may be refinanced on attractive terms;
- low technology and market risk;
- strong customer relationships; and
- low to moderate capital expenditure requirements.

We expect that deal flow and idea generation for investments will primarily originate from the Adviser and its affiliates' existing and extensive network of informal and unconventional deal sources in the middle-market business community. Once potential investments have been identified, we, through our Adviser, will conduct a rigorous due diligence process that draws from our Adviser's investment experience, industry expertise and network of contacts. Our Adviser will then work with outside counsel to structure loans with strong creditor protections and contractual controls over borrower operations. Our Adviser will work to obtain extensive operating and financial covenants, detailed reporting requirements, governance rights and board seats to protect our investment while allowing the borrower the necessary flexibility to successfully execute its business plan. We will actively monitor and manage our portfolio with regard to individual company performance as well as general market conditions. Investment decisions on new originations generally will include an analysis of the impact of the new loan on our broader portfolio, including a "top-down" assessment of portfolio structure and risk exposure.

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Investments in Middle-Market Healthcare Companies

Our portfolio of middle-market investments will have a focus on companies in the healthcare sector as we believe there is a large and growing investment opportunity in this sector. Changes in the U.S. healthcare reimbursement system, including the implementation of value-based payment models are creating a dramatic upheaval in the healthcare sector, affecting each sub-sector differently, and will produce a positive impact for some sub-sectors and a negative impact for others.

We believe some companies are better positioned to take advantage of these changes while others will consolidate with stronger players. Based on our deep understanding of the healthcare sector, we believe these developments will create a changing landscape for years to come.

Healthcare is a defensive and stable sector that has experienced out-sized growth and consistency during the past four decades. There are three primary growth drivers of healthcare: (1) demographics, (2) price inflation and (3) per-person utilization of care. The historical demographic growth rate has been 1.00%. Price inflation in healthcare has added an additional 5.64%, more than double the baseline U.S. GDP growth rate since 1970 of 2.79%. Per-person utilization is a function of access to health insurance as well as aging demographics. In the past three decades, the population above age 90 has tripled and is expected to quadruple over the next three decades. Due to these drivers, healthcare has moved from 3% of GDP in 1980 to approximately 18% today and is expected to continue to grow.

Investments in Middle-Market Non-Healthcare Companies

In response to elevated inflation, the Federal Reserve (the "Fed") has raised Fed Funds from effectively zero at the start of 2022 to over 4.25% by year-end and commenced with Quantitative Tightening by reducing its balance sheet after two years of growth. We believe that higher interest rates will make it more difficult for middle-market companies in all sectors to raise debt and equity capital. Furthermore, the capital requirements of business in many sectors will be enormous in coming years as companies catch up on delayed capital spending and make required investments to adapt to structural economic changes brought on by COVID-19. These companies will, in our opinion, turn more and more to specialty finance vehicles, such as us, to procure the capital they need for growth. We view the financing of middle-market companies to be an underserved area, presenting enormous opportunities.

Investments in Large Syndicated Floating Rate Debt

A portion of the investments we make in middle-market companies are expected to be in the form of floating rate instruments. Also, a portion of the portfolio will be invested in large syndicated floating rate debt of non-public and public companies. Syndicated floating rate debts are loans originated by a bank to a corporation that are sold off, or syndicated, to investors in pieces. Floating rate loans have a base rate that adjusts periodically plus a spread over the base rate. The base rate is typically the secured overnight financing rate (SOFR) and resets every 90 days. With rates resetting in an environment where the prevailing base rate is increasing, the income stream from a floating rate instrument will increase.

Syndicated floating rate debt offers certain benefits:

High current income. Historically, floating rate loans have lower yields than high yield bonds, due in part to better credit and interest-rate risk profile, but still offer an attractive risk-reward income dynamic.

Adjustable coupon payment. Floating rate loans are structured so that interest rates reset on a predetermined schedule. When interest rates rise, coupon payments increase, and vice versa, with little lag time (typically 90 days or less). This feature greatly reduces the interest rate, or duration, risk inherent in high yield bonds, which typically never reset. Therefore, as rates rise, the value of a high yield bond should decline while the value of a floating rate loan should remain stable.

Priority in event of default. In the event of a default, floating rate loans typically have a higher position in a company's capital structure, have first claim to assets and greater covenant protection than high yield bonds. As a result, floating rate loans have generally recovered a greater percentage of value than high yield bonds. Also, the default rate for floating rate loans has historically been lower than defaults of high yield bonds.

Reduced Volatility. The return of floating rate loans has historically had a low correlation to most asset classes and a negative correlation with some asset classes. Therefore, adding floating rate loans to a portfolio should reduce volatility and risk.

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In our view, an allocation to large syndicated floating rate debt provides stable value with high current income and offers the portfolio liquidity.

Investments in CLOs

We view CLOs as an excellent way to gain exposure to syndicated floating rate debt at a less expensive price and higher yield with greater upside potential for capital appreciation while minimizing interest rate risk. CLO vehicles are entities formed to manage a portfolio of syndicated bank loans. The CLO vehicle raises capital by issuing equity and multiple tranches of debt and uses the proceeds to buy the underlying portfolio of syndicated bank loans. The syndicated bank loans the CLO is allowed to purchase is limited by criteria established within the documents governing the CLO. The CLO also has certain priority of payment provisions or "waterfall" provisions that benefit the higher rated debt tranches. Documents governing CLOs typically provide for adjustments to the "waterfall" in the event certain tests are triggered, diverting cash to the higher rated debt tranches.

Investment Process Overview

Sourcing. We believe that identifying middle-market companies that represent attractive debt investment opportunities requires a different sourcing network than is required for investments in larger companies. Whereas larger companies typically hire an investment bank to help develop marketing materials and run a financing process involving a large number of potential lenders to ensure pricing is determined by the market, middle-market companies typically do not have the resources to hire large financial advisers or investment banks. While these lending opportunities are far less competitive, they are more difficult to source.

We expect that deal flow and idea generation for investments will primarily originate from the Adviser and its affiliates' existing and extensive network of informal and unconventional deal sources in the middle-market business community. Built over 20 years, this deal sourcing network includes accountants, attorneys, bankers, brokers, insurance agents, consultants, private equity firms and financial advisers who have access to small-cap companies. Additionally, we have forged contacts specific to the healthcare and energy industry that includes all sub-sectors, as well as other sectors.

The contacts in the Adviser's network generally operate outside of the established investment banking infrastructure and typically play a limited introductory role to companies and their management teams. In addition, the Adviser promotes a culture in which sourcing is considered a focus for all of its investment professionals.

Due Diligence. We believe it is critical to conduct extensive due diligence on investment targets, and in evaluating new investments. We, through our Adviser, will conduct a rigorous due diligence process that draws from our Adviser's investment experience, industry expertise and network of contacts. Our Adviser intends to conduct extensive due diligence and perform thorough credit analysis on each potential portfolio company investment. In conducting due diligence, we expect that our Adviser will use publicly available information and private information provided by borrowers, their financial sponsors and their advisers. Our Adviser expects to use its relationships with former and current management teams, consultants, competitors, bankers, private equity firms and investment bankers to gain further insights into businesses and industries, generally, and our potential portfolio companies, specifically.

Our due diligence will typically include the following elements (although not all elements will necessarily form part of each due diligence review):

- thorough review of historical and pro forma financial information, including an analysis of collateral coverage, cash flow and valuation multiples and quality of earnings;
- review of capital structure, including leverage and equity amounts, participants and intercreditor arrangements;
- analysis of the business of the prospective portfolio company, including drivers of growth, customer and supplier concentrations, fixed versus variable costs and sensitivity analyses (with a focus on downside scenario analysis);
- analysis of the industry in which the prospective portfolio company operates, including its competitive position, industry size and growth rates, competitive outlook, barriers to entry, and technological, regulatory and similar considerations;
- interviews with management, employees, customers and vendors and analysis of management's track record, quality, breadth and depth;
- anticipated form of any potential restructuring, potential liquidation value and potential for collateral impairment;
- preparation or review of material contracts and loan documents;
- anticipated timing of covenant breaches and default cure provisions;
- research relating to the company's business, industry, markets, products and services;
- background checks on key managers when appropriate; and

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- third-party research relating to the company's management, industry, markets, products and services and competitors.

Additional due diligence with respect to any investment may be conducted on our behalf by attorneys and independent accountants as well as other outside advisers, as appropriate.

Structuring Originations. Our Adviser's team has substantial expertise in structuring and documenting loans originated to middle-market companies. Our Adviser works with outside counsel to structure loans with strong creditor protections and contractual controls over borrower operations. Our Adviser works to obtain extensive operating and financial covenants, detailed reporting requirements, governance rights and board seats to protect our investment while allowing the borrower the necessary flexibility to successfully execute its business plan. We believe that our Adviser's extensive experience allows it to anticipate issues and maximize our potential recovery upon the occurrence of adverse events, and our Adviser is able to seek to structure our loan and credit documentation to protect us from risks identified in the due diligence process. Our Adviser also evaluates the broader capital structure of the borrower to ensure that we have strong rights as compared to other participants in the borrower's capital structure.

Portfolio Management and Monitoring. We actively monitor and manage our portfolio with regard to individual company performance as well as general market conditions. Investment decisions on new originations generally include an analysis of the impact of the new loan on our broader portfolio, including a "top-down" assessment of portfolio structure and risk exposure. This assessment includes a review of portfolio concentration by issuer, industry, geography and type of credit as well as an evaluation of our portfolio's exposure to macroeconomic factors and cyclical trends.

We believe that consistent, active monitoring of individual companies and the broader market is integral to portfolio management and a critical component of our investment process. Our Adviser uses several methods of evaluating and monitoring the performance and fair value of our investments, including the following:

- frequent discussions with management and sponsors, including board observation rights where possible;
- comparing/analyzing financial performance to the portfolio company's business plan, as well as our internal projections developed at underwriting;
- tracking portfolio company compliance with covenants, as well as other metrics identified at the initial investment stage, such as acquisitions, divestitures, product development and specified management hires; and
- periodic review of each asset in the portfolio and more rigorous monitoring of "watch list" positions.

Competition

Our primary competitors to provide financing to middle-market companies include public and private funds, including other business development companies, commercial and investment banks, commercial financing companies, and, to the extent they provide an alternative form of financing, private equity funds. As the economic recovery continues, we expect that we may face enhanced competition in the future. Many of our competitors are substantially larger and have considerably greater financial, technical and marketing resources than we do. For example, some competitors may have a lower cost of funds and access to funding sources that are not available to us. In addition, some of our competitors may have higher risk tolerances or different risk assessments, which could allow them to consider a wider variety of investments and establish more relationships than us. Furthermore, many of our competitors are not subject to the regulatory restrictions that the 1940 Act will impose on us as a BDC and that the Code will impose on us as a RIC. For additional information concerning the competitive risks we face, see "Risk Factors—Risks Relating to our Business and Structure—The highly competitive market for investment opportunities in which we operate may limit our investment opportunities."

Administration

We do not have any direct employees, and our day-to-day investment operations are managed by our Adviser. Our officers will be employees of the Adviser. Some of our executive officers described under "Management of the Company" are also officers of the Adviser. See "The Adviser and the Administrator—Administration Agreement."

Regulation

We have filed an election to be treated as a BDC under the 1940 Act and to be treated as a RIC under Subchapter M of the Code and intend each year to qualify and be eligible to be treated as such. As a RIC, we generally do not have to pay corporate-level U.S. federal income taxes on any net ordinary income or capital gains that we timely distribute to our stockholders as dividends. The 1940 Act contains prohibitions and restrictions relating to transactions between business development companies and their affiliates (including any Advisers or sub-advisers), principal underwriters and affiliates of those affiliates or underwriters and requires that a

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majority of the directors of a BDC be persons other than "interested persons," as that term is defined in the 1940 Act. In addition, the 1940 Act provides that we may not change the nature of our business so as to cease to be, or to withdraw our election as, a BDC unless approved by a majority of our outstanding voting securities.

We may invest up to 100% of our assets in securities acquired directly from issuers in privately negotiated transactions. With respect to such securities, we may, for the purpose of public resale, be deemed an "underwriter" as that term is defined in the Securities Act of 1933, as amended (the "Securities Act"). Our intention is to not write (sell) or buy put or call options to manage risks associated with the publicly traded securities of our portfolio companies, except that we may enter into hedging transactions to manage the risks associated with interest rate fluctuations to the extent that we are permitted to engage in such hedging transactions without registering with the U.S. Commodity Futures Trading Commission ("CFTC") as a commodity pool operator. However, we may purchase or otherwise receive warrants to purchase the common stock of our portfolio companies in connection with acquisition financing or other investments. Similarly, in connection with an acquisition, we may acquire rights to require the issuers of acquired securities or their affiliates to repurchase them under certain circumstances. We also do not intend to acquire securities issued by any investment company that exceed the limits imposed by the 1940 Act. Under these limits, we generally cannot acquire more than 3% of the voting stock of any registered investment company, invest more than 5% of the value of our total assets in the securities of one investment company or invest more than 10% of the value of our total assets in the securities of investment companies in the aggregate. With regard to that portion of our portfolio invested in securities issued by investment companies, it should be noted that such investments might subject our stockholders to additional expenses. None of these policies is fundamental and each may be changed without stockholder approval.

To the extent that we utilize a REIT subsidiary that directly incurs leverage in the form of debt (as opposed to non-recourse borrowings made through special purpose vehicles), the amount of such recourse leverage used by us will be consolidated and treated as senior securities for purposes of complying with the 1940 Act's limitations on leverage. Accordingly, it is our present intention to utilize leverage through debt or borrowings in an amount not to exceed 50% of our total assets (i.e., to maintain 200% asset coverage), less the amount of any nonrecourse direct debt or borrowing by a REIT subsidiary, if any. Because a REIT subsidiary's preferred shares would represent a small amount of leverage by the REIT subsidiary, such leverage will also be consolidated for purposes of complying with the 1940 Act's limitations on our ability to issue preferred shares.

Qualifying Assets

Under the 1940 Act, a BDC may not acquire any asset other than assets of the type listed in Section 55(a) of the 1940 Act, which are referred to as qualifying assets, unless, at the time the acquisition is made, qualifying assets represent at least 70% of the company's total assets. The principal categories of qualifying assets relevant to our proposed business are the following:

1. Securities purchased in transactions not involving any public offering from the issuer of such securities, which issuer (subject to certain limited exceptions) is an eligible portfolio company, or from any person who is, or has been during the preceding 13 months, an affiliated person of an eligible portfolio company, or from any other person, subject to such rules as may be prescribed by the U.S. Securities and Exchange Commission ("SEC"). An eligible portfolio company is defined in the 1940 Act as any issuer which:
    a. is organized under the laws of, and has its principal place of business in, the United States;
    b. is not an investment company (other than a small business investment company wholly owned by the BDC) or a company that would be an investment company but for certain exclusions under the 1940 Act; and
    c. satisfies any of the following:
        i. does not have any class of securities listed on a national securities exchange or has any class of securities listed on a national securities exchange subject to a $250 million market capitalization maximum; or
        ii. is controlled by a BDC or a group of companies including a BDC, the BDC actually exercises controlling influence over the management or policies of the eligible portfolio company, and, as a result, the BDC has an affiliated person who is a director of the eligible portfolio company.
2. Securities of any eligible portfolio company which we control.
3. Securities purchased in a private transaction from a U.S. issuer that is not an investment company or from an affiliated person of the issuer, or in transactions incident thereto, if the issuer is in bankruptcy and subject to reorganization or if the issuer, immediately prior to the purchase of its securities was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements.

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4. Securities of an eligible portfolio company purchased from any person in a private transaction if there is no ready market for such securities and we already own 60% of the outstanding equity of the eligible portfolio company.
5. Securities received in exchange for or distributed on or with respect to securities described in (1) through (4) above, or pursuant to the exercise of warrants or rights relating to such securities.
6. Cash, cash equivalents, U.S. Government securities or high-quality debt securities maturing in one year or less from the time of investment.

The regulations defining and interpreting qualifying assets may change over time. We expect to adjust our investment focus as needed to comply with and/or take advantage of any regulatory, legislative, administrative or judicial actions in this area.

Managerial Assistance to Portfolio Companies

In addition, a BDC must have been organized and have its principal place of business in the United States and must be operated for the purpose of making investments in the types of securities described in (1), (2) or (3) above. However, in order to count portfolio securities as qualifying assets for the purpose of the 70% test, the BDC must either control the issuer of the securities or must offer to make available to the issuer of the securities (other than small and solvent companies described above) significant managerial assistance. When a BDC purchases such securities in conjunction with one or more other persons acting together, one of the other persons in the group may make available such managerial assistance. Making available managerial assistance means any arrangement whereby the BDC, through its directors, officers or employees, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of a portfolio company. As our administrator, the Adviser has agreed to provide such managerial assistance on our behalf to portfolio companies that request this assistance. We may receive fees for these services and will reimburse the Adviser for the actual costs incurred in providing managerial assistance on our behalf, subject to the review and approval by the Board, including our independent directors.

Temporary Investments

Pending investment in other types of qualifying assets, as described above, our investments may consist of cash, cash equivalents, U.S. Government securities or high-quality debt securities maturing in one year or less from the time of investment, which we refer to, collectively, as temporary investments, so that 70% of our assets are qualifying assets. Typically, we will invest in U.S. Treasury bills or in repurchase agreements, so long as such agreements are fully collateralized by cash or securities issued by the U.S. Government or its agencies. A repurchase agreement involves the purchase by an investor, such as us, of a specified security and the simultaneous agreement by the seller to repurchase it at an agreed-upon future date and at a price which is greater than the purchase price by an amount that reflects an agreed-upon interest rate. Our Adviser intends to monitor the creditworthiness of the counterparties with which we enter into repurchase agreement transactions.

Senior Securities

We are permitted, under specified conditions, to issue multiple classes of indebtedness and one class of stock senior to our common stock if our asset coverage, as defined in the 1940 Act, is at least equal to 200% immediately after each such issuance. In addition, while any senior securities remain outstanding, we must make provisions to prohibit any distribution to our stockholders or the repurchase of such securities or shares unless we meet the applicable asset coverage ratios at the time of the distribution or repurchase.

We may also borrow amounts up to 5% of the value of our total assets for temporary or emergency purposes without regard to asset coverage. For a discussion of the risks associated with leverage, see “Risk Factors—Risks Relating to our Business and Structure—Regulations governing our operation as a BDC will affect our ability to raise, and the way in which we raise, additional debt or equity capital.”

Code of Ethics

We and the Adviser have each adopted a code of ethics pursuant to Rule 17j-1 under the 1940 Act that establishes procedures for personal investments and restricts certain personal securities transactions. Personnel subject to each code may invest in securities for their personal investment accounts, including securities that may be purchased or held by us, so long as such investments are made in accordance with the code’s requirements. In addition, each code of ethics is attached as an exhibit to the registration statement of which this prospectus is a part and is available on the EDGAR Database on the SEC’s Internet site at *http://www.sec.gov*. You may also obtain copies of each code of ethics, after paying a duplicating fee, by electronic request at the following Email address: publicinfo@sec.gov.

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Proxy Voting Policies and Procedures

We have delegated our proxy voting responsibility to our Adviser. The Proxy Voting Policies and Procedures of our Adviser are described below. The guidelines are reviewed periodically by our Adviser and our non-interested directors, and, accordingly, are subject to change. For purposes of these Proxy Voting Policies and Procedures described below, "we" "our" and "us" refers to our Adviser.

Introduction

As an Adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act"), we have a fiduciary duty to act solely in the best interests of our clients. As part of this duty, we recognize that we must vote client securities in a timely manner free of conflicts of interest and in the best interests of our clients.

These policies and procedures for voting proxies for our investment advisory clients are intended to comply with Section 206 of, and Rule 206(4)-6 under the Advisers Act.

Proxy Policies

We vote proxies relating to our clients' portfolio securities in what we perceive to be the best interest of our clients' stockholders. We review on a case-by-case basis each proposal submitted to a stockholder vote to determine its impact on the portfolio securities held by our clients. In most cases, we will vote in favor of proposals that we believe are likely to increase the value of our clients' portfolio securities. Although we will generally vote against proposals that may have a negative impact on our clients' portfolio securities, we may vote for such a proposal if there exist compelling long-term reasons to do so.

Our proxy voting decisions are made by the senior officers who are responsible for monitoring each of clients' investments. To ensure that our vote is not the product of a conflict of interest, we require that: (1) anyone involved in the decision making process disclose to our Chief Compliance Officer any potential conflict that he or she is aware of and any contact that he or she has had with any interested party regarding a proxy vote; and (2) employees involved in the decision making process or vote administration are prohibited from revealing how we intend to vote on a proposal in order to reduce any attempted influence from interested parties. Where conflicts of interest may be present, we will disclose such conflicts, including to us, and may request guidance on how to vote such proxies.

Proxy Voting Records

You may obtain information without charge about how we voted proxies by making a written request for proxy voting information to: Investor Relations, 300 Crescent Court, Suite 700, Dallas, Texas 75201, or by calling us collect at (844) 485-9167.

Privacy Principles

We are committed to maintaining the privacy of our stockholders and to safeguarding their non-public personal information. The following information is provided to help you understand what personal information we collect, how we protect that information and why, in certain cases, we may share information with select other parties.

Generally, we do not receive any non-public personal information relating to our stockholders. The only information we collect from you is your name, address, number of shares you hold and your social security number. This information is used only so that we can send you annual reports and other information about us, and send you proxy statements or other information required by law. We will maintain physical, electronic and procedural safeguards designed to protect the non-public personal information of our stockholders. We do not disclose any non-public personal information about our stockholders or former stockholders to anyone except as described below.

- *Authorized Employees of the Adviser and Its Affiliates*. It is our policy that only authorized employees of the Adviser and its affiliates with a legitimate business need for the information will have access to it.

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- *Service Providers*. We may disclose your personal information to companies that provide services on our behalf, such as record keeping, processing your trades, and mailing you information. These companies are required to protect your information and use it solely for the purpose for which they received it.
- *Courts and Government Officials*. If required by law, we may disclose your personal information in accordance with a court order or at the request of government regulators. Only that information required by law, subpoena, or court order will be disclosed.

Other

We are prohibited under the 1940 Act from participating in certain transactions with our affiliates without the prior approval of our independent directors and, in some cases, of the SEC. Any person that owns, directly or indirectly, five percent or more of our outstanding voting securities will be our affiliate for purposes of the 1940 Act, and we are generally prohibited from buying or selling any security from or to, or entering into certain "joint" transactions (which could include investments in the same portfolio company) with such affiliates, absent the prior approval of our independent directors and/or appropriate exemptive relief. Our Adviser and its affiliates, including persons that control, are controlled by, or are under common control with, us or our Adviser, are also considered to be our affiliates under the 1940 Act, and we are generally prohibited from buying or selling any security from or to, or entering into "joint" transactions with such affiliates without the prior approval of our independent directors and, in some cases, exemptive relief from the SEC.

We may, however, invest alongside the Adviser's, and its affiliates' other clients in certain circumstances where doing so is consistent with applicable law and SEC staff interpretations and specific exemptive relief from the SEC. For example, we may invest alongside such accounts consistent with guidance promulgated by the staff of the SEC permitting us and such other accounts to purchase interests in a single class of privately placed securities so long as certain conditions are met, including that our Adviser, acting on our behalf and on behalf of other clients, negotiates no term other than price. We and the Adviser have obtained an exemptive order dated April 19, 2016 from the SEC to permit co-investments among the Company and other accounts managed by the Adviser or its affiliates, subject to certain conditions. We may also invest alongside our Adviser's other clients as otherwise permissible under regulatory guidance, applicable regulations and the allocation policy of our Adviser and its affiliates (including clients that may pay higher fees to the Adviser or its affiliates or in which our portfolio managers have personal interest in the receipt of such fess). If sufficient securities or loan amounts are available to satisfy our and each such account's proposed demand, we expect that the opportunity will be allocated in accordance with our Adviser's pre-transaction determination. Where there is an insufficient amount of an investment opportunity to satisfy us and other accounts sponsored or managed by our Adviser or its affiliates, the allocation policy further provides that allocations among us and such other accounts will generally be made pro rata, based on the amount that each such party would have invested if sufficient securities or loan amounts were available. The allocation policies and procedures are intended to assist the Adviser and its affiliates in ensuring that investment opportunities will be allocated to us fairly and equitably.

We will be subject to periodic examination by the SEC for compliance with the 1940 Act. Under the 1940 Act, we are required to provide and maintain a bond issued by a reputable fidelity insurance company to protect us against larceny and embezzlement. Furthermore, as a BDC, we are prohibited from protecting any director or officer against any liability to us or our stockholders arising from willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such person's office.

We and the Adviser will each be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the U.S. federal securities laws, review these policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures.

We are not generally able to issue and sell our common stock at a price below current net asset value per share. We may, however, issue and sell our common stock, or warrants, options or rights to acquire our common stock, at a price below the then-current net asset value per share of our common stock if the Board determines that such sale is in the best interests of us and our stockholders, and if our stockholders approve such sale within the preceding 12 months. In any such case, the price at which our securities are to be issued and sold may not be less than a price that, in the determination of the Board, closely approximates the fair value of such securities as determined by the Adviser, as the Company's valuation designee.

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Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") imposes a wide variety of regulatory requirements on publicly held companies and their insiders. Many of these requirements will affect us. For example:

- pursuant to Rule 13a-14 under the Securities Exchange Act of 1934, as amended ("Exchange Act"), our Chief Executive Officer and Chief Financial Officer must certify the accuracy of the financial statements contained in our periodic reports;
- pursuant to Item 307 of Regulation S-K under the Securities Act, our periodic reports must disclose our conclusions about the effectiveness of our disclosure controls and procedures;
- pursuant to Rule 13a-15 of the Exchange Act, our management must prepare an annual report regarding its assessment of our internal control over financial reporting.
- pursuant to Item 308 of Regulation S-K under the Securities Act and Rule 13a-15 under the Exchange Act, our periodic reports must disclose whether there were significant changes in our internal controls over financial reporting or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

The Sarbanes-Oxley Act requires us to review our current policies and procedures to determine whether we comply with the Sarbanes-Oxley Act and the regulations promulgated under it. We will continue to monitor our compliance with all regulations that are adopted under the Sarbanes-Oxley Act and will take actions necessary to ensure that we are in compliance with that act.

Brokerage Allocation and Other Practices

Since we intend to generally acquire and dispose of our investments in privately negotiated transactions, we expect to infrequently use brokers in the normal course of our business. Subject to policies established by the Board, the Adviser will be primarily responsible for the execution of the publicly traded securities portion of our portfolio transactions and the allocation of brokerage commissions. The Adviser does not execute transactions through any particular broker or dealer, but seeks to obtain the best net results for us, considering such factors as (i) price (including the applicable brokerage commission or dealer spread), (ii) size of the order, (iii) difficulty of execution, (iv) operational facilities of the firm, (v) promptness of execution and past history in executing orders, (vi) clearance and settlement capabilities, (vii) research capabilities, (viii) access to markets and distribution network, (ix) the firm's risk and skill in positioning blocks of securities and (x) trade error rate and ability or willingness to correct errors. While the Adviser will generally seek reasonably competitive trade execution costs, we will not necessarily pay the lowest spread or commission available. Subject to applicable legal requirements, the Adviser may select a broker based partly upon brokerage, research or other services provided to it and us and any other clients. In return for such services, we may pay a higher commission than other brokers would charge if the Adviser determines in good faith that such commission is reasonable in relation to the services provided.

Tax Matters

The following is a general summary of some of the important U.S. federal income tax considerations affecting us and our common shareholders that are "United States persons" within the meaning of the Code, and does not address any state, local, foreign or other tax consequences. It reflects provisions of the Code, existing Treasury regulations, and other applicable authority, as of the date of this annual report. These authorities may be changed, possibly with retroactive effect, or subject to new legislative, administrative, or judicial interpretations. This summary does not purport to be a complete description of the U.S. federal income tax considerations applicable to our common shareholders. For example, except as otherwise specifically noted herein, we have not described certain tax considerations that may be relevant to certain types of holders subject to special treatment under the U.S. federal income tax laws, including shareholders subject to the U.S. federal alternative minimum tax, insurance companies, tax-exempt organizations, pension plans and trusts, RICs, dealers in securities, shareholders holding our shares through tax-advantaged accounts (such as 401(k) plans or individual retirement accounts), financial institutions, shareholders holding our shares as part of a hedge, straddle, or conversion transaction, entities that are not organized under the laws of the United States or a political subdivision thereof, and persons who are neither citizens nor residents of the United States. This summary assumes that investors hold our common shares as capital assets (within the meaning of the Code). Please consult your tax advisor about U.S. federal, state, local, foreign or other tax laws applicable to you, as the tax consequences to an investor in our common shares will depend on the facts of his, her or its particular situation.

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Taxation of the Company

We have elected to be treated as a RIC under Subchapter M of the Code and intend each year to qualify and to be eligible to be treated as such.

In order to qualify for the special tax treatment accorded RICs and their shareholders, we must, among other things:

(i) derive at least 90% of our gross income for each taxable year from: (a) dividends, interest (including tax-exempt interest), payments with respect to certain securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income (including but not limited to gains from options, futures and forward contracts) derived with respect to our business of investing in such stock, securities or foreign currencies; and (b) net income derived from interests in "qualified publicly traded partnerships";

(ii) diversify our holdings so that, at the end of each quarter of our taxable year, (a) at least 50% of the market value of our total assets consists of cash and cash items, U.S. government securities, the securities of other RICs and other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of our total assets and not more than 10% of the outstanding voting securities of such issuer, and (b) not more than 25% of the value of our total assets is invested, including through corporations in which we own a 20% or more voting stock interest, (x) in the securities (other than U.S. government securities and the securities of other RICs) of any one issuer or of two or more issuers that we control, as determined under applicable Code rules, and that are determined to be engaged in the same business or similar or related trades or businesses, or (y) in the securities of one or more "qualified publicly traded partnerships"; and

(iii) distribute to our shareholders with respect to each taxable year at least 90% of the sum of our "investment company taxable income" (as that term is defined in the Code, without regard to the deduction for dividends paid—generally taxable ordinary income and the excess, if any, of net short-term capital gains over net long-term capital losses) and any net tax-exempt interest income (the excess of our gross tax-exempt interest over certain disallowed deductions), for such year, in a manner qualifying for the dividends paid deduction.

If we qualify as a RIC (i.e., satisfy the source of income and diversification requirements described in (i) and (ii) above) and satisfy the annual distribution requirement described in (iii) above, we will not be subject to U.S. federal income tax on income distributed in a timely manner to our shareholders in the form of dividends (including Capital Gain Dividends, as defined below).

If, for any taxable year, we were to fail to meet the income, diversification or distribution tests described above, we could in some cases cure such failure, including by paying a corporate-level tax, paying interest, making additional distributions or disposing of certain assets. If we were ineligible to or otherwise did not cure any such failure for any year, or if we were otherwise to fail to qualify as a RIC accorded special tax treatment for such year, we would be subject to tax on our taxable income at corporate rates, and all distributions from earnings and profits, including any distributions of net long-term capital gains, would be taxable to shareholders as ordinary income. Some portions of such distributions might be eligible for the dividends-received deduction in the case of corporate shareholders and might be eligible to be treated as "qualified dividend income" and thus taxable at the lower long-term capital gain rate in the case of shareholders taxed at individual rates, provided, in both cases, the shareholder met certain holding period and other requirements in respect of our shares (as described below). In addition, we might be required to recognize unrealized gains, pay substantial taxes and interest and make substantial distributions before requalifying as a RIC.

We intend to distribute at least annually to our shareholders all or substantially all of our investment company taxable income (computed without regard to the dividends-paid deduction) and, in general, our net capital gain (that is, the excess of net long-term capital gain over net short-term capital loss, in each case determined with reference to any loss carryforwards). Any investment company taxable income we retain will be subject to a corporate-level tax at regular corporate rates. We may also retain for investment our net capital gain. If we retain any net capital gain, it will be subject to corporate-level tax at regular corporate rates on the amount retained, but we may designate the retained amount as undistributed capital gains in a timely notice to our shareholders who would then, in turn, be (i) required to include in income for U.S. federal income tax purposes, as long-term capital gain, their shares of such undistributed amount, and (ii) entitled to credit their proportionate shares of the tax we paid on such undistributed amount against their U.S. federal income tax liabilities, if any, and to claim refunds on a properly-filed U.S. tax return to the extent the credit exceeds such liabilities. If we make this designation, for U.S. federal income tax purposes, the tax basis of shares owned by one of our shareholders would be increased by an amount equal to the difference between the amount of undistributed capital gains included in the shareholder's gross income under clause (i) of the preceding sentence and the tax deemed paid by the shareholder under clause (ii) of the preceding sentence. We are not required to, and there can be no assurance we will, make this designation if we retain all or a portion of our net capital gain in a taxable year.

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In determining its net capital gain, including in connection with determining the amount available to support a Capital Gain Dividend (as defined below), its taxable income, and its earnings and profits, a RIC generally may elect to treat part or all of any post-October capital loss (defined as any net capital loss attributable to the portion of the taxable year after October 31 or, if there is no such loss, the net long-term capital loss or net short-term capital loss attributable to such portion of the taxable year) or late-year ordinary loss (generally, the sum of its net ordinary loss from the sale, exchange or other taxable disposition of property, attributable to the portion of the taxable year after October 31, as if incurred in the succeeding taxable year.

If in a calendar year we fail to distribute at least an amount equal to the sum of 98% of our ordinary income for such year and 98.2% of our capital gain net income (adjusted for certain ordinary losses) for the one-year period ending on October 31 of such year (unless an election is made to use our taxable year), plus any such undistributed amounts from the prior year, we will be subject to a nondeductible 4% excise tax on the undistributed amounts. For purposes of the required excise tax distribution, a RIC's ordinary gains and losses from the sale, exchange or other taxable disposition of property that would otherwise be taken into account after October 31 of a calendar year generally (unless an election is made to use our taxable year) are treated as arising on January 1 of the following calendar year. Also, for these purposes, we will be treated as having distributed any amount on which we have been subject to corporate income tax in the taxable year ending with the calendar year. We reserve the right to pay the excise tax when circumstances warrant.

We are authorized to borrow funds and to sell assets in order to satisfy distribution requirements. However, under the 1940 Act, we are not permitted to make distributions to our stockholders while our debt obligations and other senior securities are outstanding unless certain "asset coverage" tests are met. Moreover, our ability to dispose of assets to meet our distribution requirements may be limited by (1) the illiquid nature of our portfolio and/or (2) other requirements relating to our qualification as a RIC, including the diversification test described above. If we dispose of assets in order to meet the distribution test described above or to avoid the excise tax on undistributed amounts, we may make such dispositions at times that, from an investment standpoint, are not advantageous.

We are not permitted to deduct capital losses in excess of capital gains ("net capital losses") against our net investment income. Instead, potentially subject to certain limitations, we may carry net capital losses from any taxable year forward to subsequent taxable years to offset capital gains, if any, realized during such subsequent taxable year. Capital loss carryforwards are reduced to the extent they offset current-year net realized capital gains, whether we retain or distribute such gains. Net capital losses will be carried forward to one or more subsequent taxable years without expiration to offset capital gains realized during such subsequent taxable years; any such carryforward losses will retain their character as short-term or long-term.

Our ability to use net capital losses may be limited following the occurrence of certain (i) acquisitive reorganizations and (ii) shifts in the ownership of our shares by a shareholder owning or treated as owning 5% or more of our shares (each, an "ownership change"). The Code may similarly limit our ability to use any of our other capital losses, or ordinary losses, that have accrued but have not been recognized (i.e., "built-in" losses) at the time of an ownership change to the extent they are realized within the five-year period following the ownership change.

Distributions to Shareholders

Distributions not in excess of our current and accumulated earnings and profits are taxable to shareholders even if we paid them from income or gains, we earned before a shareholder invested in our shares (and such income and gains thus were included in the price the shareholder paid for its shares). Such distributions are taxable whether shareholders receive them in cash or reinvest them in additional shares through our distribution reinvestment plan. A shareholder who reinvests such distributions in shares through our distribution reinvestment plan will be treated as having received a dividend equal to the fair market value of the new shares issued to the shareholder.

Dividends and other distributions we pay are generally treated under the Code as received by shareholders at the time the dividend or distribution is made. However, a dividend paid to shareholders in January of a year generally is deemed to have been paid by us on December 31 of the preceding year, if the dividend was declared and payable to shareholders of record on a date in October, November or December of that preceding year.

The price of common shares purchased at any time may reflect the amount of a forthcoming distribution. If you purchase common shares just prior to a distribution, you will receive a distribution that will be taxable to you even though it economically represents in part a return of your invested capital.

Your broker or other intermediary will send you information after the end of each year setting forth the amount and tax status of any dividends or other distributions, we pay to you.

For U.S. federal income tax purposes, distributions of investment income are generally taxable as ordinary income. Taxes on distributions of capital gains are determined by how long we have owned or are treated as having owned the investments that generated them, rather than how long a shareholder has owned his or her shares. In general, we will recognize long-term capital gain or loss on investments we have owned (or are deemed to have owned) for more than one year, and short-term capital gain or loss on

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investments we have owned (or are deemed to have owned) for one year or less. Distributions of net capital gain that we properly report as capital gain dividends ("Capital Gain Dividends") will generally be taxable to shareholders as long-term capital gains. Distributions from capital gains are generally made after applying any available capital loss carryforwards. Distributions of net short-term capital gain (that is, the excess of net short-term capital gain over net long-term capital loss) will generally be taxable to shareholders receiving such distributions as ordinary income. Distributions of investment income we report as derived from "qualified dividend income" will be taxed in the hands of individuals at the rates applicable to long-term capital gain, provided holding period and other requirements are met at both the shareholder and corporate level. We do not expect a significant portion of our distributions to be derived from qualified dividend income.

In order for some portion of the dividends received by one of our shareholders to be qualified dividend income, we must meet holding period and other requirements with respect to some portion of the dividend-paying stocks in our portfolio and the shareholder must meet holding period and other requirements with respect to our shares. In general, a dividend will not be treated as qualified dividend income (at either the corporate or shareholder level) (1) if the dividend is received with respect to any share of stock held for fewer than 61 days during the 121-day period beginning on the date which is 60 days before the date on which such share becomes ex-dividend with respect to such dividend (or, in the case of certain preferred stock, 91 days during the 181-day period beginning 90 days before such date), (2) to the extent that the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property, (3) if the recipient elects to have the dividend income treated as investment income for purposes of the limitation on deductibility of investment interest, or (4) if the dividend is received from a foreign corporation that is (a) not eligible for the benefits of a comprehensive income tax treaty with the United States (with the exception of dividends paid on stock of such a foreign corporation readily tradable on an established securities market in the United States) or (b) treated as a passive foreign investment company.

In general, dividends of net investment income received by our corporate shareholders will qualify for the dividends-received deduction generally available to corporations to the extent of the amount of eligible dividends we receive from domestic corporations for the taxable year. A dividend we receive will not be treated as a qualifying dividend (i) if it has been received with respect to any share of stock that we have held for less than 46 days (91 days in the case of certain preferred stock) during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend (during the 181-day period beginning 90 days before such date in the case of certain preferred stock) or (ii) to the extent that we are under an obligation (pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property. Moreover, the dividends-received deduction may be disallowed or reduced (i) if the corporate shareholder fails to satisfy the foregoing requirements with respect to our shares or (ii) by application of various provisions of the Code (for instance, the dividends-received deduction is reduced in the case of a dividend received on debt-financed portfolio stock (generally, stock acquired with borrowed funds)). We do not expect a significant portion of our distributions to be eligible for this corporate dividends-received deduction.

Any distribution of income that is attributable to (i) income we receive in lieu of dividends with respect to securities on loan pursuant to a securities lending transaction or (ii) dividend income we receive on securities we temporarily purchased from a counterparty pursuant to a repurchase agreement under which for U.S. federal income tax purposes we are treated as a lender, such distribution will not constitute qualified dividend income to individual shareholders and will not be eligible for the dividends-received deduction for corporate shareholders.

Effective for taxable years beginning after December 31, 2017 and before January 1, 2026, the Code generally allows individuals and certain other non-corporate entities a deduction for 20% of "qualified publicly traded partnership income," such as income from MLPs, and a deduction for 20% of qualified REIT dividends. Recently issued proposed regulations, which are currently in effect, allow a RIC to pass the character of its qualified REIT dividends through to its shareholders provided certain holding period requirements are met. As a result, a shareholder in the Company will be eligible receive the benefit of the same 20% deduction with respect to any qualified REIT dividends included in Company distributions that is available to direct investors in REITs, but a shareholder in the Company will not currently receive the benefit of the 20% deduction with respect to any MLP income included in Company distributions.

The Code generally imposes a 3.8% Medicare contribution tax on the "net investment income" of certain individuals, estates and trusts to the extent their income exceeds certain amounts. Net investment income generally includes for this purpose dividends we pay, including any capital gain dividends and net capital gains recognized on the sale or exchange of our shares. Shareholders are advised to consult their tax advisors regarding the possible implications of this additional tax on their investment with us.

If for any taxable year we were not a "publicly offered" RIC within the meaning of Code Section 67(c)(2)(B), certain of our direct and indirect expenses, including the management fee, the incentive fee and certain other advisory expenses, would be subject to special "pass-through" rules. Such rules would treat these expenses as additional dividends to certain of our direct or indirect shareholders (generally including other RICs that are not "publicly offered," individuals and entities that compute their taxable income in the same manner as an individual) and, under current law, are not deductible by those shareholders that are individuals (or entities that compute their taxable income in the same manner as an individual).

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Return of Capital Distributions

If, for any taxable year, our total distributions exceed both current and accumulated earnings and profits, the excess will generally be treated as a tax-free return of capital up to the amount of your tax basis in our shares. The amount treated as a tax-free return of capital will reduce your tax basis in our shares, thereby increasing your potential gain or reducing your potential loss on the subsequent sale of our shares. Any amounts distributed to you in excess of your tax basis in our shares will be taxable to you as capital gain.

Distributions we pay with respect to our shares are generally subject to U.S. federal income tax as described herein to the extent they do not exceed our realized income and gains, even though such dividends and distributions may economically represent a return of a particular shareholder's investment. Such distributions are likely to occur in respect of shares purchased at a time when our net asset value reflects either unrealized gains, or realized but undistributed income or gains, that were therefore included in the price the shareholder paid. Such distributions may reduce the value of our shares below the shareholder's cost basis in those shares. As described above, we are required to distribute realized income and gains regardless of whether our net asset value also reflects unrealized losses.

Tax Implications of Certain Investments

Some debt obligations with a fixed maturity date of more than one year from the date of issuance that we acquire in the secondary market may be treated as having "market discount." Very generally, market discount is the excess of the stated redemption price of a debt obligation (or in the case of an obligation issued with OID (as defined below), its "revised issue price") over the purchase price of such obligation. Subject to the discussion below regarding Section 451 of the Code, generally, any gain recognized on the disposition of, and any partial payment of principal on, a debt obligation having market discount is treated as ordinary income to the extent the gain, or principal payment, does not exceed the "accrued market discount" on such debt obligation. Alternatively, a holder may elect to accrue market discount currently. As of the date of this prospectus, we have made this election, and therefore we are required to include currently any accrued market discount on such debt obligations in our taxable income (as ordinary income) and thus distribute it over the terms of the obligations, even though payment of those amounts is not received until a later time, upon partial or full repayment or disposition of the applicable debt obligations. We reserve the right to revoke this election at any time pursuant to applicable IRS procedures. The rate at which market discount accrues, and thus is included in our income, will depend upon which of the permitted accrual methods we elect.

In addition, some debt obligations with a fixed maturity date of more than one year from the date of issuance (and zero-coupon debt obligations with a fixed maturity date of more than one year from the date of issuance) that we originate or acquire will be treated as debt obligations that are issued originally at a discount. Generally, the amount of the original issue discount ("OID") is treated as interest income and is included in taxable income (and we are required to distribute it) over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. In addition, payment-in-kind ("PIK") securities we originate or acquire will give rise to income which is required to be distributed and is taxable even though we receive no interest payment in cash on the security during the year in which the income was accrued.

Some debt obligations with a fixed maturity date of one year or less from the date of issuance that we originate or acquire may be treated as having OID or, in certain cases, "acquisition discount" (very generally, the excess of the stated redemption price over the purchase price). Generally, we will be required to include the OID or acquisition discount in income (as ordinary income) over the term of the debt obligation and thus distribute it over the term of the debt obligation, even though payment of that amount is not received until a later time, upon partial or full repayment or disposition of the debt obligation. The rate at which OID or acquisition discount accrues, and thus is included in our income, will depend upon which of the permitted accrual methods we elect.

Some preferred securities may include provisions that permit the issuer, at its discretion, to defer the payment of distributions for a stated period without any adverse consequences to the issuer. If we own a preferred security that is deferring the payment of its distributions, we may be required to report income for U.S. federal income tax purposes to the extent of any such deferred distribution even though we have not yet actually received the cash distribution.

As a result of holding the foregoing kinds of obligations, we may be required to pay out as an income distribution each year an amount which is greater than the total amount of cash interest (or dividends in the case of preferred securities) we actually received. Such distributions may be made from, among other things, our cash assets or cash generated from our liquidation of portfolio securities. We may realize gains or losses from such liquidations. In the event we realize net long-term or short-term capital gains from such transactions, our shareholders may receive a larger capital gain or ordinary dividend, respectively, than they would in the absence of such transactions.

Investments in distressed debt obligations that are at risk of or in default present special tax issues. Tax rules are not entirely clear about issues such as whether and to what extent we should recognize market discount on these debt obligations; when we may cease to accrue interest, OID or market discount; when and to what extent we may take deductions for bad debts or worthless

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securities; and how we should allocate payments received on obligations in default between principal and income. We will address these and other related issues when, as and if we invest in such obligations, in order to seek to ensure that we distribute sufficient income to preserve our eligibility for treatment as a RIC and do not become subject to U.S. federal income or excise tax.

A portion of the OID accrued on certain high-yield discount obligations we own may not be deductible to the issuer and will instead be treated as a dividend paid by the issuer for purposes of the dividends-received deduction. In such cases, if the issuer of the obligation is a domestic corporation, dividend payments we make may be eligible for the dividends-received deduction to the extent of the deemed dividend portion of such OID.

Our transactions in foreign currencies, foreign currency-denominated debt obligations and certain foreign currency options, futures contracts and forward contracts (and similar instruments) may give rise to ordinary income or loss to the extent such income or loss results from fluctuations in the value of the foreign currency concerned. Such ordinary income treatment may accelerate our distributions to shareholders and increase the distributions taxed to shareholders as ordinary income. We cannot carry forward any net ordinary losses so created to offset income or gains earned in subsequent years.

Special tax rules may change the treatment of gains and losses we recognize when we make certain investments outside the United States. The application of these special rules may accelerate or increase our recognition of ordinary income or loss, and affect the timing, amount and/or character of our distributions. In addition, dividend, interest, capital gains and other income we receive from investments outside the United States may be subject to withholding and other taxes imposed by foreign countries. Tax treaties between the United States and other countries may reduce or eliminate such taxes. We do not expect that we will be eligible to elect to treat any foreign taxes we pay as paid by our shareholders, and therefore shareholders will not be entitled to claim a credit or deduction for such taxes on their own tax returns. Foreign taxes we pay or are withheld from us will reduce the return from our underlying investments.

Some of our investments outside the United States, including our CLO investments, may be treated as investments in passive foreign investment companies ("PFICs"), as defined below, and could subject us to U.S. federal income tax (including interest charges) on distributions received from a PFIC or on proceeds received from the disposition of shares in a PFIC, which tax cannot be eliminated by making distributions to our shareholders. However, we may elect to avoid the imposition of that tax. For example, we may elect to treat a PFIC as a "qualified electing fund" ("QEF") (i.e., make a "QEF election"), in which case we will be required to include our share of the PFIC's income and net capital gain annually, regardless of whether it receives any distribution from the PFIC. Alternatively, we may elect to mark the gains (and to a limited extent the losses) in such holdings "to the market" as though we had sold (and, solely for purposes of this mark-to-market election, repurchased) our holdings in those PFICs on the last day of our taxable year. Such gains and losses are treated as ordinary income and loss. The QEF and mark-to-market elections may have the effect of accelerating the recognition of income (without the receipt of cash) and increasing the amount required to be distributed for us to avoid taxation. Making either of these elections therefore may require us to liquidate other investments (including when it is not advantageous to do so) to meet our distribution requirement, which also may accelerate the recognition of gain and affect our total return. Dividends paid by PFICs will not be eligible to be treated as qualified dividend income. In addition, whether a foreign corporation is a PFIC is not always entirely clear. Therefore, there is a risk, for example, that we may not realize that a foreign corporation in which we invest is a PFIC for U.S. federal tax purposes and thus we may fail to timely make a QEF or mark-to-market election in respect of that corporation, in which event we could be subject to the U.S. federal income taxes and interest charges described above.

A PFIC is any foreign corporation in which (i) 75% or more of the gross income for the taxable year is passive income, or (ii) the average percentage of the assets (generally by value, but by adjusted tax basis in certain cases) that produce, or are held for the production of, passive income is at least 50%. Generally, passive income for this purpose means dividends, interest (including income equivalent to interest), royalties, rents, annuities, the excess of gains over losses from certain property transactions and commodities transactions, income from certain notional principal contracts, and foreign currency gains. Passive income for this purpose does not include rents and royalties received by the foreign corporation from active business and certain income received from related persons.

If we own (directly or indirectly) 10% or more of the total combined voting power of all classes of stock of a foreign corporation or 10% or more of the total value of shares of all classes of stock of a foreign corporation that is treated as a controlled foreign corporation ("CFC") (including equity tranche investments and certain debt tranche investments in a CLO treated as CFC), we are a "U.S. Shareholder" for purposes of the CFC provisions of the Code. A CFC is a foreign corporation that, on any day of its taxable year, is owned (directly, indirectly, or constructively) more than 50% (measured by voting power or value) by U.S. Shareholders. A U.S. Shareholder is required to include in gross income for U.S. federal income tax purposes for each taxable year of the U.S. Shareholder its pro rata share of its CFC's "subpart F income" for the CFC's taxable year ending within the U.S. Shareholder's taxable year whether or not such income is actually distributed by the CFC. Subpart F income generally includes interest, OID, dividends, net gains from the disposition of stocks or securities, net gains from transactions (including futures, forward, and similar transactions) in commodities, receipts with respect to securities loans, and net payments received with respect to equity swaps and similar derivatives. Subpart F income is treated as ordinary income, regardless of the character of the CFC's

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underlying income. To the extent we invest in CFCs, if any, and recognize subpart F income in excess of actual cash distributions from such CFCs, if any, we may be required to sell assets (including when it is not advantageous to do so) to generate the cash necessary to distribute as dividends to our shareholders all of our income and gains and therefore to eliminate any corporate-level tax liability.

We may make certain investments through one or more wholly-owned entities treated as corporations for U.S. federal income tax purposes. Such corporations may be required to pay U.S. federal, state and local corporate income or other tax on their earnings, which ultimately will reduce the return on our underlying investments.

Income we realize from or the proceeds of dispositions of our non-U.S. investments may be subject to non-U.S. withholding or other taxes. We may otherwise be subject to non-U.S. taxation on repatriation proceeds generated from those investments or to other transaction-based non-U.S. taxes on those investments. Those withholding taxes or other taxes as well as any U.S. withholding taxes applicable to our investments, including in respect of investments in our wholly-owned subsidiaries, if any, will reduce the return on our investments.

Our derivative transactions, as well as any of our other hedging, short sale or similar transactions, may be subject to one or more special tax rules (including, for instance, notional principal contract, mark-to-market, constructive sale, straddle, wash sale and short-sale rules). These rules may affect whether gains and losses we recognize are treated as ordinary or capital and/or as short-term or long-term, accelerate our recognition of income or gains, defer losses, and cause adjustments in the holding periods of our securities. The rules could therefore affect the amount, timing and/or character of our distributions to shareholders.

Because the tax rules applicable to derivative financial instruments are in some cases uncertain under current law, an adverse determination or future guidance by the IRS with respect to these rules (which determination or guidance could be retroactive) may affect whether we have made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain our qualification as a RIC and avoid a corporate-level tax.

Certain of our derivative transactions and investments in foreign currency-denominated instruments, and any of our transactions in foreign currencies and hedging activities, are likely to produce a difference between our book income and the sum of our taxable income and net tax-exempt income (if any). If such a difference arises, and our book income is less than the sum of our taxable income and net tax-exempt income (if any), we could be required to make distributions exceeding book income to qualify as a RIC that is accorded special tax treatment and to avoid a corporate-level tax. In the alternative, if our book income exceeds the sum of our taxable income and net tax-exempt income (if any), the distribution (if any) of such excess generally will be treated as (i) a dividend to the extent of our remaining earnings and profits (including earnings and profits arising from any tax-exempt income), (ii) thereafter, as a return of capital to the extent of the recipient's basis in its shares, and (iii) thereafter, as gain from the sale or exchange of a capital asset.

Pursuant to a notice issued by the IRS and Treasury Regulations that have yet to be issued but may apply retroactively, a portion of our income (including income allocated from certain pass-through entities) that is attributable to a residual interest in a real estate mortgage investment conduit or taxable mortgage pool (referred to in the Code as an "excess inclusion") will be subject to U.S. federal income tax in all events. This notice also provides, and the regulations are expected to provide, that excess inclusion income of a RIC will be allocated to shareholders of the RIC in proportion to the dividends received by such shareholders, with the same consequences as if the shareholders held the related interest directly. As a result, to the extent we invest in any such interests, it may not be a suitable investment for certain tax-exempt shareholders. Although we do not expect to make investments that generate or pass- through excess inclusion income in the manner described above, we may make such investments, and may need to make certain elections set forth in the IRS notice governing such matters.

In general, excess inclusion income allocated to shareholders (i) cannot be offset by net operating losses (subject to a limited exception for certain thrift institutions), (ii) will constitute unrelated business taxable income ("UBTI") to entities (including a qualified pension plan, an individual retirement account, a 401(k) plan, a Keogh plan or other tax-exempt entity) subject to tax on UBTI, thereby potentially requiring such an entity that is allocated excess inclusion income, and otherwise might not be required to file a U.S. federal income tax return, to file such a tax return and pay tax on such income, and (iii) in the case of a non-U.S. shareholder, will not qualify for any reduction in U.S. federal withholding tax. A shareholder will be subject to U.S. federal income tax on such inclusions notwithstanding any exemption from such income tax otherwise available under the Code.

Our ability to pursue our investment strategy, including a strategy focused on investments in CLOs, certain debt instruments and the generation of fee income, may be limited by our intention to qualify as a RIC and our strategy may bear adversely on our ability to so qualify.

Backup Withholding

Your broker or other intermediary may be required to withhold, for U.S. federal backup withholding tax purposes, a portion of the dividends, distributions and redemption proceeds payable to a non-corporate shareholder who fails to provide the broker or other intermediary with the shareholder's correct taxpayer identification number (in the case of an individual, generally, such

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individual's social security number) or to make the required certification, or who has been notified by the IRS that such shareholder is subject to backup withholding. Certain shareholders are exempt from backup withholding. Backup withholding is not an additional tax and any amount withheld may be refunded or credited against your U.S. federal income tax liability, if any, provided that you furnish the required information to the IRS.

Sale or Exchange of Our Shares

If you sell or otherwise dispose of our common shares, you will generally recognize a gain or loss in an amount equal to the difference between your tax basis in such shares and the amount you receive in exchange for such shares. Any such gain or loss generally will be long-term capital gain or loss if you have held (or are treated as having held) such shares for more than one year at the time of sale. All or a portion of any loss you realize on a taxable sale or exchange of your shares will be disallowed if you acquire other shares from us (whether through the automatic reinvestment of dividends or otherwise) within a 61-day period beginning 30 days before and ending 30 days after your sale or exchange of our shares. In such case, the basis of the shares acquired will be adjusted to reflect the disallowed loss. In addition, any loss realized upon a taxable sale or exchange of our shares held (or deemed held) by you for six months or less will be treated as long-term, rather than short-term, to the extent of any capital gain dividends received (or deemed received) by you with respect to those shares.

You may be entitled to offset your Capital Gain Dividends with capital loss. The Code contains a number of statutory provisions affecting the circumstances under which capital loss may be offset against capital gain and limiting the use of loss from certain investments and activities. Accordingly, if you have capital losses, we urge you to consult your tax advisor.

Upon the sale or exchange of our common shares, your broker or other intermediary generally will be required to provide you and the IRS with cost basis and certain other related tax information about the shares you sold or exchanged. This cost basis reporting requirement is effective for shares purchased, including through dividend reinvestment. Please consult your broker or other intermediary for more information regarding available methods for cost basis reporting and how to select a particular method. Please consult your tax advisor to determine which available cost basis method is best for you.

When we make a tender offer for our shares (as described in "Share Repurchase Program") and you tender all common shares you hold, or are considered to be holding, and you do not hold (directly or by attribution) any other units of our shares (e.g., preferred shares, if any), you will be treated as having sold your shares and generally will realize a capital gain or loss. If you tender fewer than all of your common shares or continue to hold (directly or by attribution) other units of our shares (e.g., preferred shares, if any), there is some risk that you may be treated as having received a distribution under Section 301 of the Code ("Section 301 distribution") unless the redemption is treated as being either (i) "substantially disproportionate" or (ii) otherwise "not essentially equivalent to a dividend" under the relevant rules of the Code. A Section 301 distribution is not treated as a sale or exchange giving rise to a capital gain or loss, but rather is treated as a dividend to the extent supported by our current and accumulated earnings and profits, with the excess treated as a return of capital reducing your tax basis in Company shares, and thereafter as capital gain. Where a redeeming shareholder is treated as receiving a dividend, there is a risk that non-tendering shareholders whose interests in the Company increase as a result of such tender will be treated as having received a taxable distribution from us. Dividend treatment of a tender would also affect the amount and character of income that we are required to distribute for the year in which the redemption occurred. It is possible that such a dividend would qualify as "qualified dividend income"; otherwise, it would be taxable as ordinary income. To the extent we recognize net gains on the liquidation of portfolio securities to meet such tenders, we will be required to make additional distributions to our common shareholders.

Non-U.S. Shareholders

Distributions we pay to shareholders that are not "U.S. persons" within the meaning of the Code ("foreign shareholders") and that we properly report as (1) Capital Gain Dividends, (2) interest-related dividends, and (3) short-term capital gain dividends, each as defined below and subject to certain conditions described below, generally are not subject to withholding of U.S. federal income tax.

In general, the Code defines (1) "short-term capital gain dividends" as distributions of net short-term capital gains in excess of net long-term capital losses and (2) "interest-related dividends" as distributions from U.S. source interest income of types similar to those not subject to U.S. federal income tax if earned directly by an individual foreign shareholder, in each case to the extent such distributions are properly reported as such by us in a written notice to shareholders. The exceptions to withholding for Capital Gain Dividends and short-term capital gain dividends do not apply to (A) distributions to an individual foreign shareholder who is present in the United States for a period or periods aggregating 183 days or more during the year of the distribution and (B) distributions attributable to gain that is treated as effectively connected with the conduct by the foreign shareholder of a trade or business within the United States under special rules regarding the disposition of U.S. real property interests. The exception to withholding for "interest-related dividends" does not apply to distributions to a foreign shareholder (A) that has not provided a satisfactory statement that the beneficial owner is not a U.S. person, (B) to the extent that the dividend is attributable to certain interest on an obligation if the foreign shareholder is the issuer or is a 10% shareholder of the issuer, (C) that is within certain foreign countries that have

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inadequate information exchange with the United States, or (D) to the extent the dividend is attributable to interest paid by a person that is a related person of the foreign shareholder and the foreign shareholder is a controlled foreign corporation. We are permitted to report such part of our dividends as interest-related and/or short-term capital gain dividends as are eligible, but are not required to do so. In the case of shares held through an intermediary, the intermediary may withhold even if we report all or a portion of a payment as an interest-related or short-term capital gain dividend to shareholders.

Foreign shareholders should contact their intermediaries regarding the application of these rules to their accounts.

Distributions to foreign shareholders other than Capital Gain Dividends, interest-related dividends, and short-term capital gain dividends (e.g., dividends attributable to dividend and foreign-source interest income or to short-term capital gains or U.S. source interest income to which the exception from withholding described above does not apply) are generally subject to withholding of U.S. federal income tax at a rate of 30% (or lower applicable treaty rate).

A foreign shareholder is not, in general, subject to U.S. federal income tax on gains (and is not allowed a deduction for losses) realized on the sale of our shares unless (i) such gain is effectively connected with the conduct of a trade or business carried on by such holder within the United States, (ii) in the case of an individual holder, the holder is present in the United States for a period or periods aggregating 183 days or more during the year of the sale and certain other conditions are met, or (iii) certain special rules relating to gain attributable to the sale or exchange of U.S. real property interests apply to the foreign shareholder's sale of our shares.

Foreign shareholders with respect to whom income from us is effectively connected with a trade or business conducted by the foreign shareholder within the United States will in general be subject to U.S. federal income tax on the income derived from us at the graduated rates applicable to U.S. citizens, residents or domestic corporations, whether such income is received in cash or reinvested in additional units of our shares and, in the case of a foreign corporation, may also be subject to a branch profits tax. If a foreign shareholder is eligible for the benefits of a tax treaty, any effectively connected income or gain will generally be subject to U.S. federal income tax on a net basis only if it is also attributable to a permanent establishment maintained by the shareholder in the United States. More generally, foreign shareholders who are residents of a country with an income tax treaty with the United States may obtain different tax results than those described herein and are urged to consult their tax advisors.

In order to have qualified for any exemption from withholding described above (to the extent applicable) or for lower withholding tax rates under income tax treaties, or to establish an exemption from backup withholding, a foreign shareholder must have complied with applicable certification and filing requirements relating to its non-U.S. status (including, in general, furnishing an IRS Form W-8BEN, Form W-8BEN-E or substitute form). Foreign shareholders should contact their tax advisors in this regard.

Special rules (including withholding and reporting requirements) apply to foreign partnerships and those holding our shares through foreign partnerships. Additional considerations may apply to foreign trusts and estates. Investors holding our shares through foreign entities should consult their tax advisors.

A foreign shareholder may be subject to state and local tax and to the U.S. federal estate tax in addition to the U.S. federal tax on income referred to above.

Other Reporting and Withholding Requirements

Sections 1471-1474 of the Code, and the U.S. Treasury Regulations and IRS guidance issued thereunder (collectively, "FATCA"), generally require us to obtain information sufficient to identify the status of each of our shareholders under FATCA or under an applicable intergovernmental agreement (an "IGA"). If a shareholder fails to provide the required information or otherwise fails to comply with FATCA or an IGA, we or our agent may be required to withhold under FATCA 30% of ordinary dividends that we pay to that shareholder and, after December 31, 2018, 30% of the gross proceeds of the sale, redemption or exchange of our shares and certain capital gain dividends we pay to that shareholder. If we make a payment that is subject to FATCA withholding, we, or our agent, are required to withhold even if the payment would otherwise be exempt from withholding under rules applicable to non-U.S. shareholders (e.g., Capital Gain Dividends, short-term capital gain dividends and interest-related dividends). You are urged to consult your tax advisor regarding the applicability of FATCA and any other reporting requirements. In addition, foreign countries are considering, and may implement, laws similar in purpose and scope to FATCA.

The discussions set forth herein do not constitute tax advice, and you are urged to consult your own tax adviser to determine the specific U.S. federal, state, local and foreign tax consequences to you of investing with us.

Item 1A. Risk Factors.

Before you invest in our shares you should be aware of various risks associated with an investment in shares of our common stock, as well as risks generally associated with investment in a company with investment objectives, investment policies, capital structure or trading markets similar to ours. You should carefully consider these risk factors, together with all of the other

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information included in this annual report on Form 10-K and the other reports and documents filed by us with the SEC before you decide whether to make an investment in our common stock. The risks set out below are not the only risks we face. Additional risks and uncertainties not currently known

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to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or results of operations. If any of the following events occur, our business, financial condition and results of operations could be materially adversely affected. In such case, our net asset value and the trading price of our common stock could decline, and you may lose all or part of your investment.

Geopolitical concerns and other global events, including, without limitation, trade conflict, national and international political circumstances (including wars, terrorist acts or security operations) and pandemics or other severe public health events, have contributed and may continue to contribute to volatility in global equity and debt markets. Such concerns have contributed and may continue to contribute to volatility in global equity and debt markets.

An outbreak of respiratory disease caused by a novel coronavirus was first detected in China in December 2019 and subsequently spread globally ("COVID-19"). This coronavirus has resulted and may continue to result in the closing of borders, enhanced health screenings, healthcare service preparation and delivery, quarantines, cancellations, disruptions to supply chains and customer activity, as well as general anxiety and economic uncertainty.

The impact of this coronavirus may be short-term or may last for an extended period of time and has resulted in and may continue to result in a substantial economic downturn. Health crises caused by outbreaks of disease, such as the coronavirus, may exacerbate other pre-existing political, social and economic risks. This impact of this outbreak, and other epidemics and pandemics that may arise in the future, could continue to negatively affect the global economy, as well as the economies of individual countries, individual companies and the market in general in significant and unforeseen ways. For example, a widespread health crisis such as a global pandemic could cause substantial market volatility, exchange trading suspensions and closures, and impact the Company's ability to complete repurchase requests. Any such impact could adversely affect the Company's performance, the performance of the securities in which the Company invests, lines of credit available to the Company and may lead to losses on your investment in the Company. In addition, the increasing interconnectedness of markets around the world may result in many markets being affected by events or conditions in a single country or region or events affecting a single or small number of issuers.

The United States responded to the coronavirus pandemic and resulting economic distress with fiscal and monetary stimulus packages, including the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") passed in late March 2020. The CARES Act provides for over $2.2 trillion in resources to small businesses, state and local governments, and individuals adversely impacted by the COVID-19 pandemic. Further, in March 2021, the government passed the American Rescue Plan Act of 2021, a $1.9 trillion stimulus bill to accelerate the United States' recovery from the economic and health effects of the COVID-19 pandemic. In addition, in mid-March 2020, the Fed cut interest rates to historically low levels and announced a new round of quantitative easing, including purchases of corporate and municipal government bonds. The Fed also enacted various programs to support liquidity operations and funding in the financial markets, including expanding its reverse repurchase agreement operations, which added $1.5 trillion of liquidity to the banking system; establishing swap lines with other major central banks to provide dollar funding; establishing a program to support money market funds; easing various bank capital buffers; providing funding backstops for businesses to provide bridging loans for up to four years; and providing funding to help credit flow in asset-backed securities markets. In addition, the Fed extended credit to small- and medium-sized businesses. As the Fed "tapers" or reduces the amount of securities it purchases pursuant to quantitative easing, and/or if the Fed raises the federal funds rate, there is a risk that interest rates will rise, which could expose fixed-income and related markets to heightened volatility and could cause the value of a fund's investments, and the fund's NAV, to decline, potentially suddenly and significantly. As a result, the Company may experience high redemptions and, as a result, increased portfolio turnover, which could increase the costs that the Company incurs and may negatively impact the Company's performance. There is no assurance that the U.S. government's support in response to COVID-19 economic distress will offset the adverse impact to securities in which the Company may invest and future governmental support is not guaranteed.

In addition to the factors described above, other factors described herein that may affect market, economic and geopolitical conditions, and thereby adversely affect our business include, without limitation:

- economic slowdown in the U.S. and internationally;
- changes in interest rates and/or a lack of availability of credit in the U.S. and internationally;
- commodity price volatility; and
- changes in law and/or regulation, and uncertainty regarding government and regulatory policy.

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Risks Relating to our Business and Structure

Operating under the constraints imposed on us as a BDC and RIC may hinder the achievement of our investment objective.

The 1940 Act and the Code impose numerous constraints on the operations of business development companies and RICs that do not apply to certain other investment vehicles managed by the Adviser and its affiliates. Business development companies are required, for example, to invest at least 70% of their total assets primarily in securities of U.S. private or thinly traded public companies, cash, cash equivalents, U.S. government securities and other high-quality debt instruments that mature in one year or less from the date of investment. Subject to certain exceptions for follow-on investments and distressed companies, an investment in an issuer that has outstanding securities listed on a national securities exchange may be treated as qualifying assets only if such issuer has a common equity market capitalization that is less than $250 million at the time of such investment. In addition, qualification for the special tax treatment accorded RICs and their shareholders requires satisfaction of source-of-income, asset diversification and distribution requirements. We and our Adviser have limited experience operating under the constraints applicable to BDCs, which may hinder our ability to take advantage of attractive investment opportunities and to achieve our investment objective. As a result, we cannot assure you that our Adviser will be able to operate our business successfully under these constraints. Any failure to do so could subject us to enforcement action by the SEC, cause us to fail to satisfy the requirements for qualifying to be treated as a RIC, cause us to fail the 70% test described above or otherwise have a material adverse effect on our business, financial condition or results of operations.

We may be precluded from investing in what we believe are attractive investments if such investments are not qualifying assets for purposes of the 1940 Act. If we do not invest a sufficient portion of our assets in qualifying assets, we could violate the 1940 Act provisions applicable to business development companies and possibly lose our status as a BDC, which would have a material adverse effect on our business, financial condition and results of operations. Similarly, these rules could prevent us from making follow-on investments in existing portfolio companies (which could result in the dilution of our position) or could require us to dispose of investments at inopportune times in order to comply with the 1940 Act. If we need to dispose of such investments quickly, it may be difficult to do so on favorable terms, or at all. For example, we may have difficulty finding a buyer and, even if we do find a buyer, we may have to sell such investments for less than we could have received if we were able to sell them at a later time.

We depend upon key personnel of the Adviser and its affiliates.

We are an externally managed BDC and therefore we do not have any internal management capacity or employees. We will depend on the diligence, skill and network of business contacts of the Adviser to achieve our investment objective. We expect the Adviser to evaluate, negotiate, structure, close and monitor our investments in accordance with the terms of the Investment Advisory Agreement.

We depend upon the senior professionals of the Adviser to maintain relationships with potential sources of lending opportunities, and we intend to rely heavily upon these relationships to provide us with potential investment opportunities. We cannot assure you that these individuals will continue to indirectly provide investment advice to us. We do not intend to purchase any "key person" insurance coverage respecting such investment personnel. If these individuals do not maintain their existing relationships with our Adviser, maintain existing relationships or develop new relationships with other sources of investment opportunities, we may not be able to grow our investment portfolio. In addition, individuals with whom the senior professionals of our Adviser have relationships are not obligated to provide us with investment opportunities. Therefore, we can offer no assurance that such relationships will generate investment opportunities for us.

If our Adviser is unable to manage our investments effectively, we may be unable to achieve our investment objective.

Our ability to achieve our investment objective will depend upon our ability to manage and grow our business. This will depend, in turn, on our Adviser's ability to identify, invest in and monitor companies that meet our investment criteria. The achievement of our investment objective on a cost-effective basis will depend upon our Adviser's execution of our investment process, its ability to provide competent, attentive and efficient services to us and our access to financing on acceptable terms. Our Adviser will have substantial responsibilities under the Investment Advisory Agreement. The personnel of our Adviser are engaged in other business activities and may be called upon to provide managerial assistance to our portfolio companies, either of which could distract them, divert their time and attention such that they could no longer dedicate a significant portion of their time to our businesses or otherwise slow our rate of investment. Any failure to manage our business and our future growth effectively could have a material adverse effect on our business, financial condition, results of operations and cash flows.

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An investment in our shares is not an investment in existing funds, accounts or other investment vehicles managed by the Adviser or its affiliates except to the extent that we, consistent with the 1940 Act, invest in such entities. Our performance, therefore, is distinct from the prior performance of such entities.

Our primary focus in making investments generally differs from that of existing investment funds, accounts or other investment vehicles that are or have been managed or sponsored by the Adviser or its affiliates. In addition, investors in our common stock are not acquiring an interest in any such investment funds, accounts or other investment vehicles that are or have been managed or sponsored by the Adviser or its affiliates. While we may consider co-investing in portfolio investments with other investment funds, accounts or investment vehicles managed or sponsored by the Adviser or its affiliates, our ability to make such investments will be limited by the 1940 Act, including, potentially, requiring the prior approval of our independent directors. We and the Adviser have obtained an exemptive order dated April 19, 2016 from the SEC to permit co-investments among the Company and other accounts managed by the Adviser or its affiliates, subject to certain conditions. We may also invest alongside our Adviser's other clients as

otherwise permissible under regulatory guidance, applicable regulations and the allocation policy of our Adviser and its affiliates. We also cannot assure you that we will replicate the historical results achieved by the Adviser or its affiliates, and we caution you that our investment returns could be substantially lower than the returns achieved by them in prior periods. Additionally, all or a portion of the prior results may have been achieved in particular market conditions which may never be repeated.

The highly competitive market for investment opportunities in which we operate may limit our investment opportunities.

A number of entities compete with us to make the types of investments we plan to make in middle- market companies. We compete with public and private funds, including other business development companies, commercial and investment banks, commercial financing companies, and, to the extent they provide an alternative form of financing, private equity funds. Additionally, as competition for investment opportunities increases, alternative investment vehicles, such as hedge funds, may invest in middle-market companies. As a result of these new entrants, competition for investment opportunities in middle-market companies may intensify. Many of our potential competitors are substantially larger and have access to considerably greater financial, technical and marketing resources than we do. For example, some competitors may have a lower cost of funds and access to funding sources that are not available to us which could allow them to offer more favorable terms to borrowers. In addition, some of our competitors have higher risk tolerances or different risk assessments, which could allow them to consider a wider variety of investments and establish more relationships than us. Furthermore, many of our competitors are not subject to the regulatory restrictions the 1940 Act imposes on us as a BDC. We cannot assure you that the competitive pressures we face will not have a material adverse effect on our business, financial condition and results of operations. Also, as a result of this competition, we may not be able to take advantage of attractive investment opportunities from time to time, and we can offer no assurance that we will be able to identify and make investments that are consistent with our investment objective. Participants in our industry compete on several factors, including price, flexibility in transaction structuring, customer service, reputation, market knowledge and speed in decision-making. We will not seek to compete primarily based on the interest rates we offer, and we believe that some of our competitors may make loans with interest rates that are lower than the rates we offer. We may lose investment opportunities if we do not match our competitors' pricing, terms and structure. However, if we match our competitors' pricing, terms and structure, we may reduce our net investment income and increase our risk of credit loss.

The global capital markets are in a period of disruption and instability. These market conditions materially and adversely affected debt and equity capital markets in the United States and abroad, which could have a negative impact on our business, financial condition and results of operations.

Uncertainties surrounding the sovereign debt of a number of European Union (EU) countries and the viability of the EU have disrupted and may in the future disrupt markets in the United States and around the world. If one or more countries leave the EU or the EU dissolves, the world's securities markets likely will be significantly disrupted. On January 31, 2020, the UK left the EU, commonly referred to as "Brexit," and the UK ceased to be a member of the EU. Following a transition period during which the EU and the UK Government engaged in a series of negotiations regarding the terms of the UK's future relationship with the EU, the EU and the UK Government signed an agreement on December 30, 2020 regarding the economic relationship between the UK and the EU. This agreement became effective on a provisional basis on January 1, 2021 and formally entered into force on May 1, 2021.. While the full impact of Brexit is unknown, Brexit has already resulted in volatility in European and global markets. There remains significant market uncertainty regarding Brexit's ramifications, and the range of potential outcomes of possible political, regulatory, economic, and market outcomes are difficult to predict. This uncertainty may affect other countries in the EU and elsewhere, and may cause volatility within the EU, triggering prolonged economic downturns in certain countries within the EU. Despite the influence of the lockdowns, and the economic bounce back, Brexit has had a material impact on the UK's economy. Additionally, trade between the UK and the EU did not benefit from the global rebound in trade in 2021, and remained at the very low levels experienced at the start of the novel coronavirus (COVID-19) pandemic in 2020, highlighting Brexit's potential long-term effects on the UK economy. In addition, Brexit may create additional and substantial economic stresses for the UK, including a contraction of the UK economy and price volatility in UK stocks, decreased trade, capital outflows, devaluation of the British pound, wider corporate bond spreads due to uncertainty and declines in business and consumer spending as well as foreign direct investment. Brexit may also adversely affect UK-based financial firms that have counterparties in the EU or participate in market infrastructure (trading venues, clearing houses, settlement facilities) based in the EU. Additionally, the spread of the novel coronavirus (COVID-19)

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pandemic is likely to continue to stretch the resources and deficits of many countries in the EU and throughout the world, increasing the possibility that countries may be unable to make timely payments on their sovereign debt. These events and the resulting market volatility may have an adverse effect on the performance of the Company.

Political and military events, including in Russia, North Korea, Venezuela, Iran, Ukraine, Syria, and other areas of the Middle East, and nationalist unrest in Europe and South America, also may cause market disruptions. As a result of continued political tensions and armed conflicts, including the Russian invasion of Ukraine commencing in February of 2022, the extent and ultimate result of which are unknown at this time, the United States and the EU, along with the regulatory bodies of a number of countries, have imposed economic sanctions on certain Russian corporate entities and individuals, and certain sectors of Russia's economy, which may result in, among other things, the continued devaluation of Russian currency, a downgrade in the country's credit rating, and/or a decline in the value and liquidity of Russian securities, property or interests. These sanctions could also result in the immediate freeze of Russian securities and/or funds invested in prohibited assets, impairing the ability of the Company to buy, sell, receive or deliver those securities and/or assets. These sanctions or the threat of additional sanctions could also result in Russia taking counter measures or retaliatory actions, which may further impair the value and liquidity of Russian securities. The United States and other nations or international organizations may also impose additional economic sanctions or take other actions that may adversely affect Russia-exposed issuers and companies in various sectors of the Russian economy. Any or all of these potential results could lead Russia's economy into a recession. Economic sanctions and other actions against Russian institutions, companies, and individuals resulting from the ongoing conflict may also have a substantial negative impact on other economies and securities markets both regionally and globally, as well as on companies with operations in the conflict region, the extent to which is unknown at this time. The United States and the EU have also imposed similar sanctions on Belarus for its support of Russia's invasion of Ukraine.

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Additional sanctions may be imposed on Belarus and other countries that support Russia. Any such sanctions could present substantially similar risks as those resulting from the sanctions imposed on Russia, including substantial negative impacts on the regional and global economies and securities markets.

Any return of the U.S. or global economic downturn or a recession period in the United States could adversely impact our investments. In addition, social and political tensions and conflict around the world, and particularly in the Middle East, may continue to contribute to increased market volatility, may have long-term effects on the U.S. and worldwide financial markets and may cause further economic uncertainty or deterioration in the United States and worldwide. We do not know how long the financial markets will continue to be affected by these events and cannot predict the effects of these or similar events in the future on the U.S. economy and securities markets, the global economy and securities markets or on our investments. We monitor developments and seek to manage our investments in a manner consistent with achieving our investment objective, but there can be no assurance that we will be successful in doing so, and we may not timely anticipate or manage existing, new or additional risks, contingencies or developments, including regulatory developments in the current or future market environment.

While these conditions persist, we and other companies in the financial services sector may be required to, or may choose to, seek access to alternative markets for debt and equity capital. Equity capital may be difficult to raise because, subject to certain limited exceptions, as a BDC, we are not generally able to issue and sell our common stock at a price below net asset value per share without first obtaining approval for such issuance from our stockholders and independent directors. In addition, the debt capital that will be available to us, if at all, may be at a higher cost and on terms and conditions that may be less favorable than we expect, which, if incurred, could negatively affect our financial performance and results in the future. In addition, the portfolio companies in which we invest may not be able to service or refinance their debt, which could materially and adversely affect our financial condition, as we could experience reduced income or even losses. The inability to raise capital and the risk of portfolio company defaults may have a negative effect on our business, financial condition and results of operations. Another prolonged period of market illiquidity may also cause us to reduce the volume of loans we originate and/or fund below historical levels and adversely affect the value of our portfolio investments, which could have a material and adverse effect on our business, financial condition and results of operations.

Moreover, recent market conditions have made, and may in the future make, it difficult to extend the maturity of or refinance our existing indebtedness and any failure to do so could have a material adverse effect on our business, financial condition and results of operations. The illiquidity of our investments may make it difficult for us to sell such investments if required. As a result, we may realize significantly less than the value at which we have recorded our investments.

Capital markets volatility also affects our investment valuations. While most of our investments will not be publicly traded, applicable accounting standards require us to assume as part of our valuation process that our investments are sold in a principal market to market participants (even if we plan on holding an investment through its maturity). As a result, volatility in the capital markets can adversely affect our valuations.

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We have elected to be treated as a RIC and intend each year to qualify and to be eligible to be treated as such. If we fail to qualify for treatment as a RIC, we will, among other things, be subject to corporate-level income tax.

We have elected to be treated as a RIC under Subchapter M of the Code and intend each year to qualify and be eligible to be treated as such. In order to qualify for the special tax treatment accorded RICs and their shareholders, we must meet certain gross income, diversification and distribution requirements. A RIC generally is not subject to tax at the corporate level on income and gains from investments that are timely distributed to shareholders. Our ability to pursue our investment strategy, including a strategy focused on investments in CLOs, certain debt instruments and the generation of fee income, may be limited or adversely affected by our intention to qualify as a RIC and our strategy may bear adversely on our ability to so qualify. Our failure to qualify as a RIC would result in, among other things, corporate-level taxation, and consequently, a reduction in the value of an investment in our shares.

If we failed to qualify for treatment as a RIC, we would be subject to tax on all our taxable income at regular corporate rates and all of our distributions from earnings and profits (including from net long-term capital gains) would be taxable to stockholders as ordinary income. We would not be able to deduct distributions to stockholders, nor would we be required to make such distributions. Distributions, including distributions of net long-term capital gain, would generally be taxable to our stockholders as ordinary dividend income to the extent of our current and accumulated earnings and profits. Subject to certain limitations under the Code, corporate stockholders would be eligible to claim a dividends-received deduction with respect to such dividends, and non-corporate stockholders would generally be able to treat such dividends as "qualified dividend income," which is subject to reduced rates of U.S. federal income tax. To the extent such distributions exceed our current and accumulated earnings and profits, such excess distributions will be treated first as a return of capital to the extent of a stockholder's tax basis in his or her shares, and then as a capital gain. Reducing a stockholder's tax basis will have the effect of increasing his or her gain (or reducing loss) on a subsequent sale of shares. If we fail to qualify as a RIC for a period greater than two consecutive taxable years, to qualify as a RIC in a subsequent year we may be subject to regular corporate tax on any net built-in gains with respect to certain of our assets (i.e., the excess of the aggregate gains, including items of income, over aggregate losses that would have been realized with respect to such assets if we had been liquidated) that we elect to recognize on requalification or when recognized over the next ten years.

Our distributions may exceed our net investment income. As a result, portions of the distributions that we make may represent a return of capital to you for tax purposes, which will lower your tax basis in your shares and reduce the amount of funds we have available for investment in targeted assets.

A return of capital is a return of your investment rather than a return of earnings or gains derived from our investment activities and will be made after the offering, including any fees payable to our Adviser. Although a return of capital is not currently taxable, it will lower your tax basis in your shares, which may increase your gain or decrease your loss in connection with a sale of our shares.

We may have difficulty paying our required distributions if we recognize income before or without receiving cash representing such income.

For U.S. federal income tax purposes, we will include in income certain amounts that we have not yet received in cash, such as original issue discount, which may arise if we receive warrants in connection with the making of a loan or possibly in other circumstances, or PIK interest, which represents contractual interest added to the loan balance and due at the end of the loan term. Such original issue discount, which could be significant relative to our overall investment assets and increases in loan balances as a result of PIK interest will be included in income before we receive any corresponding cash payments. We also may be required to include in income certain other amounts that we will not receive in cash.

Accordingly, in order to qualify for the special tax treatment accorded RICs and their shareholders, we may be required to distribute income accrued prior to the receipt of cash and thus we may have to sell some of our investments at times we would not consider advantageous, raise additional debt or equity capital or reduce new investment originations to meet these distribution requirements.

We may retain a portion of our earnings and be subject to excise tax on such earnings.

If we fail to distribute in a calendar year at least an amount equal to the sum of 98% of our ordinary income for such year and 98.2% of our capital gain net income (adjusted for certain ordinary losses) for the one-year period ending on October 31 of such year (unless an election is made to use our taxable year), plus any such undistributed amounts from the prior year, we will be subject to a nondeductible 4% excise tax on the undistributed amounts. We reserve the right to pay the excise tax when circumstances warrant.

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Potential tax consequences if we were not a “publicly offered” RIC

If for any taxable year we were not a “publicly offered” RIC within the meaning of Code Section 67(c)(2)(B), certain of our direct and indirect expenses, including the management fee, the incentive fee and certain other advisory expenses, would be subject to special “pass-through” rules. Such rules would treat these expenses as additional dividends to certain of our direct or indirect shareholders (generally including other RICs that are not “publicly offered,” individuals and entities that compute their taxable income in the same manner as an individual) and, under current law, are not deductible by those shareholders that are individuals (or entities that compute their taxable income in the same manner as an individual).

To qualify for the special tax treatment accorded to RICs and their shareholders, we must, among other things, distribute to our shareholders with respect to each taxable year at least 90% of the sum of our “investment company taxable income” (as that term is defined in the Code, without regard to the deduction for dividends paid—generally taxable ordinary income and the excess, if any, of net short-term capital gains over net long-term capital losses) and any net tax-exempt interest income (the excess of our gross tax-exempt interest over certain disallowed deductions), for such year, in a manner qualifying for the dividends paid deduction. If we were not a “publicly offered” RIC within the meaning of Code Section 67(c)(2)(B) for any taxable year, such status would potentially render distributions to our shareholders non-deductible by virtue of the terms of our distribution reinvestment plan, which would bear adversely on our ability to satisfy the distribution requirements to qualify as a RIC accorded special tax treatment for such year.

If we make loans to borrowers that include PIK interest or accretion of original issue discount provisions, this could increase the risk of default by our borrowers.

Some of the loans we make or acquire may provide for the payment by borrowers of PIK interest or accreted original issue discount at maturity. Such loans have the effect of deferring a borrower’s payment obligation until the end of the term of the loan, which may make it difficult for us to identify and address developing problems with borrowers in terms of their ability to repay us. Particularly in a rising interest rate environment, loans containing PIK and original issue discount provisions can give rise to negative amortization on a loan, resulting in a borrower owing more at the end of the term of a loan than what it owed when the loan was originated. Any such developments may increase the risk of default on our loans by borrowers.

Any PIK interest payments we receive will increase our assets under management and, as a result, will increase the amount of base management fees payable by us to our Adviser.

Certain of our debt investments may contain provisions providing for the payment of PIK interest. Because PIK interest results in an increase in the size of the loan balance of the underlying loan, the receipt by us of PIK interest will have the effect of increasing our assets under management. As a result, because the base management fee that we pay to our Adviser is based on the value of our consolidated gross assets, the receipt by us of PIK interest will result in an increase in the amount of the base management fee payable by us regardless of whether the PIK interest income is ever realized. In addition, any such increase in a loan balance due to the receipt of PIK interest will cause such loan to accrue interest on the higher loan balance, which will result in an increase in our pre-incentive fee net investment income and, as a result, an increase in incentive fees that are payable by us to our Adviser.

Regulations governing our operation as a BDC will affect our ability to raise, and the way in which we raise, additional debt or equity capital.

We expect that we will require a substantial amount of capital. We may issue debt securities or preferred stock and/or borrow money from banks or other financial institutions, which we refer to collectively as “senior securities,” up to the maximum amount permitted by the 1940 Act. Under the provisions of the 1940 Act, we will be permitted as a BDC to issue senior securities only in amounts such that our asset coverage, as defined in the 1940 Act, equals at least 200% after each issuance of senior securities. If the value of our assets declines, we may be unable to satisfy this test. If that happens, we may be required to sell a portion of our investments at a time when such sales may be disadvantageous and, depending on the nature of our leverage, repay a portion of our indebtedness.

Senior Securities. If we issue senior securities, we will be exposed to typical risks associated with leverage, including an increased risk of loss. If we issue preferred stock, such securities would rank “senior” to common stock in our capital structure, and preferred stockholders would have separate voting rights, dividend and liquidation rights, and possibly other rights, preferences or privileges more favorable than those granted to holders of our

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common stock. Furthermore, the issuance of preferred stock could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for our common stockholders or otherwise be in your best interest.

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Additional Common Stock. The Board may decide to issue common stock to finance our operations rather than issuing debt or other senior securities. As a BDC, we are not generally able to issue and sell our common stock at a price below current net asset value per share. We may, however, issue or sell our common stock at a price below the current net asset value of the common stock, or sell warrants, options or rights to acquire such common stock, at a price below the current net asset value of the common stock if the Board determines that such sale is in the best interests of us and our stockholders, and if our stockholders approve such sale within 12 months prior to such sale. In any such case, the price at which our securities are to be issued and sold may not be less than a price which, in the determination of the Board, closely approximates the fair value of such securities as determined by the Adviser, as the Company's valuation designee. We also may conduct rights offerings at prices per share less than the net asset value per share, subject to the requirements of the 1940 Act. If we raise additional funds by issuing additional common stock or senior securities convertible into, or exchangeable for, our common stock, the ownership percentage of our stockholders at that time would decrease, and our stockholders may experience dilution.

If we enter into securitization transactions, we may be subject to additional risks.

In addition to issuing securities to raise capital as described above, we may securitize our loans to generate cash for funding new investments. To securitize loans, we may create a wholly-owned subsidiary, contribute a pool of loans to the subsidiary and have the subsidiary issue primarily investment grade debt securities to purchasers who we would expect to be willing to accept a substantially lower interest rate than the loans earn. Even though we expect the pool of loans that we contribute to any such securitization vehicle to be rated below investment grade, because the securitization vehicle's portfolio of loans would secure all of the debt issued by such vehicle, a portion of such debt may be rated investment grade, subject in each case to market conditions that may require such portion of the debt to be over collateralized and various other restrictions. If applicable accounting pronouncements or SEC staff guidance require us to consolidate the securitization vehicle's financial statements with our financial statements, any debt issued by it would be generally treated as if it were issued by us for purposes of the asset coverage ratio applicable to us. In such case, we would expect to retain all or a portion of the equity and/or subordinated notes in the securitization vehicle. Our retained equity would be exposed to any losses on the portfolio of loans before any of the debt securities would be exposed to such losses. Accordingly, if the pool of loans experienced a low level of losses due to defaults, we would earn an incremental amount of income on our retained equity, but we would be exposed, up to the amount of equity we retained, to that proportion of any losses we would have experienced if we had continued to hold the loans in our portfolio. We would have no direct ability to enforce the payment obligations on the loans contributed to the securitization vehicle. We may hold subordinated debentures in any such securitization vehicle and, if so, we would not consider such securities to be senior securities. An inability to successfully securitize our loan portfolio could limit our ability to grow our business and fully execute our business strategy and adversely affect our earnings, if any. Moreover, the successful securitization of a portion of our loan portfolio might expose us to losses as the residual loans in which we do not sell interests will tend to be those that are riskier and less liquid. Any fee payable under any servicing or collateral management agreement in respect of the securitization would be offset in an amount equal to the base management fee payable under the Investment Advisory Agreement.

As part of the securitization transaction, we would likely enter into an agreement under which we would be required to repurchase any loan (or participation interest therein) which was sold to the securitization vehicle in breach of any representation or warranty made by us with respect to such loan on the date such loan was sold.

The structure of a securitization transaction is intended to prevent, in the event of our bankruptcy, the consolidation of the securitization vehicle with our operations. If the true sale of these assets were not respected in the event of our insolvency, a trustee or debtor-in-possession might reclaim the assets of the securitization vehicle for our estate. However, in doing so, we would become directly liable for all of the indebtedness then outstanding under the securitization transaction, which would equal the full amount of debt of the securitization vehicle reflected on our consolidated balance sheet.

Recourse to us by the securitization vehicle would be limited and generally consistent with the terms of other similarly structured finance transactions. In a securitization transaction, we would sell and/or contribute to the securitization vehicle all of our ownership interest in certain of our portfolio loans and participations for the purchase price and other consideration set forth in the securitization agreement. This transfer would be structured by its terms to provide limited recourse to us by the securitization vehicle relating to certain representations and warranties with respect to certain characteristics including title and quality of the portfolio loans that were transferred to the securitization vehicle. If we breached these representations and warranties and such breach materially and adversely affected the value of the portfolio loans or the interests of holders of notes issued by the securitization vehicle, then we could be required to (a) cure such breach in all material respects, (b) repurchase the portfolio loan or loans subject to such breach or (c) remove the portfolio loan or loans subject to such breach from the pool of loans and other assets held by the securitization vehicle and substitute a portfolio loan or loans that meet the requirements of the securitization documents. This repurchase and substitution obligation of us would constitute the sole remedy available against us for any breach of a representation or warranty related to the portfolio loans transferred to the securitization vehicle.

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We intend to finance our investments with borrowed money, which will magnify the potential for gain or loss on amounts invested and may increase the risk of investing in us.

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The use of leverage magnifies the potential for gain or loss on amounts invested. We expect to incur leverage through a credit facility and, from time to time, intend to incur additional leverage to the extent permitted under the 1940 Act. The use of leverage is generally considered a speculative investment technique and increases the risks associated with investing in our securities. In the future, we may borrow from, and issue senior securities, to banks, insurance companies and other lenders. Holders of these senior securities will have fixed dollar claims on our assets that are superior to the claims of our common stockholders, and we would expect such holders to seek recovery against our assets in the event of a default. We may pledge up to 100% of our assets and may grant a security interest in all of our assets under the terms of any debt instruments into which we may enter. In addition, under the terms of any credit facility or other debt instrument we enter into, we are likely to be required by its terms to use the net proceeds of any investments that we sell to repay a portion of the amount borrowed under such facility or instrument before applying such net proceeds to any other uses.

If the value of our assets decreases, leveraging would cause net asset value to decline more sharply than it otherwise would have had we not leveraged, thereby magnifying losses or eliminating our equity stake in a leveraged investment. Similarly, any decrease in our revenue or income will cause our net income to decline more sharply than it would have had we not borrowed. Such a decline would also negatively affect our ability to make dividend payments on our common stock or preferred stock. Our ability to service our debt will depend largely on our financial performance and will be subject to prevailing economic conditions and competitive pressures. In addition, our common stockholders will bear the burden of any increase in our expenses as a result of our use of leverage, including interest expenses and any increase in the management fee payable to our Adviser.

As a BDC, we generally are required to meet a coverage ratio of total assets to total borrowings and other senior securities, which includes all of our borrowings and any preferred stock that we may issue in the future, of at least 150%. If this ratio declines below 150%, we cannot incur additional debt and could be required to sell a portion of our investments to repay some debt at a time when it is disadvantageous to do so. This could have a material adverse effect on our operations, and we may not be able to make distributions. The amount of leverage that we employ will depend on the Adviser's and the Board's assessment of market conditions and other factors at the time of any proposed borrowing. We cannot assure you that we will be able to obtain credit on terms acceptable to us or at all.

In addition, the terms of indebtedness that we incur in the future could impose financial and operating covenants that restrict our business activities, including limitations that may hinder our ability to finance additional loans and investments or make the distributions required to qualify for the special tax treatment accorded RICs and their shareholders under the Code. Furthermore, the terms of any credit facility and other indebtedness that we incur in the future may contain various covenants which, if not complied with, could accelerate repayment, thereby materially and adversely affecting our liquidity, financial condition, results of operations and our ability to pay distributions to our stockholders.

As of December 31, 2022, the Company did not utilize any leverage.

We may enter into reverse repurchase agreements, which are another form of leverage.

We may enter into reverse repurchase agreements. A repurchase agreement is an agreement by a bank or other financial institution to buy securities or another asset with a corresponding agreement that it will resell these same securities or assets to the same seller for an agreed-upon price on a certain day (often the next day). A reverse repurchase agreement is the same as a repurchase agreement, but from the perspective of the buyer rather than the seller. Under a reverse repurchase agreement, we will pledge our assets as collateral to secure a short- term loan. Generally, the other party to the agreement makes the loan in an amount equal to a percentage of the fair value of the pledged collateral. At the maturity of the reverse repurchase agreement, we will be required to repay the loan and correspondingly release our collateral.

Our use of reverse repurchase agreements, if any, involves many of the same risks involved in our use of leverage, as the proceeds from reverse repurchase agreements generally will be invested in additional securities. There is a risk that the market value of the securities acquired in the reverse repurchase agreement may decline below the price of the securities that we have sold but we will remain obligated to repurchase pursuant to the terms of the repurchase agreement.

In addition, there is a risk that the market value of the securities retained by us may decline. If a buyer of securities under a reverse repurchase agreement were to file for bankruptcy or experience insolvency, we may be adversely affected. Also, in entering into reverse repurchase agreements, we would bear the risk of loss to the extent that the proceeds of such agreements at settlement are less than the fair value of the underlying securities being pledged.

Reverse repurchase agreements are considered leverage under the 1940 Act. We may "set aside" liquid assets, or engage in other appropriate measures, to "cover" obligations with respect to transactions in reverse repurchase agreements. As a result of such segregation, our obligations under such transactions will not be considered senior securities representing indebtedness for purposes of the 1940 Act and our use of leverage through reverse repurchase agreements will not be limited by the 1940 Act.

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We are exposed to risks resulting from the current low interest rate environment.

Since we will borrow money to make investments, our net investment income depends, in part, upon the difference between the rate at which we borrow funds and the rate at which we invest those funds. The current, historically low interest rate environment can, depending on our cost of capital, depress our net investment income, even though the terms of our investments generally will include a minimum interest rate. In addition, any reduction in the level of interest rates on new investments relative to interest rates on our current investments could adversely impact our net investment income, reducing our ability to service the interest obligations on, and to repay the principal of, our indebtedness, as well as our capacity to pay dividends. Any such developments would result in a decline in our net asset value and in the trading price of our common stock.

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When interest rates increase, floating rate interest rate reset features on debt instruments may make it more difficult for borrowers to repay their loans, and separately, will make it easier for the Adviser to meet its income incentive fee threshold without any additional effort.

Beginning in March 2022, the U.S. Federal Reserve (the "Fed") began increasing interest rates and has signaled the potential for further increases. It is difficult to accurately predict the pace at which the Fed will increase interest rates any further, or the timing, frequency or magnitude of any such increases, and the evaluation of macro-economic and other conditions could cause a change in approach in the future. A rise in the general level of interest rates can be expected to lead to higher interest rates applicable to our debt investments, particularly since our strategy includes investments in floating rate loans. Accordingly, an increase in interest rates would make it easier for us to meet or exceed the incentive fee hurdle and may result in a substantial increase of the amount of incentive fees payable to the Adviser with respect to Pre- Incentive Fee Net Investment Income.

There is also a risk that our borrowers will be unable to pay escalating interest amounts if general interest rates rise, resulting in a default under their loan documents with us. This could also cause borrowers to shift cash from other productive uses to the payment of interest, which may have a material adverse effect on their business and operations and could, over time, lead to increased defaults. In addition, increasing payment obligations under floating rate loans may cause borrowers to refinance or otherwise repay our loans earlier than they otherwise would, requiring us to incur management time and expense to re-deploy such proceeds, including on terms that may not be as favorable as our existing loans. We expect that many of our debt investments will include floating interest rates that reset on a periodic basis and typically do not require the borrowers to pay down the outstanding principal of such debt prior to maturity. These features of our debt investments will increase our risk of losing a substantial amount of our investments if borrowers are unable to pay the increased interest resulting from these reset provisions or if borrowers are unable to repay or refinance their debts at maturity.

Because loans are not ordinarily registered with the SEC or any state securities commission or listed on any securities exchange, there is usually less publicly available information about such instruments. In addition, loans may not be considered "securities" for purposes of the federal securities laws and, as a result, as a purchaser of these instruments, we may not be entitled to the anti-fraud protections of the federal securities laws. In the course of investing in such instruments, we may come into possession of material nonpublic information and, because of prohibitions on trading in securities of issuers while in possession of such information, we may be unable to enter into a transaction in a publicly traded security of that issuer when it would otherwise be advantageous for us to do so. Alternatively, we may choose not to receive material nonpublic information about an issuer of such loans, with the result that we may have less information about such issuers than other investors who transact in such assets.

Any failure on our part to maintain our status as a BDC would reduce our operating flexibility.

If we lose our status as a BDC, we might be regulated as a closed-end investment company under the 1940 Act, which would subject us to substantially more regulatory restrictions under the 1940 Act and correspondingly decrease our operating flexibility. For example, if we were to be regulated as a closed-end investment company under the 1940 Act, we would be further limited in the amount of leverage we could incur and would face additional restrictions governing our ability to engage in transactions with our affiliates.

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Since we intend to use debt to finance our investments, and we may use debt financing, changes in interest rates may affect our cost of capital and net investment income.

Interest rate fluctuations may have a substantial negative impact on our investments, the value of our common stock and our rate of return on invested capital. Since we intend to use debt to finance investments, our net investment income will depend, in part, upon the difference between the rate at which we borrow funds and the rate at which we invest those funds. As a result, we can offer no assurance that a significant change in market interest rates will not have a material adverse effect on our net investment income. In periods of rising interest rates when we have debt outstanding, our cost of funds will increase, which could reduce our net investment income. Conversely, in periods of falling interest rates, the probability that our loans and other investments in portfolio companies will be pre-paid increases. In such periods, we can offer no assurance that we will be able to make new loans on the same terms, or at all. If we cannot make new loans on terms that are the same or better than the investments that are repaid, then our results of operations and financial condition will be adversely affected. We expect that our investments will be financed primarily with equity and long-term debt. We may use interest rate risk management techniques in an effort to limit our exposure to interest rate fluctuations. These techniques may include various interest rate hedging activities to the extent permitted by the 1940 Act. These activities may limit our ability to participate in the benefits of lower interest rates with respect to the hedged portfolio. Adverse developments resulting from changes in interest rates or hedging transactions could have a material adverse effect on our business, financial condition and results of operations. Additionally, our ability to engage in hedging transactions may also be adversely affected by recent rules adopted by the CFTC, unless we register with the CFTC as a commodity pool operator.

You should also be aware that a rise in the general level of interest rates can be expected to lead to higher interest rates applicable to our debt investments. Accordingly, an increase in interest rates would make it easier for us to meet or exceed the incentive fee hurdle rate and may result in a substantial increase in the amount of incentive fees payable to our Adviser with respect to Pre-Incentive Fee Net Investment Income.

There are significant potential conflicts of interest that could affect our investment returns.

As a result of our arrangements with the Adviser, there may be times when our Adviser has interests that differ from those of our stockholders, giving rise to a conflict of interest.

There are conflicts of interest related to the obligations of the Adviser or its affiliates to other clients.

The Adviser or its affiliates may have other clients with similar, different or competing investment objectives. In serving in these multiple capacities, they may have obligations to other clients or investors in those other entities, the fulfillment of which may not be in the best interests of us or

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our stockholders. For example, our Adviser and its affiliates manage or sponsor other investment funds, accounts or other investment vehicles. Our investment objective may overlap with the investment objectives of such affiliated investment funds, accounts or other investment vehicles. As a result, our Adviser may face conflicts of interest in the allocation of investment opportunities among us and other investment funds, accounts or other investment vehicles advised by or affiliated with our Adviser. Our Adviser will seek to allocate investment opportunities among eligible accounts in a manner that is fair and equitable over time and consistent with its allocation policy. However, we can offer no assurance that such opportunities will be allocated to us fairly or equitably in the short-term or over time. Where we are able to co- invest consistent with the requirements of the 1940 Act and SEC exemptive relief, if sufficient securities or loan amounts are available to satisfy our and each such account's proposed demand, the opportunity will be allocated in accordance with our Adviser's pre-transaction determination and the requirements of the exemptive relief. If there is an insufficient amount of an investment opportunity to satisfy our demand and that of other accounts sponsored or managed by our Adviser or its affiliates, the allocation policy and exemptive relief further provides that allocations among us and such other accounts will generally be made pro rata based on the amount that each such party would have invested if sufficient loan amounts were available. However, there can be no assurance that we will be able to participate in all suitable investment opportunities.

Our Adviser or its affiliates may, from time to time, possess material non-public information, limiting our investment discretion.

Principals of our Adviser and its affiliates may serve as directors of, or in a similar capacity with, companies in which we invest, the securities of which are purchased or sold on our behalf. If we obtain material nonpublic information with respect to public companies, or we become subject to trading restrictions under the internal trading policies of those companies or as a result of applicable law or regulations, we could be prohibited for a period of time from purchasing or selling the securities of such companies, and this prohibition may have an adverse effect on us.

Our management and incentive fee structure may create incentives for our Adviser that are not fully aligned with the interests of our stockholders and may induce our Adviser to make speculative investments.

In the course of our investing activities, we will pay management and incentive fees to our Adviser. The incentive fee payable by us to our Adviser may create an incentive for our Adviser to make investments on our behalf that are risky or more speculative than would be the case in the absence of such a compensation arrangement. The management fee is based on our consolidated gross assets. As a result, investors in our common stock will invest on a "gross" basis and receive distributions on a

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"net" basis after expenses, resulting in a lower rate of return than one might achieve through direct investments. Because the management fee is based on our consolidated gross assets, our Adviser will benefit if and when we issue additional equity, incur debt or use leverage. The use of leverage will increase the likelihood of default under any credit facility or other debt instruments we enter into, which would disfavor the holders of our common stock, including investors in this offering.

Under the incentive fee structure, our Adviser may benefit when capital gains are recognized and, because our Adviser determines when a holding is sold, our Adviser controls the timing of the recognition of such capital gains. The Board is charged with protecting our interests by monitoring how our Adviser addresses these and other conflicts of interest associated with its management services and compensation. While they are not expected to review or approve each investment or realization, our independent directors will periodically review our Adviser's services and fees as well as its portfolio management decisions and portfolio performance. In connection with these reviews, our independent directors will consider whether such fees and our expenses (including those related to leverage) remain appropriate. As a result of this arrangement, our Adviser or its affiliates may from time to time have interests that differ from those of our stockholders. Unlike that portion of the incentive fee based on income, there is no hurdle rate applicable to the incentive fee based on net capital gains. As a result, our Adviser may seek to invest more capital in investments that are likely to result in capital gains as compared to income producing securities. This practice could result in our investing in more speculative securities than would otherwise be the case, which could result in higher investment losses, particularly during economic downturns.

The Investment Advisory Agreement and the Administration Agreement with the Adviser were not negotiated on an arm's length basis and may not be as favorable to us as if they had been negotiated with an unaffiliated third party.

The Investment Advisory Agreement and the Administration Agreement were negotiated between related parties. Consequently, their terms, including fees payable to our Adviser, may not be as favorable to us as they might be had they been negotiated with an unaffiliated third party. In addition, in deciding whether and how vigorously to enforce our rights and remedies under these agreements, our Board may, to the extent consistent with applicable law, take into account the value of our ongoing relationship with our Adviser, our administrator and their respective affiliates.

Our ability to enter into transactions with our affiliates will be restricted, which may limit the scope of investments available to us.

We are prohibited under the 1940 Act from participating in certain transactions with our affiliates without the prior approval of our independent directors and, in some cases, of the SEC. Any person that owns, directly or indirectly, five percent or more of our outstanding voting securities will be our affiliate for purposes of the 1940 Act, and we are generally prohibited from buying or selling any security from or to or entering into certain "joint" transactions (which could include investments in the same portfolio company) with such affiliates, absent the prior approval of our independent directors. Our Adviser and its affiliates, including persons that control, are controlled by, or are under common control with, us or our Adviser, are also considered to be our affiliates under the 1940 Act, and we are generally prohibited from buying or selling any security from or to, or entering into "joint" transactions with such affiliates without the prior approval of our independent directors and, in some cases, exemptive relief from the SEC.

We may, however, invest alongside the Adviser's, and its affiliates' other clients in certain circumstances where doing so is consistent with applicable law, SEC staff interpretations and/or appropriate exemptive relief from the SEC. For example, we may invest alongside such accounts consistent with guidance promulgated by the staff of the SEC permitting us and such other accounts to purchase interests in a single class of privately

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placed securities so long as certain conditions are met, including that our Adviser, acting on our behalf and on behalf of other clients, negotiates no term other than price. We and the Adviser have obtained an exemptive order dated April 19, 2016 from the SEC to permit co-investments among the Company and other accounts managed by the Adviser or its affiliates, subject to certain conditions. We may also invest alongside our Adviser's other clients as otherwise permissible under regulatory guidance, applicable regulations and the allocation policy of our Adviser and its affiliates. Under this allocation policy, a calculation, based on the type of investment, will be applied to determine the amount of each opportunity to be allocated to us. This allocation policy will be periodically reviewed by our Adviser and approved by our independent directors. We expect that these determinations will be made similarly for other accounts sponsored or managed by our Adviser and its affiliates. If sufficient securities or loan amounts are available to satisfy our and each such account's proposed demand, we expect that the opportunity will be allocated in accordance with our Adviser's pre- transaction determination. Where there is an insufficient amount of an investment opportunity to satisfy us and other accounts sponsored or managed by our Adviser or its affiliates, the allocation policy further provides that allocations among us and such other accounts will generally be made pro rata based on the amount that each such party would have invested if sufficient securities or loan amounts were available. These allocation policies and procedures are intended to assist the Adviser and its affiliates in ensuring that investment opportunities will be allocated to us fairly and equitably.

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In situations where co-investment with other accounts managed by our Adviser or its affiliates is not permitted or appropriate, our Adviser and its affiliates will need to decide which client will proceed with the investment. Our Adviser's allocation policy provides, in such circumstances, for investments to be allocated on a random or rotational basis to assure that all clients have fair and equitable access to such investment opportunities. Moreover, except in certain circumstances, we will be unable to invest in any issuer in which a fund managed by our Adviser or its affiliates has previously invested. Similar restrictions limit our ability to transact business with our officers or directors or their affiliates. These restrictions may limit the scope of investment opportunities that would otherwise be available to us.

The Adviser may be entitled to receive substantial compensation from us if we consummate a liquidity event, which could negatively impact our investment returns.

In the future, the Board may consider various types of transactions to provide liquidity to stockholders, including: (i) a listing of our shares on a national securities exchange; (ii) a merger or another transaction approved by the Board in which our stockholders will receive cash or securities of a listed company; and (3) a sale of all or substantially all of our assets for cash or other consideration. In the event that the Board approves a sale or merger of our company, it is likely that such a transaction would cause a termination of the Investment Advisory Agreement. Upon the termination of the Investment Advisory Agreement, we would be potentially required to make a one-time payment to the Adviser in an amount based upon the market value of its interest in us as of the date of termination. This potential obligation to make a substantial payment to the Adviser in the event of sale or merger of our company or sale of our assets may limit the amount that our stockholders will receive upon the consummation of a liquidity event.

Because we expect to distribute substantially all of our ordinary income and net realized capital gains to our stockholders, we will need additional capital to finance our growth and such capital may not be available on favorable terms, or at all.

We will need capital to fund growth in our investment portfolio. We may issue debt securities or borrow from financial institutions in order to obtain this additional capital. A reduction in the availability of new capital could limit our ability to grow. We will be required to distribute at least 90% of our ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any, to our stockholders to qualify for the special tax treatment accorded RICs and their stockholders. As a result, these earnings will not be available to fund new investments. If we fail to obtain additional capital to fund new investments, this could limit our ability to grow, which may have an adverse effect on the value of our securities.

In addition, as a BDC, we are generally required to maintain a ratio of at least 200% of total assets to total borrowings, which may restrict our ability to borrow in certain circumstances.

The valuation process for certain of our portfolio holdings creates a conflict of interest.

Many of our portfolio investments are expected to be made in the form of securities that are not publicly traded. As a result, the fair value of these securities will be determined by the Adviser in good faith as described elsewhere in this annual report. In connection with that determination, investment professionals from our Adviser will provide portfolio company valuations based upon the most recent portfolio company financial statements available and projected financial results of each portfolio company. The participation of our Adviser's investment professionals in our valuation process, could result in a conflict of interest as the management fee paid to our Adviser is based, in part, on our consolidated gross assets.

Many of our portfolio investments will be recorded at fair value as determined in good faith by the Adviser, as the Company's valuation designee. As a result, there will be uncertainty as to the value of our portfolio investments.

Many of our portfolio investments will take the form of securities that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable, and we value these securities at fair value as determined in good faith by the Adviser, as the Company's valuation designee pursuant to Board approved policies and procedures including to reflect significant events affecting the value of our securities. As discussed in more detail under "Discussion of Operating Plans — Critical Accounting Policies," most, if not all, of our investments (other than cash and cash equivalents) are expected to be classified as Level 3 under ASC Topic 820, Fair Value Measurement. This means that our portfolio valuations are based on unobservable inputs and our own assumptions about how market participants would price the asset or liability in question. Inputs into the determination of fair value of our portfolio investments requires significant management judgment or estimation.

Even if observable market data are available, such information may be the result of consensus pricing information or broker quotes, which include a disclaimer that the broker would not be held to such a price in an actual transaction. Consensus pricing is a methodology for the determination of fair value based on quotations from market makers. These quotations include a disclaimer that the market maker would not be held to such a price in an actual transaction. The non-binding nature of consensus pricing and/or

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quotes accompanied by disclaimers materially reduces the reliability of such information. We have retained the services of one or more independent service providers to review the valuation of these securities periodically. The types of factors that the Adviser may take into account in determining the fair value of our investments generally include, as appropriate, comparison to publicly traded securities including such factors as yield, maturity and measures of credit quality, the enterprise value of a portfolio company, the nature and realizable value of any collateral, the portfolio company's ability to make payments and its earnings and discounted cash flow, the markets in which the portfolio company does business and other relevant factors. Because such valuations, and particularly valuations of private securities and private companies, are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, our determinations of fair value may differ materially from the values that would have been used if a ready market for these securities existed. In addition, the determination of fair value and thus the amount of unrealized losses we may incur in any year, is, to a degree, subjective, in that it is based on unobservable inputs and certain assumptions. Our net asset value could be adversely affected if our determinations regarding the fair value of our investments were materially higher than the values that we ultimately realize upon the disposal of such securities.

Each quarter, the fair value of each investment in our portfolio. that is not publicly-traded is determined in good faith by the Board or by the Adviser, pursuant to Board-approved policies and procedures. Any changes in fair value are recorded in our statement of operations as a net change in unrealized appreciation or depreciation.

We may experience fluctuations in our quarterly results.

We could experience fluctuations in our quarterly operating results due to a number of factors, including the interest rate payable on the senior securities we acquire, the default rate on such securities, the level of our expenses, variations in, and the timing of the recognition of, realized and unrealized gains or losses, the degree to which we encounter competition in our markets and general economic conditions. As a result of these factors, results for any period should not be relied upon as being indicative of performance in future periods.

Changes in laws or regulations governing our operations may adversely affect our business or cause us to alter our business strategy.

We and our portfolio companies will be subject to regulation at the local, state and federal level. We are also subject to federal, state and local laws and are subject to judicial and administrative decisions that affect our operations, including maximum interest rates, fees and other charges, disclosures to portfolio companies, the terms of secured transactions, collection and foreclosure proceedings and other trade practices. If these laws, regulations or decisions change, or if we expand our business into additional jurisdictions, we may have to incur significant expenses in order to comply or we might have to restrict our operations. New legislation may be enacted or new interpretations, rulings or regulations could be adopted, including those governing the types of investments we or our portfolio companies are permitted to make, any of which could harm us and our stockholders, potentially with retroactive effect. In particular, in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, became law. The Dodd-Frank Act set forth a legislative framework for the regulation of the financial services industry generally, including certain over-the-counter derivatives, such as swaps, in which the Company may invest. The effects of the Dodd- Frank Act on the financial services industry depends, in large part, upon the extent to which regulators exercise the authority granted to them and the approaches taken in implementing regulations. While the continued impact of the Dodd-Frank Act on us and our portfolio companies may not be known for an extended period of time, the Dodd-Frank Act, along with other legislative and regulatory proposals directed at the financial services industry or affecting taxation that are proposed or pending in the U.S. Congress, may negatively impact the operations, cash flows or financial condition of us or our portfolio companies, impose additional costs on us or our portfolio companies, intensify the regulatory supervision of us or our portfolio companies or otherwise adversely affect our business or the business of our portfolio companies. In addition, if we do not comply with applicable laws and regulations, we could lose any licenses we hold for the conduct of our business and may be subject to civil fines and criminal penalties. Significant uncertainty currently exists in the market regarding the ramifications of any repeal or reform of certain parts of the Dodd Frank Act, and the range and potential implications of possible political, regulatory, economic and market outcomes are difficult to predict.

In particular, effective August 19, 2022 (the "Compliance Date"), Rule 18f-4 under the 1940 Act (the "Derivatives Rule") replaced the asset segregation regime of Investment Company Act Release No. 10666 (Release 10666) with a new framework for the use of derivatives by registered funds. As of the Compliance Date, the Securities and Exchange Commission ("SEC") rescinded Release 10666 and withdrew no-action letters and similar guidance addressing a fund's use of derivatives and began requiring funds to satisfy the requirements of the Derivatives Rule. As a result, on or after the Compliance Date, the Company will no longer engage in "segregation" or "coverage" techniques with respect to derivatives transactions and will instead comply with the applicable requirements of the Derivatives Rule.

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The Derivatives Rule mandates that a fund adopt and/or implement: (i) value-at-risk limitations (VaR); (ii) a written derivatives risk management program; (iii) new Board oversight responsibilities; and (iv) new reporting and recordkeeping requirements. In the event that a fund's derivative exposure is 10% or less of its net assets, excluding certain currency and interest rate hedging transactions, it can elect to be classified as a limited derivatives user (Limited Derivatives User) under the Derivatives Rule, in which case the fund is not subject to the full requirements of the Derivatives Rule. Limited Derivatives Users are excepted from VaR testing, implementing a derivatives risk management program, and certain Board oversight and reporting requirements mandated by the Derivatives Rule. However, a Limited Derivatives User is still required to implement written compliance policies and procedures reasonably designed to manage its derivatives risks.

The Derivatives Rule also provides special treatment for reverse repurchase agreements, similar financing transactions and unfunded commitment agreements. Specifically, a fund may elect whether to treat reverse repurchase agreements and similar financing transactions as "derivatives transactions" subject to the requirements of the Derivatives Rule or as senior securities equivalent to bank borrowings for purposes of Section 18 of the Investment Company Act of 1940. In addition, when-issued or forward settling securities transactions that physically settle within 35-days are deemed not to involve a senior security. Additionally, changes to the laws and regulations governing our operations related to permitted investments may cause us to alter our investment strategy in order to avail ourselves of new or different opportunities. Such changes could result in material differences to the strategies and plans set forth in this prospectus and may shift our investment focus from the areas of expertise of our Adviser to other types of investments in which our Adviser may have little or no expertise or experience. Any such changes, if they occur, could have a material adverse effect on our results of operations and the value of your investment.

The Board may change our investment objective, operating policies and strategies without prior notice or stockholder approval.

The Board has the authority to modify or waive certain of our operating policies and strategies without prior notice and without stockholder approval (except as required by the 1940 Act). However, absent stockholder approval, we may not change the nature of our business so as to cease to be, or withdraw our election as, a BDC. We cannot predict the effect any changes to our current operating policies and strategies would have on our business, operating results and value of our stock. Nevertheless, the effects of any such changes may adversely affect our business and impact our ability to make distributions and since our shares are not expected to be listed on a national securities exchange for the foreseeable future, stockholders will be limited in their ability to sell their shares in response to any changes in our investment objective, operating policies and strategies.

We will incur significant costs as a result of being a public company.

As a public company, we will incur legal, accounting and other expenses, including costs associated with the periodic reporting requirements applicable to a company whose securities are registered under the Exchange Act as well as additional corporate governance requirements, including requirements under the Sarbanes-Oxley Act and other rules implemented by the SEC.

Provisions of the General Corporation Law of the State of Delaware and our certificate of incorporation and bylaws could deter takeover attempts and have an adverse effect on the price of our common stock.

The General Corporation Law of the State of Delaware ("DGCL"), contains provisions that may discourage, delay or make more difficult a change in control of us or the removal of our directors. Our certificate of incorporation and bylaws contain provisions that limit liability and provide for indemnification of our directors and officers. These provisions and others also may have the effect of deterring hostile takeovers or delaying changes in control or management. We are subject to Section 203 of the DGCL, the application of which is subject to any applicable requirements of the 1940 Act. This section generally prohibits us from engaging in mergers and other business combinations with stockholders that beneficially own 15% or more of our voting stock, or with their affiliates, unless our directors or stockholders approve the business combination in the prescribed manner. The Board will adopt a resolution exempting from Section 203 of the DGCL any business combination between us and any other person, subject to prior approval of such business combination by the Board, including approval by a majority of our directors who are not "interested persons." If the resolution exempting business combinations is repealed or the Board does not approve a business combination, Section 203 of the DGCL may discourage third parties from trying to acquire control of us and increase the difficulty of consummating such an offer.

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We have also adopted measures that may make it difficult for a third party to obtain control of us, including provisions of our certificate of incorporation classifying the Board in three classes serving staggered three-year terms, and provisions of our certificate of incorporation authorizing the Board to classify or reclassify shares of our unissued preferred stock in one or more classes or series, to cause the issuance of additional shares of our stock, and to amend our certificate of incorporation, without stockholder approval, to increase or decrease the number of shares of stock that we have authority to issue. These provisions, as well as other provisions of our certificate of incorporation and bylaws, may delay, defer or prevent a transaction or a change in control that might otherwise be in the best interests of our stockholders. In addition, if we issue preferred stock, such securities would rank "senior" to common stock in our capital structure, resulting in preferred stockholders having separate voting rights, dividend and liquidation rights, and possibly other rights, preferences or privileges more favorable than those granted to holders of our common stock.

Our Adviser can resign on 120 days' notice, and we may not be able to find a suitable replacement within that time, resulting in a disruption in our operations that could adversely affect our financial condition, business and results of operations.

Our Adviser has the right, under the Investment Advisory Agreement, to resign at any time upon not less than 120 days' written notice, whether we have found a replacement or not. If our Adviser resigns, we may not be able to find a new Adviser or hire internal management with similar expertise and ability to provide the same or equivalent services on acceptable terms within 120 days, or at all. If we are unable to do so quickly, our operations are likely to experience a disruption, our financial condition, business and results of operations as well as our ability to pay distributions are likely to be adversely affected. In addition, the coordination of our internal management and investment activities is likely to suffer if we are unable to identify and reach an agreement with a single institution or group of executives having the expertise possessed by our Adviser and its affiliates. Even if we are able to retain comparable management, whether internal or external, the integration of such management and their lack of familiarity with our investment objective may result in additional costs and time delays that may adversely affect our business, financial condition and results of operations.

The Adviser has the right to resign under the Administration Agreement, whether we have found a replacement or not. If the Adviser resigns, we may not be able to find a new administrator or hire internal management with similar expertise and ability to provide the same or equivalent services on acceptable terms, or at all. If we are unable to do so quickly, our operations are likely to experience a disruption, our financial condition, business and results of operations as well as our ability to pay distributions are likely to be adversely affected. In addition, the coordination of our internal management and administrative activities is likely to suffer if we are unable to identify and reach an agreement with a service provider or individuals with the expertise possessed by the Adviser. Even if we are able to retain a comparable service provider or individuals to perform such services, whether internal or external, their integration into our business and lack of familiarity with our operations may result in additional costs and time delays that may adversely affect our business, financial condition and results of operations.

As a public company, we will be subject to regulations not applicable to private companies, such as provisions of the Sarbanes-Oxley Act. Efforts to comply with such regulations will involve significant expenditures, and non-compliance with such regulations may adversely affect us.

As a public company, we will be subject to regulations not applicable to private companies, including provisions of the Sarbanes-Oxley Act and the related rules and regulations promulgated by the SEC. Our management will be required to report on our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act and rules and regulations of the SEC thereunder. We will be required to review on an annual basis our internal control over financial reporting, and on a quarterly and annual basis, to evaluate and disclose changes in our internal control over financial reporting. Once we no longer qualify as an emerging growth company, Section 404 of the Sarbanes-Oxley Act will generally require an attestation from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. We cannot be certain as to the timing of the completion of our evaluation, testing and remediation actions or the impact of the same on our operations, and we may not be able to ensure that the process is effective or that our internal control over financial reporting is or will be effective in a timely manner. In the event that we are unable to develop or maintain an effective system of internal controls and maintain or achieve compliance with the Sarbanes-Oxley Act and related rules, we may be adversely affected.

We depend on information systems, and systems failures could significantly disrupt our business, which may, in turn, negatively affect our ability to pay dividends to our stockholders.

Our business depends on the communications and information systems of the Adviser. In addition, certain of these systems are provided to the Adviser by third-party service providers. Any failure or interruption of such systems, including as a result of the termination of an agreement with any such third-party service provider, could cause delays or other problems in our activities. Our financial, accounting, data processing, backup or other operating systems and facilities may fail to operate properly or become disabled or damaged as a result of a number of factors including events that are wholly or partially beyond our control and adversely affect our business. There could be:

- sudden electrical or telecommunications outages;

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- natural disasters such as earthquakes, tornadoes and hurricanes;
- disease pandemics;
- events arising from local or larger scale political or social matters, including terrorist acts; and
- cyber-attacks.

Cyber-attacks, disruptions, or failures that affect our service providers or counterparties may adversely affect us and our stockholders, including by causing losses for us or impairing our operations. For example, our or our service providers' assets or sensitive or confidential information may be misappropriated, data may be corrupted, and operations may be disrupted (e.g., cyber-attacks or operational failures may cause the release of private stockholder information or confidential information, interfere with the processing of stockholder transactions, impact the ability to calculate our NAV, and impede trading). In addition, cyber-attacks, disruptions, or failures may cause reputational damage and subject us or our service providers to regulatory fines, litigation costs, penalties or financial losses, reimbursement or other compensation costs, and/or additional compliance costs. While we and our service providers may establish business continuity and other plans and processes to address the possibility of cyber-attacks, disruptions, or failures, there are inherent limitations in such plans and systems, including that they do not apply to third parties, such as other market participants, as well as the possibility that certain risks have not been identified or that unknown threats may emerge in the future. Similar types of operational and technology risks are also present for issuers of our investments, which could have material adverse consequences for such issuers, and may cause our investments to lose value. In addition, cyber-attacks involving our counterparty could affect such counterparty's ability to meet its obligations to us, which may result in losses to us and our stockholders. Furthermore, as a result of cyber-attacks, disruptions, or failures, an exchange or market may close or issue trading halts on specific securities or the entire market, which may result in us being, among other things, unable to buy or sell certain securities or financial instruments or unable to accurately price its investments. We cannot directly control any cybersecurity plans and systems put in place by its service providers, our counterparties, issuers in which we invest, or securities markets and exchanges.

These events, in turn, could have a material adverse effect on our operating results and negatively affect the market price of our common stock and our ability to pay dividends to our stockholders.

If we internalize our management functions, your interest in us could be diluted, and we could incur other significant costs associated with being self-managed.

The Board may decide in the future to pursue exemptive relief from the SEC in order to internalize our management functions. If we do so, we may elect to negotiate to acquire the Adviser's assets and personnel. At this time, we cannot anticipate the form or amount of consideration or other terms relating to any such acquisition. Such consideration could take many forms, including cash payments, promissory notes and shares of our common stock. The payment of such consideration could result in dilution of your interest as a stockholder and could reduce the earnings per share attributable to your investment.

In addition, while we would no longer bear the costs of the various fees and expenses, we expect to pay to the Adviser under the Investment Advisory Agreement, we would incur the compensation and benefits costs of our officers and other employees and consultants that are being paid by the Adviser or its affiliates. In addition, we may issue equity awards to officers, employees and consultants. These awards would decrease net income and may further dilute your investment in us. We cannot reasonably estimate the amount of fees we would save or the costs we would incur if we became self-managed. If the expenses we assume as a result of an internalization are higher than the expenses we avoid paying to the Adviser, our earnings per share would be lower as a result of the internalization than it otherwise would have been, potentially decreasing the amount of funds available to distribute to our stockholders and the value of our shares. As we are currently organized, we do not have any employees. If we elect to internalize our operations, we would employ personnel and would be subject to potential liabilities commonly faced by employers, such as workers disability and compensation claims and other employee-related liabilities and grievances.

If we internalize our management functions, we could have difficulty integrating these functions as a standalone entity. Currently, individuals employed by the Adviser and its affiliates perform asset management and general and administrative functions, including accounting and financial reporting, for multiple entities. These personnel have a great deal of know-how and experience. We may fail to properly identify the appropriate mix of personnel and capital needs to operate as a standalone entity. An inability to manage an internalization transaction effectively could thus result in our incurring excess costs and/or suffering deficiencies in our disclosure controls and procedures or our internal control over financial reporting. Such deficiencies could cause us to incur additional costs, and our management's attention could be diverted from effectively managing our investments.

Internalization transactions have also, in some cases, been the subject of litigation. Even if these claims are without merit, we could be forced to spend significant amounts of money defending such claims, which would reduce the amount of funds we have available for investment in targeted assets.

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We, through our investment in a REIT Subsidiary, may be subject to the risks associated with investing in real estate-related securities.

We may form a REIT Subsidiary that is generally subject to the same investment policies and restrictions as we are. The adviser would not charge an additional fee on assets held in the REIT Subsidiary. We intend to limit investments in any REIT Subsidiaries and related entities to the extent

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necessary to qualify as a RIC for tax purposes. In general, and subject to certain exceptions not applicable here, a RIC is not permitted to invest, including through corporations in which the RIC owns a 20% or more voting stock interest, more than 25% of its total assets in any one issuer, or in any two or more issuers which the taxpayer controls and which are determined to be engaged in the same or similar trades or businesses or related trades or businesses. Investments in REITs such as a REIT Subsidiary may be affected by changes in the real estate markets generally as well as changes in the values of the specific properties owned by a REIT or securing the mortgages owned by the REIT. REITs are dependent upon the management skill and abilities of those persons or entities responsible for managing their investments. REITs are by definition not diversified as their permitted investments are significantly limited by the provisions of the Code.

Because of minimum distribution requirements imposed by the Code, REITs tend to be dependent on the acquisition of assets with high positive cash flows. The minimum distribution requirements also tend to limit the degree to which REITs can retain and redeploy capital. REITs are particularly vulnerable to defaults by their borrowers and there are significant limitations on their ability to realize income from property acquired as a result of foreclosure. REITs investing in healthcare properties are subject to complex rules on how they can acquire and operate those properties while maintaining their REIT status.

Risks Related to our Investments

Our investments may be risky, and you could lose all or part of your investment.

We invest primarily in debt investments and to a lesser extent, selected equity investments in middle-market healthcare companies. The portfolio companies in which we invest may have, or may be permitted to incur, other debt ranking equally with, or senior to, the debt securities in which we invest. By their terms, such debt instruments may provide that the holders are entitled to receive payment of interest or principal on or before the dates on which we are entitled to receive payments in respect of the debt securities in which we invest. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of a portfolio company, holders of debt instruments ranking senior to our investment in that portfolio company would typically be entitled to receive payment in full before we receive any distribution in respect of our investment. After repaying senior creditors, the portfolio company may not have sufficient assets to repay its obligation to us in full, or at all. In the case of debt ranking equally with debt securities in which we invest, we would have to share any distributions on an equal and ratable basis with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant portfolio company.

Secured Loans. When we extend first lien senior secured, second lien senior secured and unitranche loans, we will generally take a security interest in the available assets of these portfolio companies, including the equity interests of their subsidiaries. We expect this security interest to help mitigate the risk that we will not be repaid. However, there is a risk that the collateral securing our loans may decrease in value over time, may be difficult to sell in a timely manner, may be difficult to appraise and may fluctuate in value based upon the success of the business and market conditions, including as a result of the inability of the portfolio company to raise additional capital. Also, in the case of first lien loans, our lien may be subordinated to claims of other creditors and, in the case of second lien loans, our lien will be subordinated to claims of other creditors. In addition, deterioration in a portfolio company's financial condition and prospects, including its inability to raise additional capital, may be accompanied by deterioration in the value of the collateral for the loan. Consequently, the fact that a loan is secured does not guarantee that we will receive principal and interest payments according to the loan's terms, or at all, or that we will be able to collect on the loan should we be forced to enforce our remedies.

The rights we may have with respect to the collateral securing loans we make to our portfolio companies with senior debt outstanding may also be limited pursuant to the terms of one or more intercreditor agreements that we enter into with the holders of such senior debt. Under a typical intercreditor agreement, at any time that obligations benefiting from first-priority liens are outstanding, any of the following actions that may be taken in respect of the collateral will be at the direction of the holders of the obligations secured by the first-priority liens:

- the ability to commence enforcement proceedings against the collateral;
- the ability to control the conduct of such proceedings;
- the approval of amendments to collateral documents;
- releases of liens on the collateral; and
- waivers of past defaults under collateral documents.

We may not have the ability to control or direct such actions, even if our rights are adversely affected.

Mezzanine Loans. Our mezzanine investments will generally be subordinated to senior loans and will generally be unsecured. This may result in greater risk and volatility or a loss of principal. These investments may involve additional risks that could adversely affect our investment returns. To the extent interest payments associated with such debt are deferred, such debt may be subject to greater fluctuations in valuations, and such debt could subject us and our stockholders to non-cash income as described above under "Risk Factors—Risks Relating to our Business and Structure—We may have difficulty paying our required distributions if we recognize income before or without receiving cash representing such income." Since we generally will not receive any substantial repayments of principal prior to the maturity of our mezzanine debt investments, such investments are riskier than amortizing loans. We can offer no assurance that the proceeds, if any, from sales of collateral securing other loans of a portfolio company would be sufficient to satisfy our unsecured obligations after payment in full of all secured loan obligations. If such proceeds were not sufficient to repay the outstanding secured loan obligations, then our unsecured claims would rank equally with the unpaid portion of such secured creditors' claims against the portfolio company's remaining assets, if any.

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We expect in the future to invest in securities that are rated below investment grade by rating agencies or that may be rated below investment grade if they were so rated. Below investment grade securities, which are often referred to as 'junk bonds,' are viewed as speculative investments because of concerns with respect to the issuer's capacity to pay interest and repay principal.

Derivative Transactions. We may invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, commodities and/or currencies, as substitutes for direct investments the Company can make. We may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Adviser to be in the best interest of the Company, and to the extent permitted by the 1940 Act, to hedge various investments for risk management and speculative purposes (collectively, "Derivative Transactions"). We may use any or all types of Derivative Transactions which we are authorized to use at any time; no particular strategy will dictate the use of one type of Derivative Transaction rather than another, as use of any authorized Derivative Transaction will be a function of numerous variables, including market conditions. Derivative Transactions involve certain risks and special considerations. Risks of Derivative Transactions include the imperfect correlation between the value of such instruments and the underlying assets, the possible default of the other party to the transaction or illiquidity of the derivative instruments. Furthermore, the ability to successfully use Derivative Transactions depends on the Adviser's ability to predict pertinent market movements. Because many derivatives are "leveraged," and thus provide significantly more market exposure than the money paid or deposited when the transaction is entered into, a relatively small adverse market movement may not only result in the loss of the entire investment, but may also expose the Company to the possibility of a loss exceeding the original amount invested. Thus, the use of Derivative Transactions may result in losses greater than if they had not been used, may require the Company to sell or purchase portfolio securities at inopportune times or for prices other than current market values, may limit the amount of appreciation the Company can realize on an investment or may cause the Company to hold a security that it might otherwise sell. The use of foreign currency transactions can result in the Company incurring losses as a result of the imposition of exchange controls, the suspension of settlements or the inability of the Company to deliver or receive a specified currency. Additionally, amounts paid by the Company as premiums and cash or other assets held in margin accounts with respect to Derivative Transactions are not otherwise available to the Company for investment purposes.

If a put or call option purchased by the Company is not sold when it has remaining value, and if the market price of the underlying security remains equal to or greater than the exercise price (in the case of a put), or remains less than or equal to the exercise price (in the case of a call), the Company will lose its entire investment in the option.

Also, where a put or call option on a particular security is purchased to hedge against price movements in a related security, the price of the put or call option may move more or less than the price of the related security. If restrictions on exercise were imposed, the Company might be unable to exercise an option it had purchased. If the Company were unable to close out an option that it had purchased on a security, it would have to exercise the option in order to realize any profit or the option may expire worthless.

In addition, as noted above, the SEC adopted the Derivatives Rule in October 2020, which introduces a new framework for the use by registered investment companies of derivatives and many related instruments.

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The Company's Derivative Transactions are generally subject to numerous special and complex tax rules. Because the tax rules applicable to such transactions may be uncertain under current law, an adverse determination or future IRS guidance with respect to these rules (which determination or guidance could be retroactive) may affect whether the Company has made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain its qualification as a RIC and avoid Company-level U.S. federal income or excise taxes. The Company's investments in derivative instruments may be limited by the Company's intention to qualify for treatment as a RIC and could adversely affect the Company's ability to so qualify.

Equity Investments. We may make selected equity investments. In addition, when we invest in first lien, second lien, unitranche or mezzanine loans, we may acquire warrants to purchase equity securities. Our goal is ultimately to dispose of these equity interests and realize gains upon our disposition of such interests. However, the equity interests we receive may not appreciate in value and, in fact, may decline in value. The value of equity interests acquired by the Company could decline if the financial condition of the companies in which the Company holds an equity interest declines, or if overall market and economic conditions deteriorate. An issuer's financial condition could decline as a result of poor management decisions, competitive pressures, technological obsolescence, undue reliance on suppliers, labor issues, shortages, corporate restructurings, fraudulent disclosures, irregular and/or unexpected activity among retail investors or other factors. Accordingly, we may not be able to realize gains from our equity interests, and any gains that we do realize on the disposition of any equity interests may not be sufficient to offset any other losses we experience.

We are subject to risks associated with middle-market companies.

Investing in middle-market companies involves a number of significant risks, including:

- these companies may have limited financial resources and may be unable to meet their obligations under their debt securities that we hold, which may be accompanied by a deterioration in the value of any collateral and a reduction in the likelihood of us realizing any guarantees we may have obtained in connection with our investment;
- they typically have shorter operating histories, narrower product lines and smaller market shares than larger businesses, which tend to render them more vulnerable to competitors' actions and changing market conditions, as well as general economic downturns;
- they are more likely to depend on the management talents and efforts of a small group of persons; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse impact on our portfolio company and, in turn, on us;

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- generally, little public information exists about these companies, and we are required to rely on our Adviser to obtain adequate information to evaluate the potential returns from investing in these companies;
- they generally have less predictable operating results, may from time to time be parties to litigation, may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence, and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position. In addition, our executive officers, directors and our Adviser may, in the ordinary course of business, be named as defendants in litigation arising from our investments in these portfolio companies; and
- they may have difficulty accessing the capital markets to meet future capital needs, which may limit their ability to grow or to repay their outstanding indebtedness upon maturity.

We are a non-diversified investment company within the meaning of the 1940 Act, and therefore we are not limited by the 1940 Act with respect to the proportion of our assets that may be invested in securities of a single issuer.

We are classified as a non-diversified investment company within the meaning of the 1940 Act, which means that we are not limited by the 1940 Act with respect to the proportion of our assets that we may invest in securities of a single issuer. Our election to be treated as an intention to qualify and be eligible to be treated as a RIC, however, has its own diversification requirement with which we intend to comply. To the extent that we assume large positions in the securities of a small number of issuers, our net asset value may fluctuate to a greater extent than that of a diversified investment company as a result of changes in the financial condition or the market's assessment of the issuer. We may also be more susceptible to any single economic or regulatory occurrence than a diversified investment company. Beyond the asset diversification requirements associated with our qualification as a RIC under the Code and certain contractual diversification requirements under a credit facility or other agreements, we do not have fixed guidelines for diversification, and our investments could be concentrated in relatively few portfolio companies.

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Our portfolio may be concentrated in a limited number of portfolio companies, industries and/or sectors which will subject us to a risk of significant loss if any of these companies defaults on its obligations under any of its debt instruments or if there is a downturn in a particular industry or sector.

Our portfolio may be concentrated in a limited number of portfolio companies, industries and/or sectors. Beyond the asset diversification requirements associated with our qualification as a RIC under the Code and certain contractual diversification requirements of a credit facility or other agreements, we do not have fixed guidelines for diversification. As a result, the aggregate returns we realize may be significantly adversely affected if a small number of investments perform poorly or if we need to write down the value of any one investment. Additionally, our investments may be concentrated in relatively few industries or sectors. As a result, a downturn in any particular industry or sector in which we are invested could also significantly impact the aggregate returns we realize.

The lack of liquidity in our investments may adversely affect our business.

We will generally make investments in private companies. Private companies have reduced access to the capital markets, resulting in diminished capital resources and ability to withstand financial distress. Furthermore, substantially all of our investments in private companies will be subject to legal and other restrictions on resale or will otherwise be less liquid than publicly traded securities.

The illiquidity of our investments may make it difficult for us to sell such investments if the need arises. In addition, if we are required to liquidate all or a portion of our portfolio quickly, we may realize significantly less than the value at which we have previously recorded our investments. In addition, we may face other restrictions on our ability to liquidate an investment in a portfolio company to the extent that we have material non-public information regarding such portfolio company or if an investment is held by one of our subsidiaries and is subject to contractual limitations on sale, such as the limitations on transfer of assets under certain circumstances under a credit facility. These and similar risks may also be applicable to thinly-traded companies in which we may invest.

Price declines and illiquidity in the corporate debt markets may adversely affect the fair value of our portfolio investments, reducing our net asset value through increased net unrealized depreciation.

As a BDC, we are required to carry our investments at market value or, if no market value is ascertainable, at fair value as determined in good faith by the Adviser under our valuation policy and process. As part of the valuation process, we may take into account the following types of factors, if relevant, in determining the fair value of our investments:

- a comparison of the portfolio company's securities to publicly traded securities;
- the enterprise value of a portfolio company;
- the nature and realizable value of any collateral;
- the portfolio company's ability to make payments and its earnings;
- the markets in which the portfolio company does business; and
- changes in the interest rate environment and the credit markets generally that may affect the price at which similar investments may be made in the future and other relevant factors.

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When an external event such as a purchase transaction, public offering or subsequent equity sale occurs, we use the pricing indicated by the external event to corroborate our valuation. We record decreases in the market values or fair values of our investments as unrealized depreciation. Declines in prices and liquidity in the corporate debt markets may result in significant net unrealized depreciation in our portfolio. The effect of all of these factors on our portfolio may reduce our net asset value by increasing net unrealized depreciation in our portfolio. Depending on market conditions, we could incur substantial realized losses and may suffer additional unrealized losses in future periods, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

The Adviser may effectuate short sales that subject us to unlimited loss potential.

The Adviser may enter into transactions in which it sells a security it does not own, which we refer to as a short sale, in anticipation of a decline in the market value of the security. Short sales for our account theoretically will involve unlimited loss potential since the market price of securities sold short may continuously increase. Under adverse market conditions, the Adviser might have difficulty purchasing securities to meet short sale delivery obligations and may have to cover short sales at suboptimal prices. Further, if other short positions of the same security are closed out at the same time, a "short squeeze" can occur where demand exceeds the supply for the security sold short. A short squeeze makes it more likely that the Adviser will need to replace the borrowed security at an unfavorable price.

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Our investments in the healthcare industry are subject to numerous risks, including competition, extensive government regulation and commercial difficulties.

Our investments in portfolio companies in the healthcare industry, particularly the pharmaceuticals, devices, life sciences and facilities sub-sectors are subject to numerous risks. The successful and timely implementation of the business model of our healthcare portfolio companies depends on their ability to adapt to changing technologies and introduce new products. As competitors continue to introduce competitive products, the development and acquisition of innovative products and technologies that improve efficacy, safety and cost- effectiveness are important to the success of such portfolio companies. The success of new product offerings will depend on many factors, including the ability to properly anticipate and satisfy customer needs, obtain regulatory approvals on a timely basis, develop and manufacture products in an economic and timely manner, obtain or maintain advantageous positions with respect to intellectual property, and differentiate products from those of competitors. Failure by our portfolio companies to introduce planned products or other new products or to introduce products on schedule could have a material adverse effect on our business, financial condition and results of operations.

Further, the development of products by pharmaceuticals, devices, life sciences and facilities companies in the healthcare industry requires significant research and development, clinical trials and regulatory approvals. The results of product development efforts may be affected by a number of factors, including the ability to innovate, develop and manufacture new products, complete clinical trials, obtain regulatory approvals and reimbursement in the United States and abroad, or gain and maintain market approval of products. In addition, regulatory review processes by U.S. and foreign agencies may extend longer than anticipated as a result of decreased funding and tighter fiscal budgets. Further, patents attained by others can preclude or delay the commercialization of a product. There can be no assurance that any products now in development will achieve technological feasibility, obtain regulatory approval, or gain market acceptance. Failure can occur at any point in the development process, including after significant funds have been invested. Products may fail to reach the market or may have only limited commercial success because of efficacy or safety concerns, failure to achieve positive clinical outcomes, inability to obtain necessary regulatory approvals, failure to achieve market adoption, limited scope of approved uses, excessive costs to manufacture, the failure to establish or maintain intellectual property rights, or the infringement of intellectual property rights of others.

Changes in healthcare laws and other regulations applicable to some of our portfolio companies' businesses may constrain their ability to offer their products and services.

There has also been an increased political and regulatory focus on healthcare laws in recent years, and new legislation could have a material effect on the business and operations of some of our portfolio companies by increasing their compliance and other costs of doing business, requiring significant systems enhancements, or rendering their products or services less profitable or obsolete. In particular, the Food and Drug Administration ("FDA"), has established regulations, guidelines and policies to govern the development and approval of pharmaceuticals and medical devices, as have foreign regulatory authorities, which affect some of our portfolio companies. Any change in regulatory requirements due to the adoption by the FDA and/or foreign regulatory authorities of new legislation, regulations, or policies may require some of our portfolio companies to amend existing clinical trial protocols or add new clinical trials to comply with these changes. Such amendments to existing protocols and/or clinical trial applications or the need for new ones, may significantly impact the cost, timing and completion of the clinical trials. Also, may have adverse effects on certain healthcare sub-sectors due to changes in payer-mix, patient volumes, as well as other changes to the current law.

We may hold the debt securities of leveraged companies that may, due to the significant volatility of such companies, enter into bankruptcy proceedings.

Leveraged companies may experience bankruptcy or similar financial distress. The bankruptcy process has a number of significant inherent risks. Many events in a bankruptcy proceeding are the product of contested matters and adversary proceedings and are beyond the control of the creditors. A bankruptcy filing by an issuer may adversely and permanently affect the issuer. If the proceeding is converted to a liquidation, the value of the issuer may not equal the liquidation value that was believed to exist at the time of our investment. The duration of a bankruptcy proceeding is also difficult to predict, and a creditor's return on investment can be adversely affected by delays until a plan of reorganization or liquidation ultimately becomes effective. The administrative costs in connection with a bankruptcy proceeding are frequently high and would be paid out of the debtor's estate prior to any return to creditors. Because the standards for classification of claims under bankruptcy law are vague, our influence with respect to the class of securities or other obligations we own may be lost by increases in the number and amount of claims in the same class or by different classification and treatment. In the early stages of the bankruptcy process, it is often difficult to estimate the extent of, or even to identify, any contingent claims that might

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be made. In addition, certain claims that have priority by law (for example, claims for taxes) may be substantial, eroding the value of any recovery by holders of other securities of the bankrupt entity.

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Depending on the facts and circumstances of our investments and the extent of our involvement in the management of a portfolio company, upon the bankruptcy of a portfolio company, a bankruptcy court may recharacterize our debt investments as equity interests and subordinate all or a portion of our claim to that of other creditors. This could occur even though we may have structured our investment as senior debt.

Economic recessions or downturns could impair the ability of our portfolio companies to repay loans and increase our costs, which, in turn, could increase our non-performing assets, decrease the value of our portfolio, reduce our volume of new loans and otherwise harm our operating results.

Many of our portfolio companies may be susceptible to economic slowdowns or recessions and may be unable to repay our loans during these periods. Therefore, our non-performing assets are likely to increase and the value of our portfolio is likely to decrease during these periods. Adverse economic conditions may also decrease the value of collateral securing some of our loans and the value of our equity investments. Economic slowdowns or recessions could lead to financial losses in our portfolio and a decrease in revenues, net income and assets. Unfavorable economic conditions also could increase our funding costs, limit our access to the capital markets or result in a decision by lenders not to extend credit to us. These events could prevent us from making new investments, increase credit losses and harm our operating results, which could have an adverse effect on our results of operations.

We may be subject to risks associated with syndicated loans.

From time to time, we may acquire interests in syndicated loans. Under the documentation for such loans, a financial institution or other entity typically is designated as the administrative agent and/or collateral agent. This agent is granted a lien on any collateral on behalf of the other lenders and distributes payments on the indebtedness as they are received. The agent is the party responsible for administering and enforcing the loan and generally may take actions only in accordance with the instructions of a majority or two-thirds of the holders of commitments and/or principal amount of the associated indebtedness. In most cases, we do not expect to hold a sufficient amount of the indebtedness to be able to compel any actions by the agent. For example, in many cases, our investments may represent less than the amount of associated indebtedness sufficient to compel such actions or represent subordinated debt which is precluded from acting and, consequently, we would only be able to direct such actions if instructions from us were made in conjunction with other holders of associated indebtedness that together with us compose the requisite percentage of the related indebtedness then entitled to take action. Conversely, if holders of the required amount of the associated indebtedness (excluding amounts held by us) desire to take certain actions, such actions may be taken even if we did not support such actions. Furthermore, if an investment is subordinated to one or more senior loans made to the applicable obligor, our ability to exercise such rights may be subordinated to the exercise of such rights by the senior lenders. Accordingly, we may be precluded from directing such actions unless we act together with other holders of the indebtedness. If we are unable to direct such actions, we cannot assure you that the actions taken will be in our best interests.

If an investment is a syndicated revolving loan or delayed drawdown loan, other lenders may fail to satisfy their full contractual funding commitments for such loan, which could create a breach of contract, result in a lawsuit by the obligor against the lenders and adversely affect the fair market value of our investment.

There is a risk that a loan agent may become bankrupt or insolvent. Such an event would delay, and possibly impair, any enforcement actions undertaken by holders of the associated indebtedness, including attempts to realize upon the collateral securing the associated indebtedness and/or direct the agent to take actions against the related obligor or the collateral securing the associated indebtedness and actions to realize on proceeds of payments made by obligors that are in the possession or control of any other financial institution. In addition, we may be unable to remove the agent in circumstances in which removal would be in our best interests. Moreover, agented loans typically allow for the agent to resign with certain advance notice.

Our investments in CLOs may be riskier and less transparent to us and our stockholders than direct investments in the underlying companies.

We intend to invest in CLOs. Generally, there may be less information available to us regarding the underlying debt investments held by CLOs than if we had invested directly in the debt of the underlying companies. As a result, our stockholders will not know the details of the underlying securities of the CLOs in which we will invest. Our CLO investments will also be subject to the risk of leverage associated with the debt issued by such CLOs and the repayment priority of senior debt holders in such CLOs. Our investments in prospective portfolio companies may be risky, and we could lose all or part of our investment.

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Our financial results may be affected adversely if one or more of our equity or mezzanine debt investments in a CLO vehicle defaults on its payment obligations or fails to perform as we expect.

We intend to invest in the equity and mezzanine trances in CLOs, which involve a number of significant risks. CLOs are typically highly levered, and therefore the equity and mezzanine tranches that we will invest in are subject to a higher risk of total loss. In particular, investors in CLOs indirectly

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bear risks of the underlying debt investments held by such CLOs. We will generally have the right to receive payments only from the CLOs, and will generally not have direct rights against the underlying borrowers or the entity that sponsored the CLOs. Although it is difficult to predict whether the prices of indices and securities underlying CLOs will rise or fall, these prices (and, therefore, the prices of the CLOs) will be influenced by the same types of political and economic events that affect issuers of securities and capital markets generally.

The investments we intend to make in CLOs will likely be thinly traded or have only a limited trading market. CLO investments are typically privately offered and sold in the primary and secondary markets. As a result, investments in CLOs may be characterized as illiquid securities. In addition to the general risks associated with investing in debt securities, CLOs carry additional risks, including, but not limited to: (i) the possibility that distributions from the underlying loans will not be adequate to make interest or other payments; (ii) the quality of the underlying loans may decline in value or default; and (iii) the complex structure of the security may not be fully understood at the time of investment and may produce disputes with the CLO or unexpected investment results. Further, our investments in equity and mezzanine tranches of CLOs will be subordinate to the senior debt tranches thereof.

Investments in structured vehicles, including equity and mezzanine debt instruments issued by CLOs, involve risks, including credit risk and market risk. Changes in interest rates and credit quality may cause significant price fluctuations. Additionally, changes in the underlying loans held by a CLO may cause payments on the instruments we hold to be reduced, either temporarily or permanently. Structured investments, particularly the subordinated interests in which we invest, are less liquid than many other types of securities and may be more volatile than the loans underlying the CLOs in which we invest.

Certain tax consequences of our investments

There are various tax risks with respect to some of our investments, including but not limited to, the risks discussed below.

Some of our investments outside the United States, including our CLO investments, may be treated as investments in passive foreign investment companies ("PFICs"), as defined below, and could subject us to U.S. federal income tax (including interest charges) on distributions received from a PFIC or on proceeds received from the disposition of shares in a PFIC, which tax cannot be eliminated by making distributions to our shareholders. However, we may elect to avoid the imposition of that tax. For example, we may elect to treat a PFIC as a "qualified electing fund" ("QEF") (i.e., make a "QEF election"), in which case we will be required to include our share of the PFIC's income and net capital gain annually, regardless of whether it receives any distribution from the PFIC. Alternatively, we may elect to mark the gains (and to a limited extent the losses) in such holdings "to the market" as though we had sold (and, solely for purposes of this mark-to-market election, repurchased) our holdings in those PFICs on the last day of our taxable year. Such gains and losses are treated as ordinary income and loss. The QEF and mark-to-market elections may have the effect of accelerating the recognition of income (without the receipt of cash) and increasing the amount required to be distributed for us to avoid taxation. Making either of these elections therefore may require us to liquidate other investments (including when it is not advantageous to do so) to meet our distribution requirement, which also may accelerate the recognition of gain and affect our total return.

If we own (directly or indirectly) 10% or more of the total combined voting power of all classes of stock of a foreign corporation or 10% or more of the total value of shares of all classes of stock of a foreign corporation that is treated as a controlled foreign corporation ("CFC") (including equity tranche investments and certain debt tranche investments in a CLO treated as CFC), we are a "U.S. Shareholder" for purposes of the CFC provisions of the Code. A CFC is a foreign corporation that, on any day of its taxable year, is owned (directly, indirectly, or constructively) more than 50% (measured by voting power or value) by U.S. Shareholders. A U.S. Shareholder is required to include in gross income for U.S. federal income tax purposes for each taxable year of the U.S. Shareholder its pro rata share of its CFC's "subpart F income" for the CFC's taxable year ending within the U.S. Shareholder's taxable year whether or not such income is actually distributed by the CFC. Subpart F income is treated as ordinary income, regardless of the character of the CFC's underlying income. To the extent we invest in CFCs, if any, and recognize subpart F income in excess of actual cash distributions from such CFCs, if any, we may be required to sell assets (including when it is not advantageous to do so) to generate the cash necessary to distribute as dividends to our shareholders all of our income and gains and therefore to eliminate any corporate-level tax liability.

Investments in distressed debt obligations that are at risk of or in default present special tax issues. Tax rules are not entirely clear about issues such as whether and to what extent we should recognize market discount on these debt obligations, when we may cease to accrue interest, OID or market discount, when and to what extent we may take deductions for bad debts or worthless securities and how we should allocate payments received on obligations in default between principal and income. We will address these and other related issues when, as and if we invest in such obligations, in order to seek to ensure that we distribute sufficient income to preserve our eligibility for treatment as a RIC and do not become subject to U.S. federal income or excise tax.

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Our derivative transactions, as well as any of our other hedging, short sale or similar transactions, may be subject to one or more special tax rules (including, for instance, notional principal contract, mark-to-market, constructive sale, straddle, wash sale and short-sale rules). These rules may affect whether gains and losses we recognize are treated as ordinary or capital and/or as short-term or long-term, accelerate our recognition of income or gains, defer losses, and cause adjustments in the holding periods of our securities. The rules could therefore affect the amount, timing and/or character of our distributions to shareholders.

Because the tax rules applicable to derivative financial instruments are in some cases uncertain under current law, an adverse determination or future guidance by the IRS with respect to these rules (which determination or guidance could be retroactive) may affect whether we have made sufficient distributions, and otherwise satisfied the relevant requirements, to maintain our qualification as a RIC and avoid a corporate-level tax.

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To qualify for the special tax treatment accorded RICs and their shareholders, we must meet certain source-of-income, asset diversification and annual distribution requirements. Our ability to pursue our investment strategy may be limited or adversely affected by our intention to qualify as a RIC and our strategy may bear adversely on our ability to so qualify.

We may not realize gains from our equity investments.

When we invest in mezzanine loans or senior secured loans, we may also invest in the equity securities of the borrower or acquire warrants or other equity securities as well. In addition, we may invest directly in the equity securities of portfolio companies. Our goal is ultimately to dispose of such equity interests and realize gains upon our disposition of such interests. However, the equity interests we receive may not appreciate in value and, in fact, may decline in value. Accordingly, we may not realize gains from our equity interests, and any gains that we do realize on the disposition of such equity interests may not be sufficient to offset any other losses we experience.

Our failure to make follow-on investments in our portfolio companies could impair the value of our portfolio, and our ability to make follow-on investments in certain portfolio companies may be restricted.

Following an initial investment in a portfolio company, we may make additional investments in that portfolio company as "follow-on" investments, in order to:

- increase or maintain in whole or in part our equity ownership percentage;
- exercise warrants, options or convertible securities that were acquired in the original or subsequent financing; or
- attempt to preserve or enhance the value of our investment.

We will have the discretion to make any follow-on investments, subject to the availability of capital resources, the limitations of the 1940 Act, the requirements associated with qualifying for the special tax treatment accorded RICs and their shareholders and contractual requirements under a credit facility or otherwise. We may elect not to make follow-on investments or otherwise lack sufficient funds to make those investments. The failure to make follow-on investments may, in some circumstances, jeopardize the continued viability of a portfolio company and our initial investment, or may result in a missed opportunity for us to increase our participation in a successful operation. Even if we have sufficient capital to make a desired follow-on investment, we may elect not to make a follow-on investment because we do not want to increase our exposure to the portfolio company, because we prefer other opportunities or because we are inhibited by compliance with BDC requirements, or our contractual requirements or the desire to qualify for the special tax treatment accorded RICs and their shareholders.

Because we may not hold controlling equity interests in our portfolio companies, we may not be in a position to exercise control over our portfolio companies or to prevent decisions by management of our portfolio companies that could decrease the value of our investments.

Although we intend to take controlling equity positions in some of our portfolio companies, we do not intend to take a controlling equity interest in all of our portfolio companies. In addition, we may not be in a position to control any portfolio company by investing in its debt securities. As a result, we will be subject to the risk that a portfolio company may make business decisions with which we disagree, and the stockholders and management of a portfolio company may take risks or otherwise act in ways that are adverse to our interests. Due to the lack of liquidity for the debt and equity investments that we will typically hold in our portfolio companies, we may not be able to dispose of our investments in the event we disagree with the actions of a portfolio company, and we may therefore suffer a decrease in the value of our investments.

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Defaults by issuers of our holdings will harm our operating results.

A portfolio company's failure to satisfy financial or operating covenants imposed by us or other lenders could lead to defaults and, potentially, termination of its loans and foreclosure on its assets. This could trigger cross-defaults under other agreements and jeopardize such portfolio company's ability to meet its obligations under the debt or equity securities that we hold. Our investments in loans of such issuers may be placed on non-accrual status under those circumstances, if principal and/or interest payments become overdue or if there is a reasonable doubt that principal or interest will be collected. We may incur expenses to the extent necessary to seek recovery upon default or to negotiate new terms, which may include the waiver of certain financial covenants, with a defaulting portfolio company. A payment default on a loan to a portfolio company or a default leading to the acceleration of debt of a portfolio company could cause the loan to such portfolio company held by us to become, or to be deemed to be, a defaulted obligation under a credit facility. This, in turn, could result in a coverage test under a credit facility not being met and the diversion of distributions of assets to pay down debt under the credit facility rather than to make distributions. Such a portfolio company default could also lead to an event of default and acceleration under a credit facility and liquidation by the related lender of the assets securing the credit facility. Any such diversion of cash flow or any event of default could result in our being unable to make distributions to our stockholders in amounts sufficient to qualify for the special tax treatment accorded RICs and their shareholders, or at all, and could have a material adverse effect on our business, financial condition and results of operations. Investments in issuers that are in default or that have been placed on non-accrual status have in the past represented and may in the future represent a significant portion of our portfolio.

Our Adviser's liability will be limited under the Investment Advisory Agreement, and we have agreed to indemnify our Adviser against certain liabilities, which may lead our Adviser to act in a riskier manner on our behalf than it would when acting for its own account.

Under the Investment Advisory Agreement, our Adviser will not assume any responsibility to us other than to render the services called for under that agreement, and it will not be responsible for any action of the Board in following or declining to follow our Adviser's advice or recommendations. Our Adviser maintains a contractual, as opposed to a fiduciary, relationship with us. Under the terms of the Investment Advisory Agreement, our

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Adviser, its officers, members, personnel, and any person controlling or controlled by our Adviser will not be liable to us, any subsidiary of ours, our directors, our stockholders or any subsidiary's stockholders or partners for acts or omissions performed in accordance with and pursuant to the Investment Advisory Agreement, except those resulting from acts constituting negligence or misconduct. In addition, we have agreed to indemnify our Adviser and each of its officers, directors, members, managers and employees from and against any claims or liabilities, including reasonable legal fees and other expenses reasonably incurred, arising out of or in connection with our business and operations or any action taken or omitted on our behalf pursuant to authority granted by the Investment Advisory Agreement, except where attributable to negligence or misconduct. These protections may lead our Adviser to act in a riskier manner when acting on our behalf than it would when acting for its own account.

We may be obligated to pay our Adviser incentive compensation even if we incur a net loss due to a decline in the value of our portfolio.

Our Investment Advisory Agreement entitles our Adviser to receive incentive compensation on income regardless of any capital losses. In such case, we may be required to pay our Adviser incentive compensation for a fiscal quarter even if there is a decline in the value of our portfolio or if we incur a net loss for that quarter.

Any incentive fee payable by us that relates to our net investment income may be computed and paid on income that may include interest that has been accrued but not yet received. If a portfolio company defaults on a loan that is structured to provide accrued interest, it is possible that accrued interest previously included in the calculation of the incentive fee will become uncollectible. Our Adviser is not under any obligation to reimburse us for any part of the incentive fee it received that was based on accrued income that we never received as a result of a default by an entity on the obligation that resulted in the accrual of such income, and such circumstances would result in our paying an incentive fee on income we never received.

We may not apply or be approved for an SBIC license.

An affiliate of the Company may apply for a license to form an SBIC. If such an application is made and approved and the SBA so permits, we anticipate that the SBIC license would be transferred to a wholly-owned subsidiary of ours. Following such transfer, we anticipate that the SBIC subsidiary would be allowed to issue SBA-guaranteed debentures, subject to certain regulatory requirements. SBA guaranteed debentures carry long-term fixed rates that are generally lower than rates on comparable bank and other debt. We cannot assure that we will make an application for an SBIC license, be successful in receiving an SBIC license from the SBA or that the SBA will permit such license to be transferred to us. If we do receive an SBIC license, there is no minimum amount of SBA-guaranteed debentures that must be allocated to us.

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Our portfolio companies may prepay loans, which prepayment may reduce our yields if capital returned cannot be invested in transactions with equal or greater expected yields.

The loans in our investment portfolio may be prepayable at any time. It is not clear at this time when each loan may be prepaid. Whether a loan is prepaid will depend both on the continued positive performance of the portfolio company and the existence of favorable financing market conditions that allow such company the ability to replace existing financing with less expensive capital. As market conditions change, we do not know when, and if, prepayment may occur for each portfolio company. In the case of some of these loans, having the loan prepaid may reduce the achievable yield for us if the capital returned cannot be invested in transactions with equal or greater expected yields, which could have a material adverse effect on our business, financial condition and results of operations.

The disposition of our investments may result in contingent liabilities.

We currently expect that a significant portion of our investments will involve private securities. In connection with the disposition of an investment in a private company, we may be required to make representations about the business and financial affairs of the portfolio company typical of those made in connection with the sale of a business. We may also be required to indemnify the purchasers of such investment to the extent that any such representations turn out to be inaccurate or with respect to certain potential liabilities. These arrangements may result in contingent liabilities that ultimately yield funding obligations that must be satisfied through our return of certain distributions previously made to us.

We may expose ourselves to risks if we engage in hedging transactions.

If we engage in hedging transactions, we may expose ourselves to risks associated with such transactions. We may borrow under a credit facility in currencies selected to minimize our foreign currency exposure or use instruments such as forward contracts, currency options and interest rate swaps, caps, collars and floors to seek to hedge against fluctuations in the relative values of our portfolio positions from changes in currency exchange rates and market interest rates. Hedging against a decline in the values of our portfolio positions caused by these risks does not eliminate the possibility of fluctuations in the values of such positions or prevent losses if the values of such positions decline for other reasons. Such hedging transactions may also limit the opportunity for gain if the values of the underlying portfolio positions should increase. Moreover, it may not be possible to hedge against an exchange rate or interest rate fluctuation that is so generally anticipated that we are not able to enter into a hedging transaction at an acceptable price. Our ability to engage in hedging transactions may also be adversely affected by recent rules adopted by the CFTC unless we register as a commodity pool operator. While we may enter into such transactions to seek to reduce currency exchange rate and interest rate risks, unanticipated changes in currency exchange rates or interest rates may result in poorer overall investment performance than if we had not engaged in any such hedging transactions. In addition, the degree of correlation between price movements of the instruments used in a hedging strategy and price movements in the portfolio positions being hedged may vary. Moreover, for a variety of reasons, we may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Any such imperfect correlation may prevent us from achieving the intended hedge and expose us to risk of loss. In addition, it may not be possible to hedge fully or perfectly against currency fluctuations affecting the value of securities denominated in non-U.S. currencies because the value of those securities is likely to fluctuate as a result of factors not related to currency fluctuations.

Investments in securities of foreign companies, if any, may involve significant risks in addition to the risks inherent in U.S. investments.

We may make investments in securities of foreign companies. Investing in foreign companies may expose us to additional risks not typically associated with investing in U.S. companies. These risks include changes in exchange control regulations, political and social instability, expropriation, imposition of foreign taxes, less liquid markets and less available information than is generally the case in the U.S., higher transaction costs, less government supervision of exchanges, brokers and issuers, less developed bankruptcy laws, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

In addition, any investments we make that are denominated in a foreign currency will be subject to the risk that the value of a particular currency will change in relation to one or more other currencies. Among the factors that may affect currency values are trade balances, the level of short-term interest rates, differences in relative values of similar assets in different currencies, long-term opportunities for investment and capital appreciation, and political developments. We may employ hedging techniques to minimize these risks, but we can offer no assurance that we will, in fact, hedge currency risk, or, that if we do, such strategies will be effective.

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We may invest in foreign sovereign debt and the foreign governmental issuers of debt of the governmental authorities that control repayment of the debt may be unable or unwilling to repay principal or pay interest when due.

Investments in sovereign debt involve special risks. Foreign governmental issuers of debt or the governmental authorities that control the repayment of the debt may be unable or unwilling to repay principal or pay interest when due. In the event of default, there may be limited or no legal recourse. Political conditions, especially a sovereign entity's willingness to meet the terms of its debt obligations, are of considerable significance. The ability of a foreign sovereign issuer, especially an emerging market country, to make timely payments on its debt obligations will also be strongly influenced by the sovereign issuer's balance of payments, including export performance, its access to international credit facilities and investments, fluctuations of interest rates and the extent of its foreign reserves. In addition, there is no bankruptcy proceeding with respect to sovereign debt on which a sovereign has defaulted and the Company may be unable to collect all or part of its investment in a particular issue. Foreign investment in certain sovereign debt is restricted or controlled to varying degrees, including requiring governmental approval for the repatriation of income, capital or proceeds of sales by foreign investors. These restrictions or controls may at times limit or preclude foreign investment in certain sovereign debt and increase our costs and expenses.

We are not obligated to complete a liquidity event by a specified date; therefore, it will be difficult for an investor to sell his or her shares.

We intend to seek to complete a liquidity event for our stockholders within five years following the completion of our offering stage. We expect that the Board, in the exercise of the requisite standard of care applicable to directors under Delaware law, will determine to pursue a liquidity event when it believes that then-current market conditions are favorable for a liquidity event, and that such a transaction is in the best interests of our stockholders. A liquidity event could include (1) a listing of our shares on a national securities exchange, (2) the sale of all or substantially all of our assets either on a complete portfolio basis or individually followed by a liquidation or (3) a merger or another transaction approved by the Board in which our stockholders likely will receive cash or shares of a publicly traded company. However, there can be no assurance that we will complete a liquidity event within such time or at all. If we do not successfully complete a liquidity event, liquidity for an investor's shares will be limited to our share repurchase program, which we have no obligation to maintain.

We intend to offer to repurchase your shares on a quarterly basis. Only a limited number of shares will be repurchased, however, and, to the extent you are able to sell your shares under the repurchase program, you may not be able to recover the amount of your investment in those shares.

We intend to commence tender offers to allow you to tender your shares on a quarterly basis at a price equal to 90% of our public offering price in effect on the date of repurchase. The share repurchase program will include numerous restrictions that limit your ability to sell your shares. We intend to limit the number of shares repurchased pursuant to our share repurchase program as follows:

- we currently intend to limit the number of shares to be repurchased during any calendar year to the number of shares we can repurchase with the proceeds we receive from the sale of shares of our common stock under our distribution reinvestment plan, although at the discretion of the Board, we may also use cash on hand, cash available from borrowings and cash from liquidation of securities investments as of the end of the applicable period to repurchase shares;
- we will limit the number of shares to be repurchased in any calendar year to 10% of the weighted average number of shares outstanding in the prior calendar year, or 2.5% in each quarter;
- unless you tender all of your shares, you must tender at least 25% of the shares you have purchased and must maintain a minimum balance of $2,500 subsequent to submitting a portion of your shares for repurchase by us; and
- to the extent that the number of shares tendered for repurchase exceeds the number of shares we are able to repurchase, we will repurchase shares as nearly as may be pro-rata, except as permitted by Rule 13e-4 of the Exchange Act, not on a first-come, first- served basis. Further, we will have no obligation to repurchase shares if the repurchase would violate the restrictions on distributions under federal law or Delaware law, which prohibits distributions that would cause a corporation to fail to meet statutory tests of solvency. These limits may prevent us from accommodating all repurchase requests made in any year. The Board may amend, suspend or terminate the repurchase program upon 30 days' notice. We will notify you of such developments (1) in our quarterly reports or (2) by means of a separate mailing to you, accompanied by disclosure in a current or periodic report under the Exchange Act. In addition, although we have adopted a share repurchase program, we will have discretion to not repurchase your shares, to suspend the plan and to cease repurchases. Further, the plan has many limitations and should not be relied upon as a method to sell shares promptly or at a desired price.

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The timing of our repurchase offers pursuant to our share repurchase program may be at a time that is disadvantageous to our stockholders.

When we make quarterly repurchase offers pursuant to our share repurchase program, we may offer to repurchase shares at a price that is lower than the price that investors paid for shares. As a result, to the extent investors have the ability to sell their shares to us as part of our share repurchase program, the price at which an investor may sell shares, which we expect to be 90% of the offering price in effect on the date of repurchase, may be lower than what an investor paid in connection with the purchase of shares.

In addition, in the event an investor chooses to participate in our share repurchase program, the investor will be required to provide us with notice of intent to participate prior to knowing what the net asset value per share will be on the repurchase date. Although an investor will have the ability to withdraw a repurchase request prior to the repurchase date, to the extent an investor seeks to sell shares to us as part of our share repurchase program, the investor will be required to do so without knowledge of what the repurchase price of our shares will be on the repurchase date.

There is a risk that you may not receive distributions or that our distributions may not grow over time.

We cannot assure you that we will achieve investment results that will allow us to make a specified level of cash distributions or year-to-year increases in cash distributions. Also, due to the asset coverage test applicable to us as a BDC, we may be limited in our ability to make distributions. Finally, if more stockholders receive cash dividends and other distributions rather than opt to participate in our distribution reinvestment plan, we may be forced to liquidate some of our investments and raise cash in order to make distribution payments. All distributions will be paid at the discretion of the Board and will depend on our earnings, our financial condition, qualification for the special tax treatment accorded RICs and their shareholders, compliance with applicable BDC regulations and such other factors as the Board may deem relevant from time to time. We cannot assure you that we will pay distributions to our stockholders in the future.

Investing in our shares may involve an above average degree of risk and is intended for long-term investors.

The investments we make in accordance with our investment objective and strategies may result in a higher amount of risk than alternative investment options and volatility or loss of principal. Our investments in portfolio companies may be highly speculative and aggressive, and therefore, an investment in our shares may not be suitable for an investor with a lower risk tolerance. In addition, our common stock is intended for long-term investors.

We may allocate the net proceeds from the offering in ways with which you may not agree.

We will have significant flexibility in investing the net proceeds of our public offering. You will be unable to evaluate the manner in which the net proceeds of the offering will be invested or the economic merit of our expected investments and, as a result, we may use the net proceeds from the offering to invest in investments with which you may not agree. We intend to invest, under normal circumstances, at least 80% of our total assets in debt and equity of middle-market companies, with an emphasis on healthcare companies, syndicated floating rate debt of large public and non-public companies and mezzanine and equity tranches of CLOs. Additionally, we will not provide you with information on potential investments prior to our acquisition of such investments. In addition, we have flexibility under our investment policy to invest a significant portion of our assets in investments that are not debt or equity investments in middle-market companies. The failure of our management to apply net proceeds from this offering effectively or find investments that meet our investment criteria in sufficient time or on acceptable terms could result in unfavorable returns and could cause a material adverse effect on you.

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Item 1B. ***Unresolved Staff Comments***

None

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Item 2. ***Properties***

We do not own any real estate or other physical properties materially important to our operation. Our headquarters are located at 300 Crescent Court, Suite 700, Dallas, Texas 75201. We believe that our office facilities are suitable and adequate for our business as it is presently conducted.

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Item 3. ***Legal Proceedings***

Although we may, from time to time, be involved in litigation arising out of our operations in the normal course of business or otherwise, neither the Company nor any of its subsidiaries is currently a party to any pending material legal proceedings, nor, to our knowledge, is any material legal proceeding threatened against the Company or against its subsidiaries.

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Item 4. ***Mine Safety Disclosures***

Not applicable.

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PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

There is currently no secondary market for our common stock, and we do not expect that a secondary market for our shares will develop in the foreseeable future. No shares of our common stock have been authorized for issuance under any equity compensation plans.

Set forth below is a chart describing the classes of our securities outstanding as of December 31, 2022:

Title of Class	Amount Authorized	Amount Held by Us or for Our Account	Amount Outstanding Exclusive of Amount Under Column
Common Stock	200,000,000	—	9,677,593
Preferred Stock	25,000,000	—	—

As of December 31, 2022, we had 1,549 record holders of our common stock.

Share Repurchase Program

On a quarterly basis, the Company intends to offer to repurchase shares of common stock on such terms as may be determined by the Board in its complete and absolute discretion unless, in the judgment of the independent directors of the Board, such repurchases would not be in the best interests of the Company's stockholders or would violate applicable law. The Company will conduct such repurchase offers in accordance with the requirements of Rule 13e-4 of the Exchange Act and the 1940 Act. Any offer to repurchase shares of common stock will be conducted solely through tender offer materials mailed to each stockholder.

The Company currently intends to limit the number of shares of common stock to be repurchased during any calendar year to the number of shares of common stock it can repurchase with the proceeds it receives from the sale of shares of common stock under its distribution reinvestment plan. At the discretion of the Board, the Company may also use cash on hand, cash available from borrowings and cash from liquidation of securities investments as of the end of the applicable period to repurchase shares of common stock. In addition, the Company will limit the number of shares of common stock to be repurchased in any calendar year to 10.0% of the weighted average number of shares of common stock outstanding in the prior calendar year, or 2.5% in each quarter, though the actual number of shares of common stock that the Company offers to repurchase may be less in light of the limitations noted above. The Company intends to offer to repurchase such shares of common stock at a price equal to 90% of the offering price in effect on each date of repurchase. In months in which the Company repurchases shares of common stock pursuant to its share repurchase program, it expects to conduct repurchases on the same date that it holds its first weekly closing in such month for the sale of shares of common stock in its continuous public offering. The Board may amend, suspend or terminate the share repurchase program at any time, upon 30 days' notice.

We will repurchase shares from a stockholder in the event of the stockholder's death or Qualifying Disability, as defined below, upon such shares being presented to us for repurchase. The repurchase price for repurchases in connection with a stockholder's death or Qualifying Disability will be the NAV as determined for the next weekly pricing period commencing after the receipt by our transfer agent of a repurchase request in proper form.

We will not be obligated to repurchase shares if more than 360 days have elapsed since the date of the death or Qualifying Disability of a stockholder. Further, the Board will have no obligation to repurchase shares if it would cause us to violate federal law or Delaware law. Moreover, the Board has the right to suspend or terminate this repurchase right to the extent that it determines it is in our best interest to do so. This repurchase right will terminate on the date that our shares are listed on a national securities exchange or are included for quotation in a national securities market. All shares to be repurchased must be (i) fully transferable and not be subject to any liens or other encumbrances and (ii) free from any restrictions on transfer. If we determine that a lien or other encumbrance or restriction exists against the shares requested to be repurchased, we will not repurchase any such shares.

In order for a disability to be considered a "Qualifying Disability," (1) the stockholder must receive a determination of disability based upon a physical or mental condition or impairment arising after the date the stockholder acquired the shares to be repurchased, and (2) such determination of disability must be made by the governmental agency responsible for reviewing the

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disability retirement benefits that the stockholder could be eligible to receive (the “Applicable Governmental Agency”). For purposes of this repurchase right, Applicable Governmental Agencies are limited to the following:

- if the stockholder paid Social Security taxes and, therefore, could be eligible to receive Social Security disability benefits, then the Applicable Governmental Agency is the Social Security Administration, or the agency charged with the responsibility for administering Social Security disability benefits at that time if other than the Social Security Administration;
- if the stockholder did not pay Social Security taxes and, therefore, could not be eligible to receive Social Security disability benefits, but the stockholder could be eligible to receive disability benefits under the Civil Service Retirement System (the “CSRS”), then the Applicable Governmental Agency is the U.S. Office of Personnel Management or the agency charged with the responsibility for administering CSRS benefits at that time if other than the U.S. Office of Personnel Management; or
- if the stockholder did not pay Social Security taxes and, therefore, could not be eligible to receive Social Security benefits, but suffered a disability that resulted in the stockholder’s discharge from military service under conditions that were other than dishonorable and, therefore, could be eligible to receive military disability benefits, then the Applicable Governmental Agency is the Department of Veterans Affairs or the agency charged with the responsibility for administering military benefits at that time if other than the Department of Veterans Affairs.

Disability determinations by governmental agencies for purposes other than those listed above, including, but not limited to, workers’ compensation insurance, the administration or enforcement of the Rehabilitation Act or Americans with Disabilities Act, or waiver of insurance premiums, will not entitle a stockholder to the repurchase right. Further, as the following disabilities do not entitle a worker to Social Security disability benefits, they do not qualify the stockholder for the repurchase right, except in the limited circumstances when the stockholder is awarded disability benefits by one of the Applicable Governmental Agencies described above: (a) disabilities occurring after the legal retirement age; and (b) disabilities that do not render a worker incapable of performing substantial gainful activity.

All stockholder repurchase requests must be accompanied by: (1) the investor’s initial application for disability benefits and (2) a Social Security Administration Notice of Award, a U.S. Office of Personnel Management determination of disability under CSRS, a Department of Veterans Affairs record of disability-related discharge or such other documentation issued by the Applicable Governmental Agency that we deem acceptable and that demonstrates an award of disability benefits.

If you tender all common shares you hold, or are considered to be holding, and you do not hold (directly or by attribution) any other units of our shares (e.g., preferred shares, if any), you will be treated as having sold your shares and generally will realize a capital gain or loss. If you tender fewer than all of your common shares or continue to hold (directly or by attribution) other units of our shares (e.g., preferred shares, if any), you may be treated as having received a distribution under Section 301 of the Code (“Section 301 distribution”) unless the redemption is treated as being either (i) “substantially disproportionate” or (ii) otherwise “not essentially equivalent to a dividend” under the relevant rules of the Code. A Section 301 distribution is not treated as a sale or exchange giving rise to a capital gain or loss, but rather is treated as a dividend to the extent supported by our current and accumulated earnings and profits, with the excess treated as a return of capital reducing your tax basis in Company shares, and thereafter as capital gain. In such a case, there is a risk that non-tendering shareholders whose interests in us increase as a result of such tender will be treated as having received a taxable distribution from us.

To the extent we recognize net gains on the liquidation of portfolio securities to meet such tenders, we will be required to make additional distributions to our common shareholders.

Issuer Purchases of Equity Securities

Date	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Program
October 8, 2014	652,174	$ 9.20	0
March 31, 2016	3,232	8.55	3,232
December 31, 2016	4,169	9.24	4,169
March 31, 2017	58,893	9.59	58,893
June 30, 2017	23,441	9.59	23,441
September 30, 2017	37,284	9.36	37,284
December 31, 2017	10,820	9.52	10,820
March 31, 2018	73,736	9.89	73,736
June 30, 2018	142,605	9.69	142,605

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September 30, 2018	73,877	9.61	73,877
December 31, 2018	183,934	8.75	183,934
March 31, 2019	125,146	8.51	125,146
June 30, 2019	71,112	8.69	71,112
September 30, 2019	127,126	8.58	127,126
December 31, 2019	131,082	8.41	131,082
March 31, 2020	49,418	4.88	49,418
June 30, 2020	45,916	5.87	45,916
September 30, 2020	51,384	6.09	51,384
December 31, 2020	77,523	6.16	77,523
March 31, 2021	263,285	6.31	263,285
June 30, 2021	214,460	6.38	214,460
September 30, 2021	119,019	6.55	119,019
December 31, 2021	131,229	6.36	131,229
March 31, 2022	85,999	6.40	85,999
June 30, 2022	102,662	6.02	102,662
September 30, 2022	195,785	5.94	195,785
December 31, 2022	94,263	5.73	94,263

For the years ended December 31, 2022, 2021, 2020, and 2019, the Company did not repurchase any shares as part of its death and disability program. For the year ended December 31, 2018, the Company also repurchased 3,752 shares as part of its death and disability program. For the year ended December 31, 2016, the Company also repurchased 15,553 shares as part of its death and disability program. For the years ended December 31, 2017, 2015 and 2014, the Company did not repurchase any shares as part of its death and disability program.

Distributions

Subject to the Board's discretion and applicable legal restrictions, we intend to authorize and declare ordinary cash distributions on a weekly basis to be paid out quarterly. We will then calculate each stockholder's specific distribution amount for the period using record and declaration dates, and each stockholder's distributions will begin to accrue on the date we accept each stockholder's subscription for shares of our common stock. From time to time, we may also pay special interim distributions in the form of cash or shares of common stock at the discretion of the Board. We also intend to distribute any net capital gains (i.e., realized net long-term capital gains in excess of realized net short-term capital losses) at least annually out of the assets legally available for such distributions. For example, the Board may periodically declare share distributions in order to reduce our NAV per share if necessary, to ensure that we do not sell shares at a price below NAV per share. Each year a statement on Form 1099-DIV, identifying the source of the distributions (i.e., paid from ordinary income, paid from net capital gains on the sale of securities, and/or a return of capital, which is generally a nontaxable distribution), will be mailed to our stockholders. Our distributions may exceed our earnings and profits. As a result, a portion of the distributions we make may represent a return of capital for tax purposes. A return of capital is a return of your investment rather than a return of earnings or gains derived from our investment activities and will be made after deduction of the fees and expenses payable in connection with the offering, including any fees payable to the Adviser. There can be no assurance that we will be able to pay distributions at a specific rate or at all.

In order to qualify for the special tax treatment accorded RICs and their shareholders, we must, among other things, distribute to our stockholders for each taxable year at least 90% of our investment company taxable income, which is generally our ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any, on an annual basis out of the assets legally available for such distributions. In addition, we also intend to distribute any realized net capital gains (i.e., realized net long-term capital gains in excess of realized net short-term capital losses) at least annually out of the assets legally available for such distributions.

We have adopted an "opt in" distribution reinvestment plan for our stockholders. As a result, if we make a cash distribution, then stockholders will receive distributions in cash unless they specifically "opt in" to the distribution reinvestment plan so as to reinvest their cash distributions in additional shares of our common stock. However, certain state authorities or regulators may impose restrictions from time to time that may prevent or limit a stockholder's ability to participate in our distribution reinvestment plan. If you do not elect to participate in the plan, you will automatically receive any distributions we declare in cash. Stockholders who receive distributions in the form of shares of common stock will generally be subject to the same federal, state and local tax consequences as stockholders who elect to receive their distributions in cash.

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We intend to use newly issued shares to implement the plan. The number of shares to be issued to a stockholder is determined by dividing the total dollar amount of the distribution payable by the NAV determined in the last weekly closing of the month.

We may fund our cash distributions to stockholders from any sources of funds available to us, including offering proceeds, borrowings, net investment income from operations, capital gains proceeds from the sale of assets, non-capital gains proceeds from the sale of assets and expense reimbursements from the Adviser. We have not established limits on the amount of funds we may use from available source to make distributions.

On a quarterly basis, we will send information to all stockholders of record regarding distributions paid to our stockholders in such quarter.

Please see below for a table detailing the dividends paid for the year ended December 31, 2022:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2022(3)	$ 0.090	$ 870,980	$ —
9/30/2022	0.090	874,461	303,070
6/30/2022	0.090	887,710	298,766
3/31/2022	0.090	892,680	301,212
1/2/2022(2)	—	—	306,152
Total	**$ 0.360**	**$3,525,831**	**$1,209,200**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2021 Dividend was reinvested in January 2022, see total December 2021 Dividend in table below.
3 The December 2022 Dividend was reinvested in January 2023.

Please see below for a table detailing the dividends paid for the year ended December 31, 2021:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2021(3)	$ 0.090	$ 896,061	$ —
9/30/2021	0.090	903,359	320,218
6/30/2021	0.090	909,619	322,287
3/31/2021	0.090	924,140	331,405
1/2/2021(2)	—	—	345,331
Total	**$ 0.360**	**$3,633,179**	**$1,319,241**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2020 Dividend was reinvested in January 2021, see total December 2020 Dividend in table below.
3 The December 2021 Dividend was reinvested in January 2022.

Please see below for a table detailing the dividends paid for the year ended December 31, 2020:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2020(3)	$ 0.090	$ 942,766	$ —
9/30/2020	0.090	944,487	347,961
4/27/2020	0.060	633,540	241,202
3/27/2020	0.060	629,128	237,068
2/27/2020	0.060	631,127	245,478
1/30/2020	0.060	628,352	396,837
1/2/2020(2)	—	—	396,214
Total	**$ 0.420**	**$4,409,400**	**$1,864,760**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2019 Dividend was reinvested in January 2020, see total December 2019 Dividend in table below.
3 The December 2020 Dividend was reinvested in January 2021

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Please see below for a table detailing the dividends paid for the year ended December 31, 2019:

Payable Date	Dividend/ Share [1]	Total Dividend [1]	Dividends Reinvested [2] [3]
1/02/2020	$ 0.060	$ 625,526	$ —
11/28/2019	0.060	630,505	398,908
10/30/2019	0.060	627,684	397,044
10/02/2019	0.060	632,534	397,215
8/28/2019	0.060	628,890	398,232
7/31/2019	0.060	626,130	395,900
6/26/2019	0.060	624,201	396,249
5/30/2019	0.060	625,758	398,933
5/01/2019	0.060	623,117	396,582
3/27/2019	0.060	620,420	392,542
2/27/2019	0.060	625,257	397,969
1/30/2019	0.060	622,648	397,645
1/03/2019[2]	—	—	456,444
Total	**$ 0.720**	**$7,512,670**	**$4,823,663**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2018 Dividend was reinvested in January 2019, see total December 2018 Dividend in table below.
3 The December 2019 Dividend was reinvested in January 2020.

Please see below for a table detailing the dividends paid for the year ended December 31, 2018:

Payable Date	Dividend/ Share	Total Dividend [1]	Dividends Reinvested [2]
1/03/2019	$ 0.069	$ 721,979	$ —
11/28/2018	0.055	579,638	370,940
10/31/2018	0.069	721,071	461,560
9/26/2018	0.055	578,884	369,031
8/29/2018	0.055	576,777	367,935
8/01/2018	0.069	717,708	459,995
6/27/2018	0.055	579,962	367,710
5/30/2018	0.055	577,847	368,895
5/02/2018	0.069	719,079	459,922
3/28/2018	0.055	577,343	367,026
2/28/2018	0.055	566,708	368,154
1/31/2018	0.069	683,782	451,968
Total	**$ 0.730**	**$7,600,778**	**$4,413,136**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2018 Dividend was reinvested in January 2019.

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Please see below for a table detailing the dividends paid for the year ended December 31, 2017:

Payable Date	Dividend/ Share [1]	Total Dividend [1]	Dividends Reinvested [2][3]
12/27/2017	$ 0.055	$ 532,460	$ 351,929
11/29/2017	0.055	517,804	341,262
11/1/2017	0.069	636,662	417,795
9/27/2017	0.055	505,439	331,096
8/30/2017	0.055	497,727	328,315
8/2/2017	0.069	610,689	403,364
6/28/2017	0.055	481,256	318,649
5/31/2017	0.069	580,257	385,226
4/26/2017	0.055	445,910	295,916
3/29/2017	0.055	431,714	286,868
3/1/2017	0.055	418,078	277,772
2/1/2017	0.069	499,353	332,190
Total	**$ 0.716**	**$6,157,349**	**$4,070,382**

1 For the current period, there were no dividends classified as a return of capital.

Please see below for a table detailing the dividends paid for the year ended December 31, 2016:

Payable Date	Dividend/ Share	Total Dividend [1]	Dividends Reinvested
12/28/2016	$ 0.055	$ 382,152	$ 255,650
11/30/2016	0.055	368,541	247,396
11/2/2016	0.069	430,784	292,800
9/30/2016	0.055	321,955	220,312
8/31/2016	0.069	377,172	261,451
7/30/2016	0.055	277,907	200,860
6/29/2016 [2]	0.055	255,731	190,535
6/1/2016 [3]	0.067	280,557	216,628
4/29/2016	0.058	228,769	177,275
3/31/2016	0.058	196,318	161,095
2/29/2016	0.058	178,122	152,304
1/29/2016	0.058	166,836	146,197
Total	**$ 0.712**	**$3,464,844**	**$2,522,2503**

1 For the current period, there were no dividends classified as a return of capital.
2 On May 12, 2016, the Board approved a $0.002 per share monthly increase to the dividend, which was normalized to the weekly distribution schedule starting in June 2016.
3 Beginning in May 2016, we began declaring dividends weekly.

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Please see below for a table detailing the dividends paid for the year ended December 31, 2015:

Payable Date	Dividend/ Share	Total Dividend [1]	Dividends Reinvested
12/31/2015	$ 0.058	$ 155,396	$ 139,260
11/30/2015	0.058	147,122	137,008
10/30/2015	0.058	141,377	134,845
9/30/2015	0.058	134,498	130,315
8/31/2015	0.058	128,773	124,959
7/31/2015	0.058	125,195	122,496
6/30/2015	0.058	117,215	115,203
5/29/2015	0.058	114,540	112,647
4/30/2015	0.058	108,525	107,595
3/31/2015	0.058	104,842	104,543
2/27/2015	0.058	100,082	100,044
1/30/2015	0.050	69,054	69,022
Total	**$ 0.688**	**$1,446,619**	**$1,397,937**

1 Of the total dividends shown, $262,760 was classified as a return of capital.

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Item 6. Selected Financial Data

The following selected financial data for the years ended December 31, 2022, 2021, 2020, 2019, and 2018 is derived from our financial statements, which have been audited by Cohen & Company, Ltd. for the years ended 2022, 2021 and 2020 and PricewaterhouseCoopers, LLP ("PwC") for the years ended 2019 and 2018, our independent registered public accounting firms. The data should be read in conjunction with our financial statements and related notes thereto and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this annual report on Form 10-K.

	Year Ended December 31, 2022	Year Ended December 31, 2021	Year Ended December 31, 2020	Year Ended December 31, 2019	Year Ended December 31, 2018
Statements of operations data:					
Total investment income	$ 3,692,613	$ 4,097,859	$ 4,813,182	$ 7,847,493	$ 7,568,407
Expenses					
Total expenses	2,280,589	2,469,693	2,593,741	4,838,086	4,300,176
Expenses waived or reimbursed by the Advisor	(377,594)	(295,261)	(349,488)	(147,269)	(427,420)
Net expenses	1,902,995	2,174,432	2,244,253	4,690,817	3,872,756
Net investment income	1,789,618	1,923,427	2,568,929	3,156,676	3,695,651
Net realized gain (loss) on investments, securities sold short and total return swaps	329,081	(3,479,546)	(27,366,934)	389,680	2,844,449
Net change in unrealized appreciation (depreciation) on investments, securities sold short and total return swaps	(6,183,873)	7,262,262	3,898,727	5,644,539	(12,749,374)
Net increase from amounts committed by affiliates	—	—	—	—	—
Net increase (decrease) in net assets resulting from operations	$ (4,065,174)	$ 5,706,143	$(20,899,278)	$ 9,190,895	$ (6,209,274)
Distributions to stockholders:					
Net investment income	$ (1,526,458)	$ (3,633,179)	$ (4,409,400)	$ (7,512,670)	$ (7,600,778)
Realized gains	—	—	—	—	—
Return of capital	$ (1,999,373)	—	—	—	—
Total distributions to stockholders	(3,525,831)	(3,633,179)	(4,409,400)	(7,512,670)	(7,600,778)
Per share information—basic and diluted:					
Net increase (decrease) in net assets resulting from operations [(1)]	$ (0.41)	$ 0.56	$ (1.98)	$ 0.88	$ (0.60)
Balance sheet data:					
Total assets	$55,251,877	$64,587,103	$ 65,784,836	$130,697,027	$ 125,482,590
Total net assets	$53,694,167	$62,938,908	$ 64,190,472	$ 88,935,553	$ 86,310,963

(1) The per share data was derived by using the weighted average shares outstanding during the period.

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The information contained in this section should be read in conjunction with our audited financial statements and related notes thereto included elsewhere in this annual report on Form 10-K. In this report, "we," "us" and "our" refer to NexPoint Capital, Inc (the "Company").

Forward-Looking Statements

Some of the statements in this annual report on Form 10-K constitute forward-looking statements because they relate to future events or our future performance or financial condition. The forward-looking statements contained in this annual report on Form 10-K may include statements as to:

- our future operating results;
- changes in healthcare technologies, finance and regulations adversely affecting our portfolio companies or financing model;
- changes in political, economic or industry conditions, the interest rate environment or conditions affecting the financial and capital markets, which could result in changes to the value of our assets;
- our business prospects and the prospects of the companies in which we may invest;
- the impact of the investments that we expect to make;
- the impact of increased competition;
- our contractual arrangements and relationships with third parties;
- the dependence of our future success on the general economy and its impact on the industries in which we may invest;
- the ability of our portfolio companies to achieve their objectives;
- impact and effects of the recent outbreak of COVID-19 on the future financial performance of the Company;
- the relative and absolute performance of our Adviser;
- our current and expected financings and investments;
- our ability to make distributions to our stockholders;
- the adequacy of our cash resources, financing sources and working capital;
- the timing and amount of cash flows, distributions and dividends, if any, from our portfolio companies;
- our use of financial leverage;
- the ability of the Adviser to locate suitable investments for us and to monitor and administer our investments;
- the ability of the Adviser or its affiliates to attract and retain highly talented professionals;
- our ability to maintain our qualification as a regulated investment company, or RIC, and as a BDC;
- the impact on our business of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules and regulations issued thereunder;
- the effect of changes to tax legislation and our tax position; and
- the tax status of the enterprises in which we may invest.

Such forward-looking statements may include statements preceded by, followed by or that otherwise include the words "may," "might," "will," "intend," "should," "could," "can," "would," "expect," "believe," "estimate," "anticipate," "predict," "potential," "plan" or similar words. The forward-looking statements contained in this annual report on Form 10-K involve risks and uncertainties. Our actual results could differ materially from those implied or expressed in the forward-looking statements for any reason, including the factors set forth elsewhere in this annual report on Form 10-K and as "Risk Factors" in the prospectus relating to the continuous public offering of our common stock.

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We have based the forward-looking statements included in this annual report on Form 10-K on information available to us on the date of this annual report on Form 10-K. Except as required by the federal securities laws, we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise. Stockholders are advised to consult any additional disclosures that we may make directly to stockholders or through reports that we may file in the future with the U.S. Securities and Exchange Commission (the "SEC"), including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. The forward-looking statements and projections contained in this annual report on Form 10-K are excluded from the safe harbor protection provided by Section 27A of the Securities Act, and Section 21E of the Exchange Act. This annual report on Form 10-K may contain statistics and other data that have been obtained from or compiled from information made available by third-party service providers. We have not independently verified such statistics or data.

Overview

We were formed in Delaware on September 30, 2013 and formally commenced operations on September 2, 2014. We are an externally managed, closed-end, non-diversified management investment company that has elected to be regulated as a BDC under the 1940 Act. In addition, for U.S. federal income tax purposes, we have elected to be treated as a RIC (Regulated Investment Company) under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code") with retroactive effect to the date we elected to be treated as a BDC. As a BDC, we are also subject to certain constraints, including limitations imposed by the 1940 Act and the Code.

NexPoint Advisors, L.P. (the "Adviser"), which serves as the adviser of the Company, is registered with the SEC as an adviser under the Advisers Act. Under the general supervision of our board of directors (the "Board") the Adviser will carry out the investment and reinvestment of the net assets of the Company, will furnish continuously an investment program with respect to the Company, and determine which securities should be purchased, sold or exchanged. In addition, the Adviser will supervise and provide oversight of the Company's service providers.

The Adviser has also entered into a Services Agreement with Skyview Group ("Skyview"), effective February 25, 2021, pursuant to which the Adviser will receive administrative and operational support services to enable it to provide the required advisory services to the Company. The Adviser will compensate all Adviser and Skyview personnel who provide services to the Company.

Effective July 12, 2022, certain Skyview personnel became dual-employees of NexPoint Services, Inc., a wholly-owned subsidiary of the Adviser. The same services are being performed by the dual-employees. The Adviser, and not the Company, will compensate all Adviser, Skyview, and dual-employee personnel who provide services to the Company.

Our investment objective is to generate high current income and long-term capital appreciation. We seek to achieve our objective by using the experience of the healthcare, credit and structured products teams of the Adviser and its affiliates to source, evaluate and structure investments, identify attractive investment opportunities that are primarily debt investments that generate high income without creating undue risk for the portfolio, make equity investments where we believe there will be attractive risk-adjusted returns that compensate for the lack of current income, and make investments in debt and equity tranches of collateralized loan obligations, or CLOs, that deliver income and high relative value. We will focus on companies that are stable, have positive cash flow and the ability to grow their business model.

Our investment policy is to invest, under normal circumstances, at least 80% of our total assets in debt and equity of middle-market companies, with an emphasis on healthcare companies, syndicated floating rate debt of large public and nonpublic companies and mezzanine and equity tranches of CLOs. Middle-market companies include companies with annual revenues between $50,000,000 and $2,500,000,000 and syndicated floating rate debt refers to loans and other instruments originated by a bank to a corporation that are sold off, or syndicated, to investors in pieces. We consider a healthcare company to be a company that is engaged in the design, development, production, sale, management or distribution of products, services or facilities used for or in connection with the healthcare industry. Additionally, we consider companies that are materially impacted by the healthcare industry (such as a contractor that derives significant revenue or profit from the construction of hospitals) as being engaged in the healthcare industry. We may invest without limit in companies that are not in the healthcare sector.

We will leverage the expertise of our Adviser with regard to distressed investing and restructuring to make opportunistic investments in distressed companies. We will utilize the Adviser's credit underwriting capability to identify the types of companies we believe will provide high current income and/or long-term capital appreciation. In addition to the investments in the healthcare industry, we may invest a portion of our capital in other opportunistic investments in which the Adviser has expertise and where we believe an opportunity exists to achieve above average risk adjusted yields and returns. These types of opportunities may include: (1) direct lending or origination investments, (2) investments in stressed or distressed situations, (3) structured product investments, (4) equity investments and (5) other investment opportunities not typically available in other BDCs. Opportunistic investments may range from broadly syndicated deals to direct lending deals in both private and public companies and may include foreign investments. We believe this is the best approach to achieving our dual mandate of attempting to generate a high yield while also attempting to produce capital appreciation.

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We seek to invest primarily in securities deemed by the Adviser to be high income generating debt investments and income generating equity securities of privately held companies in the United States. We expect the portfolio will be concentrated primarily in senior floating rate debt securities, although we may invest without limit in securities which rank lower than senior secured instruments and may invest without limit in investments with a fixed rate of interest. We will buy syndicated loans, various tranches of CLOs and other debt instruments in the secondary market as well as originate debt so we can tailor the investment parameters more precisely to our needs. We also intend to invest a portion of the portfolio in equity securities that are non-income producing, when doing so will help us achieve our objective of long-term capital appreciation. We expect the size of our positions will range from less than $1,000,000 to $20,000,000, although investments may be larger as our asset base increases. We may selectively make investments in amounts larger than $20,000,000 in some of our portfolio companies. While our asset base increases, we may make smaller investments. We may invest up to 15% of our net assets in entities that are excluded from registration under the 1940 Act by virtue of section 3(c)(1) and 3(c)(7) of the 1940 Act (such as private equity funds or hedge funds). This limitation does not apply to any CLOs, certain of which may rely on Section 3(c)(1) or 3(c)(7) of the 1940 Act.

We expect that many of the securities in which we invest will be rated below investment grade by independent rating agencies or would be rated below investment grade if they were rated. These securities, which may be referred to as "junk", have predominantly speculative characteristics with respect to the issuer's capacity to pay interest and repay principal. In addition, we expect that many of our debt investments will include floating interest rates that reset on a periodic basis and typically will not require the borrowers to pay down the outstanding principal of such debt prior to maturity.

We and the Adviser have obtained an exemptive order dated April 19, 2016 from the SEC to permit co-investments among the Company and certain other accounts managed by the Adviser or its affiliates, subject to certain conditions.

Public Offering

As a result of a series of private placements to the Adviser, we successfully satisfied the minimum offering requirement and officially commenced operations on September 2, 2014. In connection with the satisfaction of the minimum offering requirement and the commencement of our operations, the Investment Advisory Agreement became effective and the base management fee and any incentive fees, as applicable, payable to the Adviser under the Investment Advisory Agreement began to accrue. In aggregate as of December 31, 2022, the Adviser controls 2,549,002 total shares, including reinvestment of dividends, for a net amount of approximately $14.1 million. In February 2018, we closed our continuous public offering of shares of common stock.

Revenues

We generate a significant portion of our total revenue in the form of interest on the debt securities that we hold. We expect that the senior debt we invest in will generally have stated terms of 3 to 5 years and that the subordinated debt we invest in will generally have stated terms of 5 to 7 years. Our senior and subordinated debt investments bear interest at a fixed or floating rate. Interest on debt securities is generally payable monthly, quarterly or semiannually. In addition, some of our investments provide for deferred interest payments or payment-in-kind, or PIK, interest. We may also generate revenues in the form of dividends and other distributions on the equity or other securities we may hold. In addition, we may generate revenues in the form of commitment, closing, origination, structuring or diligence fees, monitoring fees, fees for providing managerial assistance, consulting fees, prepayment fees and performance-based fees. Any such fees generated in connection with our investments will be recognized as earned.

Expenses

We expect that our primary operating expenses will include the payment of fees to the Adviser under the Investment Advisory Agreement, our allocable portion of overhead expenses under the Administration Agreement and other operating costs described below. Prior to December 20, 2017, the Adviser was waiving most fees, subject to possible recoupment for expenses pertaining to periods from and after June 10, 2016. Effective December 20, 2017, the Adviser ended its voluntary waiver of advisory and administration fees. We bear all out-of-pocket costs and expenses of our operations and transactions, including:

- our organization (expenses initially paid by the Adviser until sufficient equity proceeds are raised);
- calculating our net asset value and net asset value per share (including the costs and expenses of independent valuation firms);

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- fees and expenses, including travel expenses, incurred by the Adviser or payable to third parties in performing due diligence on prospective portfolio companies, monitoring our investments and, if necessary, enforcing our rights;
- interest payable on debt, if any, incurred to finance our investments;
- the costs of this and all future offerings of common shares and other securities, and other incurrence of debt;
- the base management fee and any incentive fee;
- distributions on our shares;
- administration fees payable to the Adviser under the Administration Agreement;
- transfer agent and custody fees and expenses;
- the actual costs incurred by the Adviser as our administrator in providing managerial assistance to those portfolio companies that request it;
- amounts payable to third parties relating to, or associated with, evaluating, making and disposing of investments;
- brokerage fees and commissions;
- registration fees;
- listing fees;
- taxes;
- director fees and expenses;
- costs associated with our reporting and compliance obligations under the 1940 Act and applicable U.S. federal and state securities laws;
- the costs of any reports, proxy statements or other notices to our stockholders, including printing costs;
- costs of holding stockholder meetings;
- our fidelity bond;
- directors and officers/errors and omissions liability insurance, and any other insurance premiums;
- litigation, indemnification and other non-recurring or extraordinary expenses;
- direct costs and expenses of administration and operation, including audit and legal costs;
- fees and expenses associated with marketing efforts, including deal sourcing fees and marketing to financial sponsors;
- dues, fees and charges of any trade association of which we are a member; and
- all other expenses reasonably incurred by us or the Adviser in connection with administering our business.

During periods of asset growth, we expect our general and administrative expenses to be relatively stable or decline as a percentage of total assets and increase during periods of asset declines.

Expense Limitation

Pursuant to an expense limitation agreement (the “Expense Limitation Agreement”), the Adviser is contractually obligated to waive fees and, if necessary, pay or reimburse certain other expenses to limit ordinary “Other Expenses” to 1.0% of the quarter-end value of the Company’s gross assets through the one-year anniversary of the effective date of the registration statement. Under the Expense Limitation Agreement, “Other Expenses” are all expenses with the exception of advisor and administration fees, organization and offering costs and the following: (i) interest, taxes, dividends tied to short sales, brokerage commissions, and other expenditures which are capitalized in accordance with U.S. GAAP; (ii) expenses incurred indirectly as a result of investments in other investment companies and pooled investment vehicles; (iii) other expenses attributable to, and incurred as a result of, our investments; (iv) expenses payable to the Adviser, as administrator, for providing significant managerial assistance to our portfolio companies; and (v) other extraordinary expenses (including litigation expenses) not incurred in the ordinary course of our business. The obligation will automatically renew for one-year terms unless it is terminated by the Company or the Adviser upon written notice within 120 days of the end of the current term or upon termination of the Investment Advisory Agreement. The Expense Limitation Agreement will continue through at least April 30, 2023.

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Any expenses waived or reimbursed by the Adviser pursuant to the Expense Limitation Agreement are subject to possible recoupment by the Adviser within three years from the date of the waiver or reimbursement. The recoupment by the Adviser will be limited to the amount of previously waived or reimbursed expenses and cannot cause the Company's expenses to exceed any expense limitation in place at the time of recoupment or waiver.

Reimbursable Expenses Table

The cumulative total of fees waived by the Adviser under the Expense Limitation Agreement which are recoupable as of December 31, 2022, are $1,022,343. This balance, and the balances in the tables below, only include amounts pertaining to the Expense Limitation Agreement, and do not include waived advisory and administration fees subject to recoupment discussed elsewhere herein.

The following table reflects the 2022 quarterly fee waivers and expense reimbursements due from the Adviser as of December 31, 2022, which are subject to recoupment by the Adviser.

Quarter Ended	Yearly Cumulative Other Expenses	Yearly Expense Limitation	Yearly Cumulative Expense Reimbursement	Quarterly Recoupable/ (Recouped) Amount	Recoupment Eligibility Expiration
December 31, 2022	$ 913,273	$535,679	$ 377,594	$ 92,216	December 31, 2025
September 30, 2022	678,333	392,955	285,378	124,667	September 30, 2025
June 30, 2022	434,019	273,308	160,711	98,950	June 30, 2025
March 31, 2022	211,896	150,135	61,761	61,761	March 31, 2025

The following table reflects the 2021 quarterly fee waivers and expense reimbursements due from the Adviser as of December 31, 2021, which are subject to recoupment by the Adviser.

Quarter Ended	Yearly Cumulative Other Expenses	Yearly Expense Limitation	Yearly Cumulative Expense Reimbursement	Quarterly Recoupable/ (Recouped) Amount	Recoupment Eligibility Expiration
December 31, 2021	$ 892,640	$597,379	$ 295,261	$ 94,762	December 31, 2024
September 30, 2021	664,052	463,553	200,499	68,134	September 30, 2024
June 30, 2021	436,866	304,501	132,365	68,919	June 30, 2024
March 31, 2021	220,126	156,680	63,446	63,446	March 31, 2024

The following table reflects the 2020 quarterly fee waivers and expense reimbursements due from the Adviser as of December 31, 2020, which are subject to recoupment by the Adviser.

Quarter Ended	Yearly Cumulative Other Expenses	Yearly Expense Limitation	Yearly Cumulative Expense Reimbursement	Quarterly Recoupable/ (Recouped) Amount	Recoupment Eligibility Expiration
December 31, 2020	$ 989,447	$ 639,959	$ 349,488	$ 101,541	December 31, 2023
September 30, 2020	687,228	439,281	247,947	94,039	September 30, 2023
June 30, 2020	445,585	291,677	153,908	(30,539)	June 30, 2023
March 31, 2020	257,226	72,779	184,447	184,447	March 31, 2023

During the year ended December 31, 2022, $147,269 of expense reimbursements that were eligible for recoupment by the Adviser expired.

There can be no assurance that the Expense Limitation Agreement will remain in effect beyond April 30, 2023 or that the Adviser will reimburse any portion of our expenses in future quarters not covered by the Expense Limitation Agreement. Amounts shown do not include the amounts committed by the Adviser to voluntarily reimburse the Company for unrealized losses, all of which are not recoupable.

Portfolio Investment Activity for the years ended December 31, 2022, 2021 and 2020

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During the year ended December 31, 2022, we made long investments in portfolio companies and other investments totaling $9,519,074. During the same period, we generated proceeds from sales and principal repayments on long investments of $11,143,514. As of December 31, 2022, our investment portfolio, with a total fair value of $53.3 million, consisted of 39 positions in portfolio companies (calculated as a percentage of investments: 21.7% in first lien senior secured loans, 5.0% in second lien senior secured loans, 5.1% in corporate bonds, 0.0% in asset-backed securities, 0.3% in warrants, 36.6% in common stock, 22.5% in preferred stocks and 8.8% in LLC interests. As of December 31, 2022, the debt investments in our portfolio carry a weighted average cost price of 94.17% on par or stated value, as applicable, and our estimated gross annual portfolio yield (which represents the expected yield to be generated by us on our investment portfolio based on the composition of our portfolio as of such date), prior to leverage costs, was 3.51% based on the amortized cost of our investments. The portfolio yield does not represent an actual investment return to stockholders and does not include income from CLO equity. As of December 31, 2022, there were no positions held in the TRS.

During the year ended December 31, 2021, we made long investments in portfolio companies and other investments totaling $8,119,981. During the same period, we generated proceeds from sales and principal repayments on long investments of $17,408,129. As of December 31, 2021, our investment portfolio, with a total fair value of $60.2 million, consisted of 39 positions in portfolio companies (calculated as a percentage of investments: 36.7% in first lien senior secured loans, 5.1% in second lien senior secured loans, 11.3% in corporate bonds, 0.7% in asset-backed securities, 0.3% in warrants, 30.4% in common stock, 2.9% in preferred stocks and 12.6% in LLC interests. As of December 31, 2021, the debt investments in our portfolio carry a weighted average cost price of 92.95% on par or stated value, as applicable, and our estimated gross annual portfolio yield (which represents the expected yield to be generated by us on our investment portfolio based on the composition of our portfolio as of such date), prior to leverage costs, was 5.70% based on the amortized cost of our investments. The portfolio yield does not represent an actual investment return to stockholders and does not include income from CLO equity. As of December 31, 2021, there were no positions held in the TRS.

During the year ended December 31, 2020, we made long investments in portfolio companies and other investments totaling $54,511,342. During the same period, we generated proceeds from sales and principal repayments on long investments of $72,368,347. As of December 31, 2020, our investment portfolio, with a total fair value of $64.7 million, consisted of 45 positions in portfolio companies (calculated as a percentage of investments: 48.3% in first lien senior secured loans, 7.3% in second lien senior secured loans, 10.6% in corporate bonds, 0.6% in asset-backed securities, 0.1% in warrants, 14.9% in common stock, 0.0% in preferred stocks, 10.1% in LLC interests and 8.1% in partnership units. As of December 31, 2020, there were no investments under the TRS with BNP Paribas in our portfolio. On a look-through basis, the debt investments in our portfolio carry a weighted average cost price of 88.76% on par or stated value, as applicable, and our estimated gross annual portfolio yield (which represents the expected yield to be generated by us on our investment portfolio based on the composition of our portfolio as of such date), prior to leverage costs, was 5.48% based on the amortized cost of our investments. The portfolio yield does not represent an actual investment return to stockholders and does not include income from CLO equity. As of December 31, 2020, there were no positions held in the TRS.

Total Portfolio Activity

The following tables present selected information regarding our portfolio investment activity for the years ended December 31, 2022, 2021 and 2020:

Net Investment Activity	December 31, 2022	December 31, 2021	December 31, 2020
Purchases	$ 9,519,074	$ 8,119,981	$ 54,511,342
Proceeds from Securities Sold Short	—	—	—
Payment-in-kind	193,003	100,908	400,250
Purchases of Securities Sold Short	—	—	—
Sales and Principal Repayments	(11,143,514)	(17,408,129)	(72,368,347)
Net Portfolio Activity	$ (1,431,437)	$ (9,187,240)	$ (17,456,755)

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New Investment Activity by Asset Class	For the Year Ended December 31, 2022		For the Year Ended December 31, 2021		For the Year Ended December 31, 2020	
	Purchases	Percentage	Purchases	Percentage	Purchases	Percentage
Senior Secured Loans—First Lien	$ 3,485,000	36.6%	$ 5,335,151	65.7%	$ 27,159,682	49.7%
Senior Secured Loans—Second Lien	—	0.0%	—	0.0%	6,299,722	11.6%
Corporate Bonds – Senior Unsecured	—	0.0%	—	0.0%	4,842,635	8.9%
Equities	34,088	0.4%	1,013,533	12.5%	3,583,987	6.6%
LLC Interests	—	0.0%	—	0.0%	6,312,618	11.6%
Mortgage-Backed-Securities	—	0.0%	—	0.0%	—	0.0%
Closed-End Mutual Funds	—	0.0%	—	0.0%	—	0.0%
Preferred Stocks	5,999,986	63.0%	1,750,000	21.6%	—	0.0%
Warrants	—	0.0%	21,297	0.2%	—	0.0%
Total Investments	$ 9,519,074	100.0%	$ 8,119,981	100.0%	$ 54,511,342	100.0%

The following tables summarize the composition of our investment portfolio at amortized cost and fair value as of December 31, 2022 and December 31, 2021:

December 31, 2022			
Portfolio Composition by Investment Type	Amortized Cost[(1)]	Fair Value	Percentage of Portfolio (at fair value)
Senior Secured Loans — First Lien	$ 14,645,107	$ 11,575,822	21.7%
Senior Secured Loans — Second Lien	2,976,056	2,652,371	5.0%
Asset-Backed Securities	388,541	7,036	0.0%
LLC Interests	3,666,112	4,689,242	8.8%
Corporate Bonds	3,358,783	2,704,917	5.1%
Common Stocks	17,100,444	19,514,684	36.6%
Preferred Stock	11,829,986	11,967,910	22.5%
Warrants	74,284	181,733	0.3%
Total Invested Assets	**$ 54,039,313**	**$ 53,293,715**	**100%**

(1) Amortized cost represents the original cost adjusted for the amortization of premiums and/or accretion of discounts, as applicable, on investments.

December 31, 2021			
Portfolio Composition by Investment Type	Amortized Cost[(1)]	Fair Value	Percentage of Portfolio (at fair value)
Senior Secured Loans — First Lien	$ 21,439,866	$ 22,144,887	36.7%
Senior Secured Loans — Second Lien	2,957,993	3,072,569	5.1%
Asset-Backed Securities	422,271	405,040	0.7%
LLC Interests	7,000,000	7,572,374	12.6%
Corporate Bonds	6,817,768	6,826,266	11.3%
Common Stocks	14,308,512	18,329,113	30.4%
Preferred Stock	1,750,000	1,725,000	2.9%
Warrants	74,284	161,062	0.3%
Total Invested Assets	**$ 54,770,694**	**$ 60,236,311**	**100%**

(1) Amortized cost represents the original cost adjusted for the amortization of premiums and/or accretion of discounts, as applicable, on investments.

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The following table presents certain selected information regarding the composition of our investment portfolio as of December 31, 2022, and December 31, 2021:

	December 31, 2022	December 31, 2021
Number of Investments	39	39
% Variable Rate (based on fair value)	71%	63%
% Non-Income Producing Equity or Other Investments (based on fair value)	27%	21%
Weighted Average Cost Price of Investments (as a % of par or stated value)	94.17%	92.95%
Weighted Average Credit Rating of Investments that were Rated	Caa1	Caa1
% of Fixed Income Investments on Non-Accrual (based on fair value)	0.0%	0.3%

Portfolio Composition by Strategy and Industry

The table below summarizes the composition of our investment portfolio by strategy and enumerates the percentage, by fair value, of the total portfolio assets in such strategies as of December 31, 2022, and December 31, 2021:

	December 31, 2022		December 31, 2021	
Portfolio Composition by Strategy	Fair Value	Percentage of Portfolio	Fair Value	Percentage of Portfolio
Broadly Syndicated – Private	$ 6,183,456	11.6%	$ 5,668,835	9.4%
Broadly Syndicated – Public	2,561,915	4.8%	394,950	0.6%
Middle-Market	42,133,492	74.4%	53,767,486	89.3%
Opportunistic/Other	2,414,852	5.1%	405,040	0.7%
Total Invested Assets	**$ 53,293,715**	**100.0%**	**$ 60,236,311**	**100.0%**

Broadly syndicated debt refers to loans and other instruments originated by a bank to a large corporation (both private and public) that are sold off, or syndicated, to investors in pieces. Middle-Market companies include companies with annual revenues between $50 million and $2.5 billion.

The table below describes investments by industry classification and enumerates the percentage, by fair value, of the total portfolio assets in such industries as of December 31, 2022, and December 31, 2021:

	December 31, 2022		December 31, 2021	
Industry Classifications	Fair Value	Percentage of Portfolio	Fair Value	Percentage of Portfolio
Chemicals	$ 42,500	0.1%	$ 42,500	0.1%
Consumer Products	3,088,750	5.8%	2,812,212	4.7%
Energy	1,752,941	3.3%	1,204,904	2.0%
Financials	3,180,161	6.0%	4,338,790	7.2%
Healthcare	26,101,074	49.0%	31,167,298	51.7%
Media/Telecommunications	310,563	0.6%	394,950	0.7%
Real Estate Investment Trusts (REITs)	1,018,779	1.9%	1,942,593	3.2%
Real Estate	11,613,222	21.8%	12,659,057	21.0%
Retail	—	0.0%	—	0.0%

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Service	2,268	0.0%	5,172	0.0%
Telecommunication Services	6,183,457	11.6%	5,668,835	9.4%
Manufacturing	—	0.0%	—	0.0%
Total Invested Assets	**$ 53,293,715**	**100.0%**	**$ 60,236,311**	**100.0%**

As of December 31, 2022, the Company was an "affiliated person," as defined in the 1940 Act, of NexPoint Real Estate Finance, Inc., NexPoint Capital REIT, LLC, SFR WLIF III, LLC, and NexPoint Residential Trust, Inc. In general, under the 1940 Act, we are presumed to "control" a portfolio company if we owned 25% or more of its voting securities or we had the power to exercise control over the management or policies of such portfolio company and would be an "affiliated person" of a portfolio company if we owned 5% or more of its voting securities.

Summary Description of Portfolio Companies/Investments

As of December 31, 2022, and December 31, 2021, 53.5% and 51.7% (based on fair value), respectively, of our portfolio consisted of healthcare related and opportunistic investments. Information regarding these investments is provided below. Information regarding these investments is provided below. This additional information is limited to publicly available information, and does not address credit worthiness or financial viability of the issuer, or our future plans as it relates to a specific investment:

Healthcare Investments

Sapience Therapeutics, Inc.: As of December 31, 2022, we held preferred shares of Sapience Therapeutics, Inc. with an aggregate fair value of $8.3 million. We did not hold preferred shares as of December 31, 2021 but held convertible promissory notes with an aggregate fair value of $4 million which converted in 2022. Sapience Therapeutics is a clinical stage biopharmaceutical company which addresses previously 'undruggable' molecular targets that address protein-protein interactions via the development of peptide-based drugs.

CCS Medical, Inc.: As of December 31, 2022, we held first lien senior secured loans of CCS Medical, Inc. with an aggregate fair value of $3.0 million. We did not hold any such investments as of December 31, 2021. CCS Medical, Inc. provides direct-to-home delivery of medical supplies. The Company offers diabetes testing, insulin pumps, prescription medications, ostomy, urological, wound care, and incontinence supplies. CCS Medical serves customers in the United States.

Apnimed, Inc.: As of December 31, 2022, we held preferred shares of Apnimed Inc, with an aggregate fair value of $2.3 million. We did not hold preferred shares as of December 31, 2021. Apnimed, Inc. is a clinical-stage pharmaceutical company focused on developing oral pharmacologic therapies for the treatment of obstructive sleep apnea (OSA) and related disorders. Apnimed' s lead development program targets the neurologic control of upper airway muscles to maintain an open airway during sleep.

RXBenefits, Inc.: As of December 31, 2022, and December 31, 2021, we held first lien senior secured loans of RXBenefits, Inc. with an aggregate fair value of $1.9 million and $3.2 million, respectively. RXBenefits, Inc. is a pharmacy benefits optimization platform that serves primarily the small and mid-sized employer market and provides a more curated and competitive pharmacy benefits marketplace for its employer customer base.

CNT Holdings I Corp.: As of December 31, 2022, and December 31, 2021, we held second lien senior secured loans of CNT Holdings I Corp., with an aggregate fair value of $1.4 million and $1.5 million, respectively. CNT Holdings I Corp. is a subsidiary of 1-800 CONTACTS Inc. 1-800 CONTACTS Inc., is the largest direct to customer distributers of contact lenses in the United States and has expanded to provide online prescription renewals, glasses, lens replacements and other services.

Results of Operations for the years ended December 31, 2022, 2021, and 2020

Revenues

We generate a significant portion of our investment income in the form of interest on the debt securities we purchase or originate. We have invested primarily in broadly syndicated bank loans of private companies. Bank loans generally pay interest at rates which are periodically determined by reference to a base lending rate plus a spread. The base lending rate is typically the three-month LIBOR. The settlement of bank loans differs from the settlement of many other equity or debt instruments. Bank loans are

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manually settled through the agent by assignment. As a result, settlement can take an undetermined amount of time. Currently, according to data provided by Markit Partners, bank loans settle, on average, on the seventeenth day after the trade date. Generally, interest does not begin to accrue to the buyer until seven business days after the trade date.

Our CLO equity pays quarterly dividends based on excess cash flow available after the CLO's payment "waterfall" provisions. Both Grayson and PAMCO CLOs are past their respective investment periods, and as a result, excess cash flow is expected to decline over time. We, therefore, expect that the quarterly dividends paid by the investment will similarly decline.

Expenses

For the years ended December 31, 2022, 2021, and 2020, respectively, we had total net operating expenses of $1,902,995 or $0.19 per share, $2,174,432 or $0.21 per share, $2,244,253 or $0.21 per share. Our operating expenses include base management fees attributed to the Adviser of $1,096,487, $1,220,044, and $1,192,535 for the year ended December 31, 2022, 2021, and 2020. Of these amounts, $0, $0, and $0 were voluntarily waived. Our expenses also include administrative services expenses attributed to the Adviser of $226,948, $244,754, and $245,534 for the years ended December 31, 2022, 2021 and 2020, respectively.

Amounts waived for management fees or administrative services expenses pertaining to periods prior to June 10, 2016 are not recoupable, but amounts waived for management fees or administrative services expenses pertaining to periods from and after June 10, 2016 are subject to recoupment by the Adviser within three years from the date that such fees were otherwise payable, provided that the recoupment will be limited to the amount of such voluntarily waived fees from and after June 10, 2016 and will not cause the sum of the Company's advisory fees, administration fees, Other Expenses, and any recoupment to exceed the annual rate of 3.40% of average gross assets. Effective December 20, 2017, the Adviser ended its voluntary waiver of advisory fees.

Amounts waived and subject to recoupment pertaining to advisory and administration fees are shown below:

Period Ended	Advisory Fees Waived and Subject to Recoupment [(1)]	Administrator fees Waived and Subject to Recoupment [(1)]	Recoupment Eligibility Expiration
December 31, 2017	$ 413,916	$ 75,906	Expired
September 30, 2017	305,288	69,308	Expired
June 30, 2017	389,733	77,947	Expired
March 31, 2017	390,969	78,194	Expired
December 31, 2016	366,861	73,372	Expired
September 30, 2016	343,320	68,664	Expired
June 30, 2016	74,421	14,884	Expired
Total	**$ 2,284,508**	**$ 458,275**	

(1) The Adviser has permanently waived the recoupment of any advisory fees or administration fees calculated on the portion of gross assets attributable to the receivable from Adviser balance on the Statements of Assets and Liabilities.

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Our other expenses subject to the Expense Limitation Agreement for years ended December 31, 2022, 2021, and 2020 were $913,273, $892,640, and $989,447, and consisted of the following:

	For the Year Ended December 31, 2022	For the Year Ended December 31, 2021	For the Year Ended December 31, 2020
Audit and tax fees	$ 167,864	$ 168,254	$ 223,648
Legal fees	53,658	72,441	81,141
Custodian and accounting service fees	311,050	307,438	312,199
Reports to stockholders	82,721	75,060	82,492
Stock transfer fee	209,866	208,251	248,563
Directors' fees	18,170	17,781	20,123
Other expenses	69,944	43,415	21,281
Total	**$ 913,273**	**$ 892,640**	**$ 989,447**

In addition, cumulatively from inception through June 10, 2016, the Adviser voluntarily waived $930,143 and $186,042 of advisory fees and administration fees, respectively, all of which are not recoupable.

Please refer to the Expense Limitation section above for further details on expense reimbursements.

Net Investment Income

We earned net investment income of $1,789,618 or $0.18 per share, $1,923,427 or $0.19 per share, $2,568,929 or $0.24 per share for the years ended December 31, 2022, 2021, and 2020, respectively.

Net Realized Gains or Losses

We had sales or principal repayments of $11,143,514, $17,408,129, and $72,368,347, during the years ended December 31, 2022, 2021, and 2020, respectively, from which we realized net gains(losses) of $329,081, $(3,479,546), and $(20,436,938), respectively. Additionally, during the year ended December 31, 2022, 2021, and 2020, we realized gains(losses) on total return swaps of $0, $0 and $(6,929,996), respectively.

Net Change in Unrealized Appreciation (Depreciation) on Investments

For the years ended December 31, 2022, 2021, and 2020, the net change in unrealized appreciation (depreciation) on investments totaled $(6,183,873) or $(0.63) per share, $7,262,262 or $0.71 per share, and $1,153,685 or $0.11 per share, respectively. The net change in unrealized appreciation (depreciation) on our investments during the year ended December 31, 2022, was primarily driven by the performance of America Banknote Corporation Common Stock, NexPoint Real Estate Finance, Inc. Common Stock and the Enterprise Merger Sub Term Loan. The net change in unrealized appreciation (depreciation) on our investments during the year ended December 31, 2021 was primarily driven by the performance of TerreStar Corp. Common Stock, NexPoint Residential Trust, Inc. Common Stock and the US Gaming LLC Interests. The net change in unrealized appreciation (depreciation) on our investments during the year ended December 31, 2020 was primarily driven by the performance of TerreStar Corp. Common Stock, BW NHHC Holdco, Inc. Senior Secure Loan and the Advantage Sales & Marketing, Inc. Second Lien Term Loan.

Net Increase from Payment from Affiliates

For the year ended December 31, 2016, the Adviser committed $872,000 to the Company to voluntarily reimburse the Company for unrealized losses sustained. No amounts were committed for the years ended December 31, 2022, 2021 and 2020. Cumulatively since inception, the Adviser has committed $2,275,000 to voluntarily reimburse the Company for such losses. Had these payments not been made, the NAV as of December 31, 2022 would have been lower. These payments are shown in the Statements of Operations as net increase from amounts committed by affiliates, if applicable, and are not recoupable.

Net Increase (Decrease) in Net Assets Resulting from Operations

For the years ended December 31, 2022, 2021 and 2020, the net increase/(decrease) in net assets resulting from operations was $(4,065,174) or $(0.41) per share, $5,706,143 or $0.56 per share, and $(20,899,278) or $(1.98) per share, respectively.

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	For the Year Ended December 31, 2022	For the Year Ended December 31, 2021	For the Year Ended December 31, 2020
Income	$ 3,692,613	$ 4,097,859	$ 4,813,182
Expenses	(1,902,995)	(2,174,432)	(2,244,253)
Net Realized Gain/(Loss)	329,081	(3,479,546)	(27,366,934)
Net Unrealized Appreciation (Depreciation)	(6,183,873)	7,262,262	3,898,727
Net increase from amounts committed by affiliates	—	—	—
Total	**$(4,065,174)**	**$ 5,706,143**	**$(20,899,278)**

Financial Condition, Liquidity and Capital Resources

As of December 31, 2022, and December 31, 2021, we had cash and cash equivalents of $1,629,846 and $2,811,171, respectively. As of December 31, 2022, and December 31, 2021, $1,420,428 and $2,704,193 was held in the State Street U.S. Government Money Market Fund, and $209,418 and $106,978 was held in a custodial account with State Street Bank and Trust Company, respectively. Cash and cash equivalents are available to fund new investments, pay operating expenses and pay distributions.

In aggregate as of December 31, 2022, the Adviser controls 2,549,002 total shares, including reinvestment of dividends, for a net amount of approximately $14.1 million.

The sales commissions and dealer manager fees related to the sale of our common stock were $0, $0, and $0, for the years ended December 31, 2022, 2021, and 2020 and were offset against capital in excess of par value on the financial statements.

We expect to generate cash flows primarily from fees, interest and dividends earned from our investments, as well as principal repayments and proceeds from sales of our investments.

Prior to investing in securities of portfolio companies, we invest the net proceeds from the issuance of shares of common stock under our distribution reinvestment plan and from sales and paydowns of existing investments primarily in cash, cash equivalents, U.S. government securities, repurchase agreements, high-quality debt instruments maturing in one year or less from the time of investment, consistent with our BDC election and our election to be treated as a RIC. Additionally, we may invest in higher yielding, liquid credit investments such as bank loans and corporate notes and bonds, which are considered "junk" as they are rated below investment grade, to the extent that at time of purchase 70% of our portfolio is in qualified investments as required by rules and regulations under the 1940 Act.

On October 19, 2017, the Company entered into a financing arrangement (the "Financing Arrangement") with BNP Paribas Prime Brokerage International, Ltd., BNP Prime Brokerage, Inc., and BNP Paribas (together, the "BNPP Entities"). Under the Financing Agreement, the BNPP Entities may make margin loans to the Company at a rate of one-month LIBOR + 1.30%. The BNPP Entities have the right to cap the amount of margin loans with prior notice to the Company. The Financing Arrangement could be terminated by either the Company or the BNPP Entities with 179 days' notice.

On April 15, 2020, the Financing Arrangement was paid down and closed. As of December 31, 2022, and December 31, 2021, $0 and $0, respectively, were outstanding under the Financing Arrangement.

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For the years ended December 31, 2022, 2021, and 2020, the components of total interest expense were as follows:

	For the Year Ended December 31, 2022	For the Year Ended December 31, 2021	For the Year Ended December 31, 2020
Direct interest expense	$ —	$ —	$ 176,711
Commitment fees	—	—	(204)
Amortization of financing costs	—	—	—
Total	**$ —**	**$ —**	**$ 176,707**

On June 13, 2017, the Company, entered into the TRS with BNP Paribas over one or more loans, with a maximum aggregate notional amount of the portfolio debt securities subject to the TRS of $40 million. On April 2, 2018, the Company amended and restated the TRS Agreement with BNP Paribas to increase the maximum aggregate notional amount of the portfolio debt securities subject to the TRS to $60 million.

On June 10, 2020, the TRS expired. As of December 31, 2019, the TRS had a notional amount of $50,904,830 and a market value of $47,899,681. As December 31, 2019, cash collateral of $21,400,000 was posted against the TRS. See Note 7 to the financial statements included herein for additional information on the TRS.

While we are authorized to issue preferred stock, we do not currently anticipate issuing any.

Contractual Obligations and Off-Balance Sheet Arrangements

We may become a party to financial instruments with off-balance sheet risk in the normal course of our business to meet the financial needs of our portfolio companies. These instruments may include commitments to extend credit and involve, to varying degrees, elements of liquidity and credit risk in excess of the amount recognized in the balance sheet. As of December 31, 2022 and December 31, 2021, we had no outstanding commitments to fund investments.

We have certain contracts under which we have material future commitments. We have entered into the Investment Advisory Agreement with the Adviser in accordance with the 1940 Act. Under the Investment Advisory Agreement, the Adviser provides us with investment advisory and management services. For these services, we pay (1) a management fee equal to a percentage of the average value of our gross assets and (2) an incentive fee based on our performance.

The incentive fee consists of two parts. The first part, which is calculated and payable quarterly in arrears, equals Pre-Incentive Fee Net Investment Income for the immediately preceding calendar quarter and is subject to a hurdle rate, expressed as a rate of return on our net assets, equal to 1.875% per quarter. As a result, the Adviser will not earn this incentive fee for any quarter until our pre-incentive fee net investment income for such quarter exceeds the hurdle rate of 1.875%. Once our pre-incentive fee net investment income in any quarter exceeds the hurdle rate, the Adviser will be entitled to a "catch-up" fee equal to the amount of the pre-incentive fee net investment income in excess of the hurdle rate, until our pre-incentive fee net investment income for such quarter equals 2.34375% of the Company's net assets at the end of such quarter. This "catch-up" feature allows the Adviser to recoup the fees foregone as a result of the existence of the hurdle rate. Thereafter, the Adviser will receive 20.0% of our pre-incentive fee net investment income. For purposes of calculating this part of the incentive fee, "Pre-Incentive Fee Net Investment Income" means interest income, distribution income and any other income (including any other fees, other than fees for providing managerial assistance, such as commitment, origination, structuring, diligence and consulting fees or other fees that we receive from portfolio companies) accrued during the calendar quarter, minus our operating expenses for the quarter (including the base management fee, expenses payable under the Administration Agreement and any interest expense and any dividends paid on any issued and outstanding preferred stock, but excluding the incentive fee). Pre-Incentive Fee Net Investment Income includes, in the case of investments with a deferred interest feature (such as original issue discount, debt instruments with PIK interest and zero-coupon securities), accrued income that we have not yet received in cash. Pre-Incentive Fee Net Investment Income does not include any realized capital gains, realized capital losses or unrealized capital appreciation or depreciation.

The second part of the incentive fee, which is referred to as the incentive fee on capital gains, is determined and payable in arrears as of the end of each calendar year (or upon termination of the Investment Advisory Agreement). This fee equals 20.0% of our incentive fee capital gains, which will equal our realized capital gains on a cumulative basis from formation, calculated as of the end of the applicable period, computed net of all realized capital losses (proceeds less amortized cost) and unrealized capital

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depreciation on a cumulative basis, less the aggregate amount of any previously paid capital gains incentive fees. We will accrue for the capital gains incentive fee, which, if earned, will be paid annually. We will accrue for the capital gains incentive fee based on net realized and unrealized gains; however, under the terms of the Investment Advisory Agreement, the fee payable to the Adviser will be based on realized gains and no such fee will be payable with respect to unrealized gains unless and until such gains are actually realized. For the years ended December 31, 2022 and December 31, 2011, the Company incurred $0 and $0 of incentive fees on capital gains, respectively Since inception, the Company has accrued $0 of incentive fees on capital gains in aggregate. Effective December 20, 2017, the Adviser ended its voluntary waiver of incentive fees. No such fees have been paid with respect to realized gains as of December 31, 2022.

Under the Administration Agreement, the Adviser furnishes us with office facilities and equipment, provides us clerical, bookkeeping and record keeping services at such facilities and provides us with other administrative services necessary to conduct our day-to-day operations. We will reimburse the Adviser for the allocable portion (subject to the review and approval of the Board) of overhead and other expenses incurred by it in performing its obligations under the Administration Agreement, including rent, the fees and expenses associated with performing compliance functions and our allocable portion of the cost of our chief financial officer and chief compliance officer and their respective staffs, to the extent that such expenses do not exceed an annual rate of 0.4% of our gross assets. The Adviser also provides on our behalf significant managerial assistance to those portfolio companies to which we are required to offer to provide such assistance and any expenses payable to the Adviser for such managerial assistance are not subject to the cap on reimbursement.

Our organization and offering costs together are limited to 1% of total gross proceeds raised and are not due and payable to the Adviser to the extent they exceed that amount. The cumulative aggregate amount of organization and offering costs exceeds 1% of total proceeds raised. Subsequent to the termination of the Offering, the Adviser forfeited the right to reimbursement of the remaining $4,305,091 of these costs.

If any of the contractual obligations discussed above is terminated, our costs under any new agreements that we enter into may increase. In addition, we would likely incur significant time and expense in locating alternative parties to provide the services we receive under our Investment Advisory Agreement and our Administration Agreement. Any new investment advisory agreement would also be subject to approval by our stockholders.

If for any taxable year we were not a “publicly offered” RIC within the meaning of Code Section 67(c)(2)(B), certain of our direct and indirect expenses, including the management fee, the incentive fee and certain other advisory expenses, would be subject to special “pass-through” rules. Such rules would treat these expenses as additional dividends to certain of our direct or indirect stockholders (generally including individuals and entities that compute their taxable income in the same manner as an individual) and as deductible by those stockholders, subject to the 2% “floor” on miscellaneous itemized deductions and other significant limitations on itemized deductions set forth in the Code.

Distributions

In order to qualify for the special tax treatment accorded RICs and their shareholders, we are required under the Code, among other things, to distribute at least 90% of our net ordinary income and net short-term capital gains in excess of net long-term capital losses, or “investment company taxable income,” to our stockholders on an annual basis. We intend to authorize and declare quarterly distributions to be paid quarterly to our stockholders as determined by the Board. In addition, we also intend to distribute any realized net capital gains (i.e., realized net long-term capital gains in excess of realized net short-term capital losses) at least annually.

We may not be able to achieve operating results that will allow us to make distributions at a specific level or to increase the amount of our distributions from time to time. In addition, we may be limited in our ability to make distributions due to the asset coverage requirements applicable to us as a BDC under the 1940 Act. If we do not distribute a certain percentage of our income annually, we will suffer adverse U.S. federal income tax consequences, including possible failure to qualify for the special tax treatment accorded RICs and their shareholders. We cannot assure stockholders that they will receive any distributions.

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We have adopted an “opt in” distribution reinvestment plan for our stockholders. As a result, if we declare a cash distribution, our stockholders will receive distributions in cash unless they specifically “opt in” to the distribution reinvestment plan to have their cash distributions reinvested in additional shares of our common stock. However, certain state authorities or regulators may impose restrictions from time to time that may prevent or limit a stockholder’s ability to participate in our distribution reinvestment plan. Although distributions paid in the form of additional shares of our common stock will generally be subject to U.S. federal, state and local taxes in the same manner as cash distributions, stockholders participating in our dividend reinvestment plan will not receive any corresponding cash distributions with which to pay any such applicable taxes.

On June 24, 2020, the Board of Directors approved a change in its dividend and capital gains distribution schedule from monthly distributions to quarterly distributions, effective immediately. The first quarterly distribution was paid on October 12, 2020 to shareholders of record as of September 30, 2020. For the year ended December 31, 2022, the Company made the following distributions:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2022(3)	$ 0.090	$ 870,980	$ —
9/30/2022	0.090	874,461	303,070
6/30/2022	0.090	887,710	298,766
3/31/2022	0.090	892,680	301,212
1/2/2022(2)	—	—	306,152
Total	**$ 0.360**	**$3,525,831**	**$ 1,209,200**

1 Of the total dividends shown, $1,999,373 was classified as a return of capital.
2 The December 2021 Dividend was reinvested in January 2022, see total December 2021 Dividend in table below.
3 The December 2022 Dividend was reinvested in January 2023.

For the year ended December 31, 2021, the Company made the following distributions:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2021(3)	$ 0.090	$ 896,061	$ —
9/30/2021	0.090	903,359	320,218
6/30/2021	0.090	909,619	322,287
3/31/2021	0.090	924,140	331,405
1/2/2021(2)	—	—	345,331
Total	**$ 0.360**	**$3,633,179**	**$ 1,319,241**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2020 Dividend was reinvested in January 2021, see total December 2020 Dividend in table below.
3 The December 2021 Dividend was reinvested in January 2022.

For the year ended December 31, 2020, the Company made the following distributions:

Payable Date	Dividend/ Share (1)	Total Dividend (1)	Dividends Reinvested (2)(3)
12/31/2020(3)	$ 0.090	$ 942,766	$ —
9/30/2020	0.090	944,487	347,961
4/27/2020	0.060	633,540	241,202
3/27/2020	0.060	629,128	237,068
2/27/2020	0.060	631,127	245,478
1/30/2020	0.060	628,352	396,837
1/2/2020(2)	—	—	396,214
Total	**$ 0.420**	**$4,409,400**	**$ 1,864,760**

1 For the current period, there were no dividends classified as a return of capital.
2 The December 2019 Dividend was reinvested in January 2020, see total December 2019 Dividend in table below.
3 The December 2020 Dividend was reinvested in January 2021

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Related Party Transactions

We have entered into a number of business relationships with affiliated or related parties, including the following:

- We entered into the Investment Advisory Agreement with the Adviser. James Dondero, our president, controls the Adviser by virtue of his control of its general partner, NexPoint Advisors GP, LLC.
- Pursuant to an expense limitation agreement, the Adviser has agreed to waive fees or, if necessary, reimburse us to limit certain expenses to 1.0% of the quarter-end value of our gross assets.
- The Adviser provides us with the office facilities and administrative services necessary to conduct our day-to-day operations pursuant to the Administration Agreement.
- The dealer manager, NexPoint Securities, Inc., is an affiliate of the Adviser.
- In aggregate as of December 31, 2022, the Adviser controls 2,549,002 total shares of the common stock of the Company, including reinvestment of dividends, for a net amount of approximately $14.1 million.
- Cumulatively since inception, the Adviser has paid $2,275,000 to voluntarily reimburse the Company for certain unrealized losses on investments. Had these payments not been made, the NAV as of December 31, 2022, would have been lower. These payments are not recoupable by the Adviser.

The Adviser and its affiliates also sponsor, or manage, and may in the future sponsor or manage, other investment funds, accounts or investment vehicles (together referred to as "accounts") that have investment mandates that are similar, in whole and in part, with ours. The Adviser and its affiliates may determine that an investment is appropriate for us and for one or more of those other accounts. In such event, depending on the availability of such investment and other appropriate factors, and pursuant to the Adviser's allocation policy and co-investment relief, the Adviser or its affiliates may determine that we should invest side-by-side with one or more other accounts. We do not intend to make any investments if they are not permitted by applicable law and interpretive positions of the SEC and its staff, or if they are inconsistent with the Adviser's allocation procedures and co-investment relief.

In addition, we and the Adviser have each adopted a formal code of ethics that governs the conduct of our and the Adviser's officers, directors and employees. Our officers and directors also remain subject to the duties imposed by both the 1940 Act and the Delaware General Corporations Law.

Critical Accounting Policies

The preparation of the financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. Changes in the economic environment, financial markets and any other parameters used in determining such estimates could cause actual results to differ. We have identified the following as critical accounting policies.

Fair Value of Financial Instruments

We will value our investments in accordance with ASC Topic 820, Fair Value Measurements and Disclosure, or ASC Topic 820. ASC Topic 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about assets and liabilities measured at fair value. ASC Topic 820's definition of fair value focuses on exit price in the principal, or most advantageous, market and prioritizes the use of market-based inputs over entity-specific inputs within a measurement of fair value.

The portfolio will often include debt investments and equity investments that are fair valued. The portion of our portfolio that receives values from independent third parties are valued at their mid quotations obtained from unaffiliated market makers, other financial institutions that trade in similar investments or based on prices provided by independent third-party pricing services. For investments where there are no available bid quotations, fair value is derived using proprietary models that consider the analyses of independent valuation agents as well as credit risk, liquidity, market credit spreads, and other applicable factors for similar transactions.

Due to the nature of our strategy, our portfolio will include relatively illiquid investments that are privately held. Valuations of privately held investments are inherently uncertain, may fluctuate over short periods of time and may be based on estimates. The determination of fair value may differ materially from the values that would have been used if a ready market for these investments existed. Our net asset value could be materially affected if the determinations regarding the fair value of our investments were materially higher or lower than the values that we ultimately realize upon the disposal of such investments.

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Pursuant to Rule 2a-5 under the 1940 Act, the Board has designated the Adviser as the Company's valuation designee to perform the fair valuation determination for securities and other assets held by the Company. Pursuant to board approved policies and procedures, the Adviser, is responsible for determining the fair value of the portfolio investments that are not publicly traded, whose market prices are not readily available on a quarterly basis in good faith or any other situation where portfolio investments require a fair value determination. Rule 2a-5 states that a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the Company can access at the measurement date, provided that a quotation will not be readily available if it is not reliable. Market quotations may also not be "readily available" if a significant event occurs that causes the Adviser to believe that the market price of a security no longer represents the security's current value at the time of the Company's NAV determination.

The valuation process is conducted at the end of each fiscal quarter, with a portion of our valuations of portfolio companies without market quotations subject to review by the independent valuation firms each quarter. When an external event with respect to one of our portfolio companies, such as a purchase transaction, public offering or subsequent equity sale occurs, we expect to use the pricing indicated by such external event to corroborate our valuation.

With respect to investments for which market quotations are not readily available, the Adviser undertakes a multi-step valuation process each quarter, as described below:

- The valuation process begins with each portfolio company or investment being initially valued by investment professionals of the Adviser responsible for credit monitoring or independent third-party valuation firms.
- Preliminary valuation conclusions are then documented and discussed with a committee comprised of certain senior management employees of the Adviser (the "Valuation Committee").
- The Audit and Qualified Legal Compliance Committee of the Board, in assistance of Board valuation oversight, reviews portfolio valuation, including oversight of valuations determined by the Adviser and the Valuation Committee pursuant to the policies and procedures approved by the Board.
- At least once each quarter, the valuations for approximately one quarter of the portfolio investments that have been fair valued are reviewed by an independent valuation firm such that, over the course of a year, each material portfolio investment that has been fair valued shall have been reviewed by an independent valuation firm at least once.
- Based on this information, the Adviser discusses valuations and determines the fair value of each investment in our portfolio in good faith pursuant to board-approved policies and procedures.

As of December 31, 2022, the Company held the following investments for which a sufficient level of current, reliable market quotations were not available:

Instrument	Type	Fair Value
Grayson Investor Corp.	Asset-Backed Securities	$ 7,023
PAMCO CLO 1997-1A B	Asset-Backed Securities	13
American Banknote Corp.	Common Stocks	1,732,500
IQHQ, Inc.	Common Stocks	2,359,000
Terrestar Corp.	Common Stocks	5,114,214
Wayne Services Legacy Inc.	Common Stocks	2,269
NexPoint Capital REIT, LLC	LLC Interests	1,176,024
SFR WLIF III, LLC	LLC Interests	424,468
US Gaming, LLC	LLC Interests	3,088,750
Apnimed, Inc.	Preferred Stocks	1,499,989
Apnimed, Inc.	Preferred Stocks	799,994
Sapience Therapeutics, Inc.	Preferred Stocks	4,549,525
Sapience Therapeutics, Inc.	Preferred Stocks	3,677,777
Carestream Health, Inc.	Senior Secured Loans	511,483
CCS Medical, Inc.	Senior Secured Loans	3,000,000
Terrestar Corp.	Senior Secured Loans	810,953
Terrestar Corp.	Senior Secured Loans	191,988
Terrestar Corp.	Senior Secured Loans	34,300

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Instrument	Type	Fair Value
Terrestar Corp.	Senior Secured Loans	32,002

As of December 31, 2021, the Company held the following investments for which a sufficient level of current, reliable market quotations were not available:

Instrument	Type	Fair Value
Grayson Investor Corp.	Asset-Backed Securities	$ 304,000
PAMCO CLO 1997-1A B	Asset-Backed Securities	101,040
American Banknote Corp.	Common Stocks	2,208,750
IQHQ, Inc.	Common Stocks	1,823,000
Terrestar Corp.	Common Stocks	4,706,357
Wayne Services Legacy Inc.	Common Stocks	5,172
SFR WLIF III, LLC	LLC Interests	1,563,916
SFR WLIF II, LLC	LLC Interests	3,196,246
US GAMING LLC	LLC Interests	2,812,212
Sapience Therapeutics, Inc.	Senior Secured Loans	4,000,000
Terrestar Corp.	Senior Secured Loans	729,979
Terrestar Corp.	Senior Secured Loans	172,817
Terrestar Corp.	Senior Secured Loans	30,875
Terrestar Corp.	Senior Secured Loans	28,807
Gemphire Therapeutics, Inc.	Warrants	—

Organization Costs

Organization costs include the cost of incorporation, such as the cost of legal services and other fees pertaining to our organization. Organization costs, together with offering costs, are limited to 1% of total gross proceeds raised in the offering and are not due and payable to the Adviser to the extent they exceed that amount. For the year ended December 31, 2022, 2021, and 2020, the Adviser did not incur any organization costs on our behalf.

Offering Costs

Our offering costs include legal fees, promotional costs and other costs pertaining to the public offering of our shares of common stock and are capitalized and amortized to expense over one year. For the years ended December 31, 2022, 2021 and 2020, the Adviser incurred offering costs of $0, $0, and $0, respectively, on our behalf. For the years ended December 31, 2022, 2021 and 2020, the Company capitalized $0, $0, and $0, respectively, of offering costs. Of the capitalized offering costs, $0, $0, and $0 were amortized to expense during the years ended December 31, 2022, 2021 and 2020, respectively. As of December 31, 2022, and December 31, 2021, $0 and $0 remained on the Statements of Assets and Liabilities, respectively.

Organization costs and offering costs are limited to 1% of total gross proceeds raised in this offering and are not due and payable to the Adviser to the extent they exceed that amount. As of December 31, 2022, the cumulative aggregate amount of $5,327,574 of organization and offering costs exceeds 1% of total proceeds raised. Subsequent to the termination of the Offering, the Adviser forfeited the right to reimbursement of the remaining $4,305,091 of these costs.

Investment Transactions and Related Investment Income and Expense

We record our investment transactions on a trade date basis, which is the date when we have determined that all material terms have been defined for the transactions. These transactions could possibly settle on a subsequent date depending on the transaction type. All related revenue and expenses attributable to these transactions are reflected on the Statements of Operations commencing on the trade date unless otherwise specified by the transaction documents. Realized gains and losses on investment transactions are recorded on the specific identification method. We accrue interest income if we expect that ultimately, we will be able to collect it. Generally, when an interest payment default occurs on a loan in our portfolio, or if our management otherwise believes that the issuer of the loan will not be able to service the loan and other obligations, we place the loan on non-accrual status and will cease recognizing interest income on that loan until all principal and interest is current through payment or until a restructuring occurs, such that the interest income is deemed to be collectible. However, we remain contractually entitled to this interest. We may make exceptions to this policy if the loan has sufficient collateral value and is in the process of collection. Accrued interest is written off when it becomes probable that such interest will not be collected, and the amount of uncollectible

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interest can be reasonably estimated. We also accrue for delayed compensation, which is a pricing adjustment payable by the parties to a secondary loan trade that closes late, intended to assure that neither party derives an economic advantage from the delay. Delayed compensation begins calculating at the loan's specific coupon rate if a trade hasn't settled within 7 business days of trading. Original issue discounts, market discounts or premiums are accreted or amortized using the effective interest method as interest income and will be accreted or amortized over the maturity period of the investments. We will record prepayment premiums on loans and debt securities as interest income. Dividend income, if any, will be recognized on an accrual basis to the extent that we expect to collect such amount.

We may have investments in our portfolio that contain a PIK interest provision. Any PIK interest will be added to the principal balance of such investments and is recorded as income, if the portfolio company valuation indicates that such PIK interest is collectible. In order to qualify for the special tax treatment accorded RICs and their shareholders, substantially all of our income (including PIK interest) must be distributed to stockholders in the form of dividends, even if we have not collected any cash.

Interest expense is recorded on an accrual basis. Certain expenses related to legal and tax consultation, due diligence, rating fees, valuation expenses and independent collateral appraisals may arise when we make certain investments.

Loan Origination, Facility, Commitment and Amendment Fees

We may receive fees in addition to interest income from loans during the life of the investment. We may receive origination fees upon the origination of an investment. These origination fees are initially deferred and deducted from the cost basis of the investment and subsequently accreted into income over the term of the loan. We may receive facility, commitment and amendment fees, which are paid to us on an ongoing basis. Facility fees, sometimes referred to as asset management fees, are accrued as a percentage periodic fee on the base amount (either the funded facility amount or the committed principal amount). Commitment fees are based upon the undrawn portion committed by us and are recorded on an accrual basis. Amendment fees are paid in connection with loan amendments and waivers and are accounted for upon completion of the amendments or waivers, generally when such fees are receivable. Any such fees are included in other income on the Statements of Operations.

Net Realized Gains or Losses and Net Change in Unrealized Appreciation or Depreciation

We measure net realized gains or losses by the difference between the net proceeds from the repayment or sale and the amortized cost basis of the investment, without regard to unrealized appreciation or depreciation previously recognized, but considering unamortized upfront fees and prepayment penalties. Net change in unrealized appreciation or depreciation will reflect the change in portfolio investment values during the reporting period, including any reversal of previously recorded unrealized appreciation or depreciation, when gains or losses are realized.

U.S. Federal Income Taxes

We have elected to be treated as a RIC under Subchapter M of the Code and intend each year to qualify and be eligible to be treated as such. As a RIC, we generally will not have to pay corporate-level federal income taxes on any investment company taxable income or net capital gains that we distribute as dividends to our stockholders. In order to qualify for the special tax treatment accorded RICs and their shareholders, we must meet certain gross income, diversification, and distribution requirements.

Recent Accounting Pronouncements

Please refer to Note 2 to the financial statements included herein for discussion of recent accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are subject to financial market risks, most significantly changes in interest rates. As of December 31, 2021, 63% (based on fair value) of the investments in our portfolio had floating interest rates. These investments are usually based on a floating LIBOR and typically have interest rate reset provisions that adjust applicable interest rates under such loans to current market rates on a monthly or quarterly basis.

Pursuant to the terms of the TRS which expired on June 10, 2020, we paid fees to BNP Paribas a rate equal to one-month LIBOR plus 2.00% per annum on the utilized notional amount of the loans subject to the TRS in exchange for the right to receive the economic benefit of a pool of loans having a maximum notional market value amount of $60,000,000. Pursuant to the terms of the Financing Arrangement, which was paid down and closed on April 15, 2020, we paid fees to the BNPP entities at floating rate based on the asset type, but generally one-month LIBOR plus 1.30% per annum on the amount borrowed.

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To the extent that any present or future credit facilities or other financing arrangements that we or any of our subsidiaries enter into are based on a floating interest rate, we will be subject to risks relating to changes in market interest rates. In periods of rising interest rates when we or our subsidiaries have such debt outstanding, or financing arrangements in effect, our interest expense would increase, which could reduce our net investment income, especially to the extent we hold fixed rate investments.

A rise in the general level of interest rates can be expected to lead to higher interest rates applicable to our debt investments, especially to the extent that we predominantly hold variable-rate investments, and to declines in the value of any fixed- rate investments we hold. To the extent that a majority of our investments may be in variable-rate investments, an increase in interest rates could make it easier for us to meet or exceed the hurdle rate for the income incentive fee payable to the Adviser and may result in a substantial increase in our net investment income, and also to the amount of incentive fees payable to our Adviser with respect to our increasing pre-incentive fee net investment income.

In July 2017, the Financial Conduct Authority (the authority that regulates LIBOR) announced it intends to stop compelling banks to submit rates for the calculation of LIBOR after 2021. The Alternative Reference Rates Committee (“ARRC”) has proposed the Secured Overnight Financing Rate (“SOFR”) as the recommended alternative to USD-LIBOR for use in derivatives and other financial contracts that are currently indexed to USD-LIBOR. ARRC has proposed a paced market transition plan to SOFR from USD-LIBOR and organizations are currently working on industry wide and company specific transition plans as it relates to derivatives and cash markets exposed to USD-LIBOR. We have material contracts that are indexed to USD-LIBOR and are monitoring this activity and evaluating the related risks. Please refer to “LIBOR Transition and Associated Risk” for more information.

In connection with the COVID-19 pandemic, the Fed and other central banks have reduced certain interest rates and LIBOR has decreased. A prolonged reduction in interest rates will reduce our gross investment income and could result in a decrease in our net investment income if such decreases in LIBOR are not offset by a corresponding increase in the spread over LIBOR that we earn on any portfolio investments, a decrease in in our operating expenses, including with respect to our income incentive fee, or a decrease in the interest rate of our floating interest rate liabilities tied to LIBOR.

Assuming that the Statement of Assets and Liabilities as of December 31, 2022, were to remain constant and that we took no actions to alter our existing interest rate sensitivity, the following table shows the annualized impact of hypothetical base rate changes in interest rates.

Change in interest rates	Increase (decrease) in interest income	(Increase) decrease in interest expense	Increase (decrease) in NII
Down 25 basis points	$ —	$ —	$ —
Up 50 basis points	73,180	—	73,180
Up 100 basis points	146,361	—	146,361
Up 200 basis points	292,721	—	292,721
Up 300 basis points	439,082	—	439,082

Although we believe that this analysis is indicative of our existing sensitivity to interest rate changes, it does not adjust for changes in the credit market, credit quality, the size and composition of the assets in our portfolio and other business developments, including borrowing under future credit facilities or other borrowing. Accordingly, we can offer no assurances that actual results would not differ materially from the analysis above.

We may in the future hedge against interest rate fluctuations by using standard hedging instruments such as interest rate swaps, futures, options and forward contracts to the limited extent permitted under the 1940 Act and applicable commodities laws. While hedging activities may insulate us against adverse changes in interest rates, they may also limit our ability to participate in the benefits of lower interest rates with respect to the investments in our portfolio with fixed interest rates.

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Item 8. ***Financial Statements and Supplementary Data***

NexPoint Capital, Inc.

Statements of Assets and Liabilities

	December 31, 2022	December 31, 2021
Assets		
Unaffiliated investments, at fair value (cost of $41,687,079 and $42,376,505, respectively)	$ 43,020,714	$ 47,457,661
Affiliated investments, at fair value (cost of $12,324,892 and $12,394,189, respectively)[1]	10,273,001	12,778,650
Cash and cash equivalents	1,629,846	2,811,171
Receivable for investments sold	—	990,537
Dividends and interest receivable	220,194	440,404
Receivable from Adviser[2]	92,216	95,458
Prepaid expenses	15,905	13,222
Total assets	55,251,876	64,587,103
Liabilities		
Payable for investments purchased	—	301,369
Payable to Adviser[2]	314,993	378,587
Accrued expenses and other liabilities	371,736	72,178
Distributions payable	870,980	896,061
Total liabilities	1,557,709	1,648,195
Commitments and contingencies[3]		
Net assets		
Preferred stock, $0.001 par value (25,000,000 shares authorized, 0 shares issued and outstanding)	—	—
Common stock, $0.001 par value (200,000,000 shares authorized, 9,677,593 and 9,956,228 shares issued and outstanding, respectively)	9,678	9,956
Paid-in capital in excess of par	86,949,376	91,135,719
Distributable earnings (accumulated loss)	(33,264,887)	(28,206,767)
Total net assets	$ 53,694,167	$ 62,938,908
Net asset value per share of common stock	$ 5.55	$ 6.32

(1) See Note 10 for a discussion of affiliated investments.
(2) See Note 4 for a discussion of related party transactions and arrangements.
(3) See Note 4 and Note 8 for a discussion of the commitments and contingencies of the Company (as defined in Note 1).

See Notes to Financial Statements

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NexPoint Capital, Inc.

Statements of Operations

	For the Year Ended December 31,		
	2022	2021	2020
Investment income:			
Interest	$ 2,178,971	$ 3,070,371	$ 3,288,205
Interest paid-in-kind	193,003	100,908	400,250
Dividend income from unaffiliated investments	645,582	17,848	50,318
Dividend income from affiliated investments[1]	675,057	904,081	965,874
Other fee income	—	4,651	108,535
Total investment income	3,692,613	4,097,859	4,813,182
Expenses:			
Investment advisory fees[2]	1,096,487	1,220,044	1,192,535
Custodian and accounting service fees	311,050	307,438	312,199
Administration fees[2]	226,948	244,754	245,534
Stock transfer fee	209,866	208,251	248,563
Audit and tax fees	167,864	168,254	223,648
Other expenses	113,825	155,670	10,799
Reports to stockholders	82,721	75,060	82,492
Legal fees	53,658	72,441	81,141
Directors' fees[2]	18,170	17,781	20,123
Interest expense and commitment fees[3]	—	—	176,707
Total expenses	2,280,589	2,469,693	2,593,741
Expenses (waived) or recouped by the Adviser[2]	(377,594)	(295,261)	(349,488)
Net expenses	1,902,995	2,174,432	2,244,253
Net investment income	1,789,618	1,923,427	2,568,929
Net realized and unrealized gains (losses) on investments:			
Net realized gain (loss) on:			
Unaffiliated investments	66,517	(4,090,996)	(18,985,829)
Affiliated investments[1]	262,564	611,450	(1,451,109)
Total return swaps[4]	—	—	(6,929,996)
Net change in unrealized appreciation (depreciation) on:			
Unaffiliated investments	(3,747,521)	5,494,097	2,832,982
Affiliated investments[1]	(2,436,352)	1,768,165	(1,679,297)
Total return swaps[4]	—	—	2,745,042
Net realized and unrealized gains (losses)	(5,854,792)	3,782,716	(23,468,207)
Net increase (decrease) in net assets resulting from operations	(4,065,174)	5,706,143	(20,899,278)
Per share information - basic and diluted per common share			
Net investment income:	$ 0.18	$ 0.19	$ 0.24
Earnings (loss) per share:	$ (0.41)	$ 0.56	$ (1.98)
Weighted average shares outstanding:	9,893,732	10,254,666	10,525,271

(1) See Note 10 for a discussion of affiliated investments.
(2) See Note 4 for a discussion of related party transactions and arrangements.
(3) See Note 7 for a discussion of credit facility.
(4) See Note 7 for a discussion of total return swaps.

See Notes to Financial Statements

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NexPoint Capital, Inc.
Statements of Changes in Net Assets

	Common Stock		Paid in Capital in Excess of Par	Distributable Earnings	Total Net Assets
	Shares	Par Amount			
Balance at December 31, 2019	10,425,431	$ 10,425	$ 93,412,260	$ (4,487,132)	$ 88,935,553
Increase (decrease) in net assets resulting from operations					
Net investment income	—	—	—	2,568,929	2,568,929
Net realized gain (loss) on investments	—	—	—	(20,436,938)	(20,436,938)
Net realized gain (loss) on total return swaps[1]	—	—	—	(6,929,996)	(6,929,996)
Net change in unrealized appreciation (depreciation) on investments	—	—	—	1,153,685	1,153,685
Net change in unrealized appreciation (depreciation)[1]	—	—	—	2,745,042	2,745,042
Shareholder distributions:					
Issuance of common stock	—	—	—	—	—
Repurchase of common stock	(224,241)	(224)	(1,300,939)	—	(1,301,163)
Reinvestment of common stock	273,978	274	1,864,486	—	1,864,760
Distributions to stockholders from net investment income	—	—	—	(4,409,400)	(4,409,400)
Total increase (decrease) for the year ended December 31, 2020	49,737	50	563,547	(25,308,678)	(24,745,081)
Tax reclassification of stockholders' equity in accordance with GAAP	—	—	(1,621,021)	1,621,021	—
Balance at December 31, 2020	10,475,168	$ 10,475	$ 92,354,786	$ (28,174,789)	$ 64,190,472
Distributions to stockholders per share	—	$ —	$ —	$ 0.42	$ 0.42

(1) See Note 7 for a discussion on Total Return Swaps.

See Notes to Financial Statements

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NexPoint Capital, Inc.
Statements of Changes in Net Assets

	Common Stock		Paid in Capital in Excess of Par	Distributable Earnings	Total Net Assets
	Shares	Par Amount			
Balance at December 31, 2020	10,475,168	$ 10,475	$ 92,354,786	$(28,174,789)	$64,190,472
Increase (decrease) in net assets resulting from operations					
Net investment income	—	—	—	1,923,427	1,923,427
Net realized gain (loss) on investments	—	—	—	(3,479,546)	(3,479,546)
Net change in unrealized appreciation (depreciation) on investments	—	—	—	7,262,262	7,262,262
Shareholder distributions:					
Issuance of common stock	—	—	—	—	—
Repurchase of common stock	(727,993)	(728)	(4,643,041)	—	(4,643,769)
Reinvestment of common stock	209,053	209	1,319,032	—	1,319,241
Distributions to stockholders from net investment income	—	—	—	(3,633,179)	(3,633,179)
Total increase (decrease) for the year ended December 31, 2021	(518,940)	(519)	(3,324,009)	2,072,964	(1,251,564)
Tax reclassification of stockholders' equity in accordance with GAAP	—	—	2,104,942	(2,104,942)	—
Balance at December 31, 2021	9,956,228	$ 9,956	$ 91,135,719	$(28,206,767)	$62,938,908
Distributions to stockholders per share	—	$ —	$ —	$ 0.36	$ 0.36

See Notes to Financial Statements

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NexPoint Capital, Inc.
Statements of Changes in Net Assets

	Common Stock		Paid in Capital in Excess of Par	Distributable Earnings	Total Net Assets
	Shares	Par Amount			
Balance at December 31, 2021	9,956,228	$ 9,956	$ 91,135,719	$(28,206,767)	$62,938,908
Increase (decrease) in net assets resulting from operations					
Net investment income	—	—	—	1,789,618	1,789,618
Net realized gain (loss) on investments	—	—	—	329,081	329,081
Net change in unrealized appreciation (depreciation) on investments	—	—	—	(6,183,873)	(6,183,873)
Shareholder distributions:					
Issuance of common stock	—	—	—	—	—
Repurchase of common stock	(478,708)	(478)	(2,862,458)	—	(2,862,936)
Reinvestment of common stock	200,073	200	1,209,000	—	1,209,200
Distributions to stockholders from net investment income	—	—	—	(1,526,458)	(1,526,458)
Distributions to stockholders from return of capital	—	—	(1,999,373)	—	(1,999,373)
Total increase (decrease) for the year ended December 31, 2022	(278,635)	(278)	(3,652,831)	(5,591,632)	(9,244,741)
Tax reclassification of stockholders' equity in accordance with GAAP	—	—	(533,512)	533,512	—
Balance at December 31, 2022	9,677,593	$ 9,678	$ 86,949,376	$(33,264,887)	$53,694,167
Distributions to stockholders per share	—	$ —	$ —	$ 0.36	$ 0.36

See Notes to Financial Statements

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NexPoint Capital, Inc.

Statements of Cash Flows

	Year Ended December 31,		
	2022	2021	2020
Cash flows provided by (used in) operating activities			
Net increase (decrease) in net assets resulting from operations	$(4,065,174)	$ 5,706,143	$(20,899,278)
Adjustments to reconcile net increase (decrease) in net assets resulting from operations to net cash provided by (used in) operating activities:			
Purchases of investment securities	(9,519,074)	(8,119,981)	(54,511,342)
Payment-in-kind investments	(193,003)	(100,908)	(400,250)
Proceeds from sales and principal repayments of investment securities	11,143,514	17,408,129	72,368,347
Net realized (gain) loss on Unaffiliated investments	(66,517)	4,090,996	18,985,829
Net realized (gain) loss on Affiliated investments	(262,564)	(611,450)	1,451,109
Net change in unrealized (appreciation) depreciation on investments	6,183,873	(7,262,262)	(1,153,685)
Net change in unrealized (appreciation) depreciation on total return swaps	—	—	(2,745,042)
Amortization of premium/discount, net	(343,633)	(972,220)	(980,931)
Change in operating assets and liabilities:			
(Increase) decrease in receivable for investments sold	990,537	(990,537)	—
(Increase) decrease in dividends and interest receivable	220,210	(155,192)	756,893
(Increase) decrease in receivable from Adviser	3,242	6,084	(51,412)
(Increase) decrease in prepaid expenses	(2,683)	(13,222)	12,208
(Increase) decrease in due from counterparty	—	—	21,400,000
Increase (decrease) in payable for investments purchased	(301,369)	301,369	(2,533,314)
Increase (decrease) in payable to Adviser	(63,594)	(44,950)	(146,916)
Increase (decrease) in interest expense and commitment fees payable	—	—	(80,207)
Increase (decrease) in accrued expenses and other liabilities	299,558	(155,884)	(150,143)
Increase (decrease) in payable on total return swap	—	—	(11,458)
Net cash flows provided by (used in) operating activities	4,023,323	9,086,115	31,310,408
Cash flows provided by (used in) financing activities			
Repurchase of common stock, net of payable	(2,862,936)	(4,643,769)	(2,403,568)
Distributions paid in cash	(2,341,712)	(2,360,642)	(2,227,401)
(Decrease) in credit facilities payable	—	—	(40,971,777)
Increase in credit facilities payable	—	—	7,256,913
Net cash flows (used in) financing activities	(5,204,648)	(7,004,411)	(38,345,833)
Net increase (decrease) in cash and cash equivalents	**(1,181,325)**	**2,081,704**	**(7,035,425)**
Cash and cash equivalents			
Beginning of the year	2,811,171	729,467	7,764,892
End of the year	$ 1,629,846	$ 2,811,171	$ 729,467
Supplemental disclosure and non-cash financing activities			
Paid-in-kind interest income	$ 193,003	$ 100,908	$ 400,250
Cash paid during the period for interest	$ —	$ —	$ 256,914
Reinvestment of distributions paid	$ 1,209,200	$ 1,319,241	$ 1,864,760
Local and excise taxes paid	$ 36,426	$ 87,200	$ 47,000

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NexPoint Capital, Inc.
Schedule of Investments
As of December 31, 2022

Portfolio Company[(1)(2)]	Interest Rate	Base Rate Floor	Maturity Date	Principal Amount	Amortized Cost[(3)]	Fair Value
Senior Secured Loans – 26.5%[(4)]						
Healthcare – 24.5%						
Auris Luxembourg III S.a.r.l. (First Lien Term Loan)[(5) (6)]	L + 375	4.93%	2/27/2026	$1,468,909	$1,465,131	$ 1,318,346
Carestream Health, Inc. (First Lien Term Loan)[(7)]	L + 675	12.18%	9/30/2027	668,605	576,001	511,483
CCS Medical, Inc (First Lien Term Loan)[(8) (9)]	14% Fixed		4/7/2026	3,000,000	2,926,520	3,000,000
CNT Holdings I Corp (Second Lien Term Loan)[(7)]	L + 675	3.74%	11/6/2028	1,500,000	1,494,084	1,422,503
Covenant Surgical Partners, Inc. (First Lien Delayed Draw Term Loan)	4% Fixed		7/1/2026	333,333	333,817	282,500
Covenant Surgical Partners, Inc. (First Lien Term Loan)[(10)]	L + 400	4.41%	7/1/2026	1,613,305	1,615,775	1,367,276
Envision Healthcare Corp. (First Lien Term Loan)[(10)]	L + 375	4.07%	10/10/2025	4,518,572	3,709,077	1,354,645
RxBenefits, Inc. (First Lien Term Loan)[(6)]	L + 450	2.11%	12/20/2027	1,993,177	1,963,107	1,888,535
Sound Inpatient Physicians (Second Lien Term Loan)[(10)]	L + 675	4.07%	6/26/2026	1,555,556	1,481,972	1,229,869
Wellpath Holdings, Inc. (First Lien Term Loan)[(7)]	L + 550	4.41%	10/1/2025	984,615	980,197	783,793
						13,158,950
Telecommunication Services – 2.0%						
TerreStar Corp. (First Lien Term Loan H)[(8) (9)]	11%PIK		2/28/2024	32,189	32,189	32,002
TerreStar Corp. (First Lien Term Loan F)[(8) (9)]	11%PIK		2/28/2024	193,108	193,108	191,988
TerreStar Corp. (First Lien Term Loan E)[(8) (9)]	11%PIK		2/28/2024	815,685	815,684	810,953
TerreStar Corp. (First Lien Term Loan G)[(8) (9)]	11%PIK		2/28/2024	34,500	34,500	34,300
						1,069,243
Total Senior Secured Loans						**14,228,193**
Asset-Backed Securities – 0.0%						
Financials – 0.0%						
Grayson Investor Corp. [(5) (8) (9) (11) (12) (13)]				800	218,666	7,023
PAMCO CLO 1997-1A B [(5) (8) (9) (11) (13) (14)]				295,435	169,875	13
						7,036
Total Asset-Backed Securities						**7,036**
Corporate Bonds – 5.0%						
Healthcare – 4.5%						
Hadrian Merger Sub, Inc. [(11)]	8.500%		5/1/2026	2,728,000	2,460,536	2,414,839
Media/Telecommunications – 0.5%						
iHeartCommunications, Inc. [(5)]	6.375%		5/1/2026	116,808	313,455	107,648
iHeartCommunications, Inc. [(5)]	8.375%		5/1/2027	214,073	584,792	182,430
						290,078
Total Corporate Bonds						**2,704,917**
				Shares		
Common Stocks – 36.3%						
Chemicals – 0.1%						
MPM Holdings, Inc. [(15)]				8,500	17,000	42,500
Energy – 3.0%						
Quarternorth Energy, Inc.				11,534	981,428	1,591,692
Financials – 3.2%						
American Banknote Corp. [(8) (9) (15)]				750,000	2,062,500	1,732,500
Real Estate – 18.6%						
Nexpoint Real Estate Finance, Inc. [(16)]				481,670	9,960,591	7,653,730
IQHQ, Inc. [(8) (9)]				100,000	1,500,000	2,359,000
						10,012,730
Real Estate Investment Trust (REIT) – 1.9%						
NexPoint Residential Trust, Inc. [(5) (16)]				23,409	698,189	1,018,779

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NexPoint Capital, Inc.
Schedule of Investments (continued)
As of December 31, 2022

	Preferred Dividend Rate				
Service – 0.0%					
Wayne Services Legacy Inc. (8) (9) (15)			237	$ 253,404	$ 2,269
Telecommunication Services – 9.5%					
TerreStar Corp. (8) (9) (15)			14,035	1,599,990	5,114,214
Total Common Stocks					**19,514,684**
LLC Interests – 8.7%					
Consumer Products – 5.7%					
US Gaming, LLC (8) (9) (15)			2,000	2,000,000	3,088,750
Real Estate – 3.0%					
SFR WLIF III, LLC (8) (9) (16)			451,112	451,112	424,468
NexPoint Capital REIT, LLC (8) (9) (16)			100	1,215,000	1,176,024
					1,600,492
Total LLC Interests					**4,689,242**
Preferred Stocks – 22.3%					
Financials – 2.7%					
777 Partners, LLC	10.000%		750	750,000	740,625
United Fidelity Bank FSB	7.000%		1,000	1,000,000	700,000
					1,440,625
Healthcare – 19.6%					
Apnimed, Inc. (8) (9)	8.000%		135,122	1,199,993	1,499,989
Apnimed, Inc. (Series C-2) (8) (9)	8.000%		72,065	799,994	799,994
Sapience Therapeutics, Inc. (Series B Preferred Shares) (8) (9)	8.000%		1,619,048	4,080,000	4,549,525
Sapience Therapeutics, Inc. (Series B-1 Preferred Shares) (8) (9)			1,111,111	4,000,000	3,677,777
					10,527,285
Total Preferred Stocks					**11,967,910**
Warrants – 0.4%					
Energy – 0.3%					
QuarterNorth Tranche 1 (15)		8/27/2029	5,738	16,122	64,553
QuarterNorth Tranche 2 (15)		8/27/2029	11,051	5,175	96,696
					161,249
Media/Telecommunications – 0.1%					
iHeartMedia, Inc. (5) (15)		5/1/2039	2,875	52,987	20,484
Total Warrants					**181,733**
Total Investments- 99.2%				**$ 54,011,971**	**$ 53,293,715**
Cash Equivalents –2.6%(17)					$ 1,420,428
Other Assets & Liabilities, net- (1.8%)					$ (1,019,976)
Net Assets- 100.0%					**$ 53,694,167**

(1) Unless otherwise noted, the Company did not "control" and was not an "affiliated person" of any of its portfolio companies, each as defined in the Investment Company Act of 1940, as amended (the "1940 Act"). In general, under the 1940 Act, the Company would be presumed to "control" a portfolio company if it owned 25% or more of its voting securities or had the power to exercise control over the management or policies of such portfolio company, and would be an "affiliated person" of a portfolio company if it owned 5% or more of its voting securities. Additionally, companies under common control (e.g., companies with a common owner of greater than 25% of their respective voting securities) are affiliates under the 1940 Act.

(2) All investments are denominated in United States Dollars.

(3) Amortized cost represents the original cost adjusted for the amortization of premiums and/or accretion of discounts, as applicable, on investments.

(4) Senior secured loans in which the Company invests generally pay interest at rates which are periodically determined by reference to a base lending rate plus a spread (unless otherwise identified, all senior secured loans carry a variable rate of interest). These base lending rates are generally (i) the Prime Rate offered by one or more major United States banks, (ii) the lending rate offered by one or more European banks such as the London Interbank Offered Rate ("LIBOR") or (iii) the coupon rate. Rate shown represents the actual rate at December 31, 2022. Senior secured loans, while exempt from registration under the Securities Act of 1933 (the "1933 Act"), contain certain restrictions on resale and cannot be sold publicly. Senior secured floating rate loans often require prepayments from excess cash flow or permit the borrower to repay at its election. The degree to which borrowers repay, whether as a contractual requirement or at their election, cannot be predicted with accuracy. As a result, the actual remaining maturity may be substantially less than the stated maturity shown.

(5) The investment is not a qualifying asset under Section 55 of the 1940 Act. A business development company, such as the Company ("BDC"), may not acquire any asset other than a qualifying asset, unless at the time the acquisition is made, qualifying assets represent at least 70% of the business development company's total assets. Non-qualifying assets represented 4.8% of the Company's total assets as of December 31, 2022.

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NexPoint Capital, Inc.
Schedule of Investments (continued)
As of December 31, 2022

(6) The interest rate on these investments is subject to a base rate of 6-Month LIBOR, which at December 31, 2022 was 5.14%. The LIBOR rate used to calculate interest is the higher of the prevailing 6 month LIBOR rate in effect on the date of the semiannual reset, or the LIBOR base rate floor shown.

(7) The interest rate on these investments is subject to a base rate of 3-Month LIBOR, which at December 31, 2022 was 4.77%. The LIBOR rate used to calculate interest is the higher of the prevailing 3 month LIBOR rate in effect on the date of the quarterly reset, or the LIBOR base rate floor shown.

(8) Represents fair value as determined by the Adviser pursuant to the policies and procedures approved by the Board of Trustees (the "Board"). The Board has designated the Adviser as "valuation designee" for the Company pursuant to Rule 2a-5 of the 1940 Act. The Adviser considers fair valued securities to be securities for which market quotations are not readily available and these securities may be valued using a combination of observable and unobservable inputs. Securities with a total aggregate value of $28,500,789 or 53.0% of net assets were fair valued under the Company's valuation procedures as of December 31, 2022.

(9) Classified as Level 3 within the three-tier fair value hierarchy. Please see Note 2 for an explanation of this hierarchy, as well as a list of unobservable inputs used in the valuation of these instruments.

(10) The interest rate on these investments is subject to a base rate of 1-Month LIBOR, which at December 31, 2022 was 4.39%. The LIBOR rate used to calculate interest is the higher of the prevailing 1 month LIBOR rate in effect on the date of the monthly reset, or the LIBOR base rate floor shown.

(11) Securities exempt from registration under Rule 144A of the Securities Act. These securities may only be resold in transactions exempt from registration to qualified institutional buyers. As of December 31, 2022, these securities amounted to $2,421,875, or 4.5% of net assets.

(12) The investment is considered to be the equity tranche of the issuer.

(13) Securities of collateralized loan obligations where an affiliate of the Adviser serves as collateral manager.

(14) The issuer is in default of its payment obligation, or is in danger of default.

(15) Non-income producing security.

(16) Represents an affiliated issuer. Assets with a total aggregate market value of $10,273,001, or 19.1% of net assets, were affiliated with the Company as of December 31, 2022. See Note 10.

(17) State Street U.S. Government Money Market Fund.

Glossary

PIK Payment-in-Kind

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NexPoint Capital, Inc.
Schedule of Investments
As of December 31, 2021

Portfolio Company[1][2]	Interest Rate	Base Rate Floor	Maturity Date	Principal Amount	Amortized Cost[3]	Fair Value
Senior Secured Loans – 40.1%[4]						
Healthcare – 38.6%						
Auris Luxembourg III S.a.r.l. (First Lien Term Loan)[5][6]	L + 375	0.09%	2/27/2026	$2,515,096	$2,506,780	$ 2,500,169
BW NHHC Holdco, Inc. (First Lien Term Loan)[7]	L + 500	0.16%	5/15/2025	4,467,593	3,274,720	3,824,818
CNT Holdings I Corp (Second Lien Term Loan)[7]	L + 675	0.75%	11/16/2028	1,500,000	1,493,315	1,513,125
Covenant Surgical Partners, Inc. (First Lien Delayed Draw Term Loan)	4% Fixed		7/1/2026	333,333	333,956	330,027
Covenant Surgical Partners, Inc. (First Lien Term Loan)[5]	L + 400	0.09%	7/1/2026	1,629,539	1,632,667	1,613,375
Envision Healthcare Corp. (First Lien Term Loan)[5]	L + 375	0.09%	10/10/2025	4,580,543	3,578,822	3,700,232
NMSC Holdings, Inc. (First Lien Term Loan)[5]	L + 500	1.00%	4/19/2023	1,007,994	1,006,001	1,008,246
RxBenefits, Inc. (First Lien Term Loan)[7]	L + 500	5.25%	12/17/2027	3,211,980	3,155,476	3,222,017
Sapience Therapeutics, Inc (First Lien Term Loan) [8][9]	8% Fixed		12/9/2023	4,000,000	4,000,000	4,000,000
Sound Inpatient Physicians (Second Lien Term Loan)[5]	L + 675	0.09%	6/26/2026	1,555,556	1,464,678	1,559,444
Wellpath Holdings, Inc. (First Lien Term Loan)[5]	L + 550	0.09%	10/1/2025	994,872	988,966	983,525
						24,254,978
Telecommunication Services – 1.5%						
TerreStar Corp. (First Lien Term Loan E)[8][9]	11% PIK		2/27/2022	729,979	729,979	729,979
TerreStar Corp. (First Lien Term Loan F)[8][9]	11% PIK		2/28/2022	172,817	172,817	172,817
TerreStar Corp. (First Lien Term Loan G)[8][9]	11% PIK		2/28/2022	30,875	30,875	30,875
TerreStar Corp. (First Lien Term Loan H)[8][9]	11% PIK		2/28/2022	28,807	28,807	28,807
						962,478
Total Senior Secured Loans						**25,217,456**
Asset-Backed Securities – 0.6%						
Financials – 0.6%						
Grayson Investor Corp. [6][8][9][10][11][12][13]			11/1/2021	800	218,665	304,000
PAMCO CLO 1997-1A B [6][8][9][10][12][13]				354,096	203,606	101,040
						405,040
Total Asset-Backed Securities						**405,040**
Corporate Bonds – 10.9%						
Healthcare – 10.3%						
Hadrian Merger Sub, Inc. [10]	8.500%		5/1/2026	2,728,000	2,398,666	2,819,320
Surgery Center Holdings, Inc. [6][10]	6.750%		7/1/2025	3,630,000	3,520,855	3,661,000
						6,480,320
Media/Telecommunications – 0.6%						
iHeartCommunications, Inc. [6]	6.375%		5/1/2026	115,507	313,455	119,965
iHeartCommunications, Inc. [6]	8.375%		5/1/2027	214,073	584,792	225,981
						345,946
Total Corporate Bonds						**6,826,266**
				Shares		
Common Stocks – 29.1%						
Chemicals – 0.1%						
MPM Holdings, Inc. [14]				8,500	17,000	42,500
Energy – 1.7%						
Quarternorth Energy, Inc.				11,534	981,429	1,092,846
Financials – 3.5%						
American Banknote Corp. [8][9][14]				750,000	2,062,500	2,208,750
Healthcare – 0.7%						
Amryt Pharma, PLC [6][14][15]				40,000	500,000	432,000
Real Estate – 12.5%						
IQHQ, Inc. [8][9]				100,000	$1,500,000	$ 1,823,000
Nexpoint Real Estate Finance, Inc. [16]				315,631	6,686,306	6,075,895
						7,898,895

See Notes to Financial Statements.

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NexPoint Capital, Inc.
Schedule of Investments (continued)
As of December 31, 2021

	Preferred Dividend Rate					
Real Estate Investment Trust (REIT) – 3.1%						
NexPoint Residential Trust, Inc. [(6) (16)]				23,173	707,883	1,942,593
Service – 0.0%						
Wayne Services Legacy Inc. [(8) (9) (14)]				237	253,404	5,172
Telecommunication Services – 7.5%						
TerreStar Corp. [(8) (9) (14)]				14,035	1,599,990	4,706,357
Total Common Stocks						**18,329,113**
LLC Interests – 12.0%						
Consumer Products – 4.5%						
US GAMING LLC [(8) (9) (14)]				2,000	2,000,000	2,812,212
Real Estate – 7.5%						
SFR WLIF II, LLC [(8) (9) (16)]				3,348,888	3,348,888	3,196,246
SFR WLIF III, LLC [(8) (9) (16)]				1,651,112	1,651,112	1,563,916
						4,760,162
Total LLC Interests						**7,572,374**
Preferred Stocks – 2.7%						
Financials – 2.7%						
777 PARTNERS LLC		10.000%		750	750,000	750,000
United Fidelity Bank FSB		7.000%		1,000	1,000,000	975,000
						1,725,000
Total Preferred Stocks						**1,725,000**
Warrants – 0.3%						
Energy – 0.2%						
QUARTERNORTH TRANCHE 1 [(14)]			8/27/2029	5,738	16,122	48,056
QUARTERNORTH TRANCHE 2 [(14)]			8/27/2029	11,051	5,175	64,002
						112,058
Healthcare – 0.0%						
Gemphire Therapeutics, Inc. [(8) (9) (14)]			3/15/2022	4,752	—	—
Media/Telecommunications – 0.1%						
iHeartMedia, Inc. [(6) (14)]			5/1/2039	2,875	52,987	49,004
Total Warrants						**161,062**
Total Investments- 95.7%					**$54,770,694**	**$60,236,311**
Cash Equivalents – 4.3%[(17)]						$ 2,704,193
Other Assets & Liabilities, net – 0.0%						$ (1,596)
Net Assets- 100.0%						**$62,938,908**

(1) Unless otherwise noted, the Company did not “control” and was not an “affiliated person” of any of its portfolio companies, each as defined in the Investment Company Act of 1940, as amended (the “1940 Act”). In general, under the 1940 Act, the Company would be presumed to “control” a portfolio company if it owned 25% or more of its voting securities or had the power to exercise control over the management or policies of such portfolio company, and would be an “affiliated person” of a portfolio company if it owned 5% or more of its voting securities. Additionally, companies under common control (e.g., companies with a common owner of greater than 25% of their respective voting securities) are affiliates under the 1940 Act.

(2) All investments are denominated in United States Dollars.

(3) Amortized cost represents the original cost adjusted for the amortization of premiums and/or accretion of discounts, as applicable, on investments.

(4) Senior secured loans in which the Company invests generally pay interest at rates which are periodically determined by reference to a base lending rate plus a spread (unless otherwise identified, all senior secured loans carry a variable rate of interest). These base lending rates are generally (i) the Prime Rate offered by one or more major United States banks, (ii) the lending rate offered by one or more European banks such as the London Interbank Offered Rate (“LIBOR”) or (iii) the coupon rate. Rate shown represents the actual rate at December 31, 2021. Senior secured loans, while exempt from registration under the Securities Act of 1933 (the “1933 Act”), contain certain restrictions on resale and cannot be sold publicly. Senior secured floating rate loans often require prepayments from excess cash flow or permit the borrower to repay at its election. The degree to which borrowers repay, whether as a contractual requirement or at their election, cannot be predicted with accuracy. As a result, the actual remaining maturity may be substantially less than the stated maturity shown.

(5) The interest rate on these investments is subject to a base rate of 1-Month LIBOR, which at December 31, 2021 was 0.10%. The LIBOR rate used to calculate interest is the higher of the prevailing 1 month LIBOR rate in effect on the date of the monthly reset, or the base rate floor shown.

(6) The investment is not a qualifying asset under Section 55 of the 1940 Act. A business development company, such as the Company (“BDC”), may not acquire any asset other than a qualifying asset, unless at the time the acquisition is made, qualifying assets represent at least 70% of the business development company’s total assets. Non-qualifying assets represented 14.8% of the Company’s total assets as of December 31, 2021.

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(7) The interest rate on these investments is subject to a base rate of 3-Month LIBOR, which at December 31, 2021 was 0.21%. The LIBOR rate used to calculate interest is the higher of the prevailing 3 month LIBOR rate in effect on the date of the quarterly reset, or the base rate floor shown.

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NexPoint Capital, Inc.
Schedule of Investments (continued)
As of December 31, 2021

(8) Represents fair value as determined by the Company's Board of Directors (the "Board"), or its designee in good faith, pursuant to the policies and procedures approved by the Board. The Board considers fair valued securities to be securities for which market quotations are not readily available and these securities may be valued using a combination of observable and unobservable inputs. Securities with a total aggregate value of $21,683,171 or 34.5% of net assets were fair valued under the Company's valuation procedures as of December 31, 2021.

(9) Classified as Level 3 within the three-tier fair value hierarchy. Please see Note 2 for an explanation of this hierarchy, as well as a list of unobservable inputs used in the valuation of these instruments.

(10) Securities exempt from registration under Rule 144A of the 1933 Act. These securities may only be resold in transactions exempt from registration to qualified institutional buyers. As of December 31, 2021, these securities amounted to $6,885,360, or 10.9% of net assets.

(11) The investment is considered to be the equity tranche of the issuer.

(12) Securities of collateralized loan obligations where an affiliate of the Adviser serves as collateral manager.

(13) The issuer is in default of its payment obligation, or is in danger of default.

(14) Non-income producing security.

(15) Securities exempt from registration under the Securities Act of 1933 (the "Securities Act"), and may be deemed to be "restricted securities" under the Securities Act. As of December 31, 2021, the aggregate fair value of these securities is $432,000 or 0.7% of the Company's net assets. The acquisition dates of the restricted securities are as follows:

Investment	Acquition Date
Amryt Pharma, PLC – Common Stock	12/7/20

(16) Represents an affiliated issuer. Assets with a total aggregate fair value of $12,778,650, or 20.3% of net assets, were affiliated with the Company as of December 31, 2021. See Note 10.

(17) State Street U.S. Government Money Market Fund.

Glossary

PIK Payment-in-Kind

See Notes to Financial Statements.

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NexPoint Capital, Inc.

Notes to Financial Statements

Note 1 — Organization

NexPoint Capital, Inc. (the "Company") is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the "1940 Act". The Company follows the investment company accounting and reporting guidance of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 946 *Financial Services—Investment Companies.* The Company's investment objective is to generate current income and capital appreciation primarily through investments in middle-market healthcare companies, middle-market companies in non-healthcare sectors, syndicated floating rate debt of large public and nonpublic companies and collateralized loan obligations. The Company has elected to be treated for federal income tax purposes, and intends to qualify annually thereafter, as a regulated investment company ("RIC"), under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). In this report, "we," "us" and "our" refer to NexPoint Capital, Inc.

The Company was formed in Delaware on September 30, 2013 and formally commenced operations on September 2, 2014 upon satisfying the minimum offering requirement by raising gross proceeds of $10.0 million in connection with a private placement with NexPoint Advisors, L.P. (the "Adviser"), our external advisor. In aggregate as of December 31, 2022, the Adviser controls 2,549,002 total shares of common stock (or 26.3%) of the Company, including reinvestment of dividends, for a net amount of approximately $14.2 million.

The Company has retained the Adviser to manage certain aspects of its affairs on a day-to-day basis. NexPoint Securities, Inc. (the "Dealer Manager"), an entity under common ownership with the Adviser, served as the dealer manager of the Company's continuous public offering prior to the termination of the offering. The Adviser and Dealer Manager are related parties and will receive fees and other compensation for services related to the investment and management of the Company's assets and the continuous public offering. The Company's continuous public offering ended on February 14, 2018.

Note 2 — Summary of Significant Accounting Policies

Basis of Accounting

The accompanying financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Additionally, the accompanying financial statements of the Company and related financial information have been prepared pursuant to the requirements for reporting on Form 10-K and Article 6 of Regulation S-X.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of increases and decreases in net assets from operations during the reporting period. Actual results could differ from those estimates.

Statements of Cash Flows

Information on financial transactions which have been settled through the receipt or disbursement of cash is presented in the Statements of Cash Flows. The cash amount shown in the Statements of Cash Flows is the amount included within the Company's Statements of Assets and Liabilities and includes cash on hand at its custodian bank.

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Cash and Cash Equivalents

The Company considers liquid assets deposited with a bank, money market funds, and certain short-term debt instruments with original maturities of three months or less to be cash equivalents. These investments represent amounts held with financial institutions that are readily accessible to pay Company expenses or purchase investments. Cash and cash equivalents are valued at cost plus accrued interest, which approximates fair value. The value of cash equivalents denominated in foreign currencies, if any, is determined by converting to U.S. dollars on the date of the Statements of Assets and Liabilities. As of December 31, 2022 and 2021, the Company had cash and cash equivalents of $1,629,846 and $2,811,171, respectively. As of December 31, 2022 and 2021, $1,420,428 and $2,704,193 was held in the State Street U.S. Government Money Market Fund, and $209,418 and $106,978 was held in a custodial account with State Street Bank and Trust Company, respectively.

Securities Sold Short and Restricted Cash

The Company may sell securities short. A security sold short is a transaction in which the Company sells a security it does not own in anticipation that the market price of that security will decline. When the Company sells a security short, it must borrow the security sold short from a broker-dealer and deliver it to the buyer upon conclusion of the transaction. The Company may have to pay a fee to borrow particular securities and is often obligated to pay over any dividends or other payments received on such borrowed securities. Cash held as collateral for securities sold short is classified as

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restricted cash on the Statements of Assets and Liabilities, when applicable. Securities held as collateral for securities sold short are shown on the Schedules of Investments for the Company, as applicable. As of December 31, 2022 and 2021, the Company did not have any securities sold short.

When securities are sold short, the Company intends to limit exposure to a possible market decline in the value of its portfolio companies through short sales of securities that the Adviser believes possess volatility characteristics similar to those being hedged. In addition, the Company may use short sales for non-hedging purposes to pursue its investment objective. Subject to the requirements of the 1940 Act and the Code, the Company will not make a short sale if, after giving effect to such sale, the market value of all securities sold short by the Company exceeds 25% of the value of its total assets.

Other Fee Income

Fee income may consist of origination/closing fees, amendment fees, administrative agent fees, transaction break-up fees and other miscellaneous fees. Origination fees, amendment fees, and other similar fees are non-recurring fee sources. Such fees are received on a transaction by transaction basis and do not constitute a regular stream of income. For the years ended December 31, 2022, 2021 and 2020 the Company recognized $0, $4,651 and $108,535 of fee income, respectively.

Fair Value of Financial Instruments

It is the Company's policy to hold the investments at fair value. Accounting Standards Codification Topic 820, *Fair Value Measurements and Disclosure* ("ASC Topic 820") defines fair value as the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC Topic 820 also establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, which includes inputs such as quoted prices for similar securities in active markets and quoted prices for identical securities where there is little or no activity in the market; and Level 3, defined as unobservable inputs for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

Pursuant to Rule 2a-5 under the 1940 Act, the Board has designated the Adviser as the Company's valuation designee to perform the fair valuation determination for securities and other assets held by the Company. The Company determines the net asset value of its investment portfolio each quarter, or more frequently as needed. Securities that are publicly-traded are valued at the reported closing price on the valuation date. Securities that are not publicly-traded are valued at fair value as determined in good faith by the Adviser as valuation designee, pursuant to board-approved policies and procedures. In connection with that determination, the Adviser will consider portfolio company valuations based on relevant inputs, including indicative dealer quotes, values of like securities, recent portfolio company financial statements and forecasts, and valuations prepared by third-party valuation services. Rule 2a-5 states that a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the Company can access at the measurement date, provided that a quotation will not be readily available if it is not reliable. Market quotations may also not be "readily available" if a significant event occurs that causes the Adviser to believe that the market price of a security no longer represents the security's current value at the time of the Company's NAV determination.

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With respect to investments for which market quotations are not readily available, the Adviser undertakes a multi-step valuation process each quarter, as described below:

- The valuation process begins with each portfolio company or investment being initially valued by investment professionals of the Adviser responsible for credit monitoring or independent third party valuation firms.
- Preliminary valuation conclusions are then documented and discussed with the Valuation Committee.
- At least once each quarter, the valuations for approximately one quarter of the portfolio investments that have been fair valued are reviewed by an independent valuation firm such that, over the course of a year, each material portfolio investment that has been fair valued shall have been reviewed by an independent valuation firm at least once.
- Based on this information, the Adviser discusses valuations and determines the fair value of each investment in the portfolio in good faith pursuant to board-approved policies and procedures.

As of December 31, 2022, the Company held the following investments for which a sufficient level of current, reliable market quotations were not available:

Instrument	Type	Fair value
Grayson Investor Corp.	Asset-Backed Securities	$ 7,023
PAMCO CLO 1997-1A B	Asset-Backed Securities	13
American Banknote Corp.	Common Stocks	1,732,500
IQHQ, Inc.	Common Stocks	2,359,000
TerreStar Corp.	Common Stocks	5,114,214
Wayne Services Legacy, Inc.	Common Stocks	2,269
NexPoint Capital REIT, LLC	LLC Interests	1,176,024
SFR WLIF III, LLC	LLC Interests	424,468
US Gaming, LLC	LLC Interests	3,088,750
Apnimed, Inc.	Preferred Stocks	1,499,989
Apnimed, Inc.	Preferred Stocks	799,994
Sapience Therapeutics, Inc.	Preferred Stocks	4,549,525

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Sapience Therapeutics, Inc.	Preferred Stocks	3,67[illegible]
CCS Medical, Inc.	Senior Secured Loans	3,000,000
TerreStar Corp.	Senior Secured Loans	810,953
TerreStar Corp.	Senior Secured Loans	191,988
TerreStar Corp.	Senior Secured Loans	34,300
TerreStar Corp.	Senior Secured Loans	32,002

As of December 31, 2021, the Company held the following investments for which a sufficient level of current, reliable market quotations were not available:

Instrument	Type	Fair value
Grayson Investor Corp.	Asset-Backed Securities	$ 304,000
PAMCO CLO 1997-1A B	Asset-Backed Securities	101,040
American Banknote Corp.	Common Stocks	2,208,750
IQHQ, Inc.	Common Stocks	1,823,000
TerreStar Corp.	Common Stocks	4,706,357
Wayne Services Legacy Inc.	Common Stocks	5,172
SFR WLIF III, LLC	LLC Interests	1,563,916
SFR WLIF II, LLC	LLC Interests	3,196,246
US Gaming, LLC	LLC Interests	2,812,212
Sapience Therapeutics, Inc	Senior Secured Loans	4,000,000
TerreStar Corp.	Senior Secured Loans	729,979
TerreStar Corp.	Senior Secured Loans	172,817
TerreStar Corp.	Senior Secured Loans	30,875
TerreStar Corp.	Senior Secured Loans	28,807
Gemphire Therapeutics, Inc.	Warrants	—

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Determination of fair value involves subjective judgments and estimates. Accordingly, the notes to the Company's financial statements will refer to the uncertainty with respect to the possible effect of such valuations, and any change in such valuations, in the Company's financial statements. Below is a description of factors that the Adviser and the Valuation Committee may consider when valuing the Company's debt and equity investments.

Valuation of fixed income investments, such as loans and debt securities, depends upon a number of factors, including prevailing interest rates for like securities, expected volatility in future interest rates, call features, put features and other relevant terms of the debt. For investments without readily available market prices, the Company may incorporate these factors into discounted cash flow models to arrive at fair value. Other factors that the Adviser and the Valuation Committee may consider include the borrower's ability to adequately service its debt, the fair market value of the portfolio company in relation to the face amount of its outstanding debt and the quality of collateral securing the Company's debt investments.

The Company's equity investments in portfolio companies for which there is no liquid public market will be valued at fair value. The Adviser and the Valuation Committee, in its analysis of fair value, may consider various factors, such as multiples of earnings before interest, taxes, depreciation and amortization ("EBITDA"), cash flows, net income, revenues or, in limited instances, book value or liquidation value. All of these factors may be subject to adjustments based upon the particular circumstances of a portfolio company or the Company's actual investment position. For example, adjustments to EBITDA may take into account compensation to previous owners or acquisition, recapitalization, restructuring or other related items.

The Adviser and the Valuation Committee may also look to private merger and acquisition statistics, public trading multiples discounted for illiquidity and other factors, valuations implied by third-party investments in the portfolio companies or industry practices in determining fair value. The Adviser and the Valuation Committee may also consider the size and scope of a portfolio company and its specific strengths and weaknesses, as well as any other factors it deems relevant in assessing the value. Generally, the value of the Company's equity interests in public companies for which market quotations are readily available will be based upon the most recent closing public market price.

If the Company receives warrants or other equity-linked securities at nominal or no additional cost in connection with an investment in a debt security, the Company will allocate the cost basis in the investment between the debt securities and any such warrants or other equity-linked securities received at the time of origination. The Adviser and the Valuation Committee will subsequently value these warrants or other equity-linked securities received at fair value.

As applicable, the Company values its Level 2 assets by using the midpoint of the prevailing bid and ask prices from dealers on the date of the relevant period end, which is provided by an independent third-party pricing service and screened for validity by such service. For investments for which the third-party pricing service is unable to obtain quoted prices, the Company obtains bid and ask prices directly from dealers who make a market in such investments.

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To the extent that the Company holds investments for which no active secondary market exists and, therefore, no bid and ask prices can be readily obtained, the Adviser and the Valuation Committee utilize an independent third-party valuation service to value such investments in a manner consistent with the Company's multistep valuation process previously described.

The Company periodically benchmarks the bid and ask prices received from the third-party pricing service and/or dealers, as applicable, and valuations received from the third-party valuation service against the actual prices at which it purchases and sells its investments. The Company believes that these prices are reliable indicators of fair value. The Adviser and the Valuation Committee review and approve the valuation determinations made with respect to these investments in a manner consistent with the Company's valuation procedures.

As of December 31, 2022, the Company's investments consisted of senior secured loans, asset-backed securities, common stocks, LLC interests, preferred stocks, corporate bonds, and warrants, which may be purchased for a fraction of the price of the underlying securities. The fair value of the Company's loans, bonds and asset-backed securities are generally based on quotes received from brokers or independent pricing services. Loans, bonds and asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the measurement date are classified as Level 2 assets. Loans, bonds and asset-backed securities that are priced using quotes derived from implied values, indicative bids or a limited number of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The fair value of the Company's common stocks and options that are not actively traded on national exchanges are generally priced using quotes derived from implied values, indicative bids, or a limited amount of actual trades and are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable. Exchange traded options are valued based on the last trade price on the primary exchange on which they trade. If an option does not trade, the mid-price is utilized to value the option.

At the end of each calendar quarter, the Adviser evaluates the Level 2 and 3 investments for changes in liquidity, including: whether a broker is willing to execute at the quoted price, the depth and consistency of prices from third party services, and the existence of contemporaneous, observable trades in the market. Additionally, management evaluates the Level 1 and 2 assets and liabilities on a quarterly basis for changes in listings or delistings on national exchanges.

Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market price, the fair value of the Company's investments may fluctuate from period to period. Additionally, the fair value of investments may differ significantly from the values that would have been used had a ready market existed for such investments and may differ materially from the values the Company may ultimately realize. Further, such investments may be subject to legal and other restrictions on resale or otherwise less liquid than publicly traded securities.

The inputs or methodology used for valuing investments are not necessarily an indication of the risk associated with investing in those investments. The following are summaries of the Company's investments categorized within the fair value hierarchy as of December 31, 2022 and December 31, 2021:

Investments	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Senior Secured Loans				
Healthcare	$ —	$10,158,950	$ 3,000,000	$13,158,950
Telecommunication Services	—	—	1,069,243	1,069,243
Asset-Backed Securities				
Financials	—	—	7,036	7,036
Corporate Bonds				
Healthcare	—	2,414,839	—	2,414,839
Media/Telecommunications	—	290,078	—	290,078
Common Stocks				
Chemicals	—	42,500	—	42,500
Energy	—	1,591,692	—	1,591,692
Financials	—	—	1,732,500	1,732,500
Real Estate	7,653,730	—	2,359,000	10,012,730
Real Estate Investment Trusts (REITs)	1,018,779	—	—	1,018,779
Service	—	—	2,269	2,269
Telecommunication Services	—	—	5,114,214	5,114,214
LLC Interests				
Consumer Products	—	—	3,088,750	3,088,750
Real Estate	—	—	1,600,492	1,600,492
Preferred Stocks				
Financials	—	1,440,625	—	1,440,625
Healthcare	—	—	10,527,285	10,527,285
Warrants				
Energy	—	161,249	—	161,249
Media/Telecommunications	—	20,484	—	20,484

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Total Assets	**$8,672,509**	**$16,120,417**	**$28,500,789**	**$53,293,715**
Total Investments	**$8,672,509**	**$16,120,417**	**$28,500,789**	**$53,293,715**

Investments	December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets				
Senior Secured Loans				
Healthcare	$ —	$20,254,978	$ 4,000,000	$24,254,978
Telecommunication Services	—	—	962,478	962,478
Asset-Backed Securities				
Financials	—	—	405,040	405,040
Corporate Bonds				
Healthcare	—	6,480,320	—	6,480,320
Media/Telecommunications	—	345,946	—	345,946
Common Stocks				
Chemicals	—	42,500	—	42,500
Energy	—	1,092,846	—	1,092,846
Financials	—	—	2,208,750	2,208,750
Healthcare	432,000	—	—	432,000
Real Estate	6,075,895	—	1,823,000	7,898,895
Real Estate Investment Trusts (REITs)	1,942,593	—	—	1,942,593
Service	—	—	5,172	5,172
Telecommunication Services	—	—	4,706,357	4,706,357
LLC Interests				
Consumer Products	—	—	2,812,212	2,812,212
Real Estate	—	—	4,760,162	4,760,162
Preferred Stocks				
Financials	—	1,725,000	—	1,725,000
Warrants				
Energy	—	112,058		112,058
Healthcare[(1)]	—	—	—	—
Media/Telecommunications	—	49,004	—	49,004
Total Assets	**$8,450,488**	**$30,102,652**	**$21,683,171**	**$60,236,311**
Total Investments	**$8,450,488**	**$30,102,652**	**$21,683,171**	**$60,236,311**

(1) Gemphire Therapeutics, Inc. Warrants at zero value.

The table below sets forth a summary of changes in the Company's Level 3 investments (measured at fair value using significant unobservable inputs) for the year ended December 31, 2022.

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Investments:	Balance as of December 31, 2021	Transfers into Level 3	Transfers out of Level 3	Net amortization (accretion) of premium/ (discount)	Distribution to Return Capital	Net realized gains/ (losses)	Net change in unrealized gains/ (losses)	Purchases/ PIK	(Sales and redemptions)	Balance as of December 31, 2022	Change in unrealized gain/(loss) on Level 3 securities still held at period end
Assets											
Senior Secured Loans											
Telecommunication Services	$ 962,478	$ —	$ —	$ —	$ —	$ —	$ (6,238)	$ 113,003	$ —	$ 1,069,243	$ (6,238
Healthcare	4,000,000	—	—	16,520	—	—	73,480	2,990,000	(4,080,000)	3,000,000	73,480
Asset-Backed Securities											
Financials	405,040	—	—	—	—	24,930	(364,273)	—	(58,661)	7,036	(364,273
Common Stocks											
Financials	2,208,750	—	—	—	—	—	(476,250)	—	—	1,732,500	(476,250
Real Estate	1,823,000	—	—	—	—	(1,440)	536,000	1,501,440	(1,500,000)	2,359,000	536,000
Service	5,172	—	—	—	—	—	(2,903)	—	—	2,269	(2,903
Telecommunication Services	4,706,357	—	—	—	—	—	407,857	—	—	5,114,214	407,857
LLC Interests											
Consumer Products	2,812,212	—	—	—	—	—	276,538	—	—	3,088,750	276,538
Real Estate	4,760,162	—	—	—	—	(74,604)	174,219	1,215,000	(4,474,285)	1,600,492	174,219
Preferred Stocks											
Healthcare	—	—	—	—	—	—	447,299	10,079,986	—	10,527,285	447,299
Total	$ 21,683,171	$ —	$ —	$ 16,520	$ —	$(51,114)	$ 1,065,729	$15,899,429	$(10,112,946)	$28,500,789	$ 1,065,729

The table below sets forth a summary of changes in the Company's Level 3 investments (measured at fair value using significant unobservable inputs) for the year ended December 31, 2021.

Investments:	Balance as of December 31, 2020	Transfers into Level 3	Transfer out of Level 3	Net amortization (accretion) of premium/ (discount)	Distribution to Return Capital	Net realized gains/ (losses)	Net change in unrealized gains/ (losses)	Purchases/ PIK	(Sales and redemptions)	Balance as of December 31, 2021	Change in unrealized gain/(loss) on Level 3 securities still held at period end
Assets											
Senior Secured Loans											
Telecommunication Services	$ 861,570	$ —	$ —	$ —	$ —	$ —	$ —	$ 100,908	$ —	$ 962,478	$ —
Healthcare	—	—	—	—	—	—	—	4,000,000	—	4,000,000	—
Asset-Backed Securities											
Financials	363,767	—	—	—	(237,335)	8,561	290,189	—	(20,142)	405,040	290,189
Common Stocks											
Chemical	—	42,000	(42,000)	—	—	—	—	—	—	—	—
Financials	1,125,000	—	—	—	—	—	1,083,750	—	—	2,208,750	1,083,750
Healthcare	40,405	—	—	—	—	(14,509)	(25,896)	—	—	—	—
Real Estate	1,661,000	—	—	—	—	—	162,000	—	—	1,823,000	162,000
Retail	532,642	—	—	—	—	(515,500)	586,525	—	(603,667)	—	—
Service	59,183	—	—	—	—	—	(54,011)	—	—	5,172	(54,011
Telecommunication Services	4,630,427	—	—	—	—	—	75,930	—	—	4,706,357	75,930
LLC Interests											
Consumer Products	2,070,427	—	—	—	—	—	741,785	—	—	2,812,212	741,785
Real Estate	4,236,603	—	—	—	—	—	523,559	—	—	4,760,162	523,559
Real Estate Investment Trusts (REITs)	228,215	—	—	—	(200,000)	200,000	(228,215)	—	—	—	—
Warrants											
Healthcare	1	—	—	—	—	—	(1)	—	—	—	(1
Total	$ 15,809,240	$ 42,000	$(42,000)	$ —	$ (437,335)	$(321,448)	$ 3,155,615	$4,100,908	$ (623,809)	$21,683,171	$ 2,823,201

Investments designated as Level 3 may include investments valued using quotes or indications furnished by brokers which are based on models or estimates and may not be executable prices. In light of the developing market conditions, the Adviser continues to search for observable data points and evaluate broker quotes and indications received for investments. Determination of fair values is uncertain because it involves subjective judgments and estimates that are unobservable. Transfers from Level 2 to Level 3 are due to a decrease in market activity (e.g. frequency of trades), which resulted in a decrease of available market inputs to determine price. For the year ended December 31, 2022, there were 0 transfers from Level 2 to Level 3. For the year ended December 31, 2021, there were no transfers from Level 2 to Level 3. Transfers from Level 3 to Level 2 and from Level 2 to Level 1 are due to an increase in market activity (e.g. frequency of trades), which resulted in an increase of available market inputs to determine price.

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The following are summaries of significant unobservable inputs used in the fair valuations of investments categorized within Level 3 of the fair value hierarchy as of December 31, 2022 and 2021:

Investment	Fair value at December 31, 2022	Valuation technique	Unobservable inputs	Range of input value(s) (weighted average)
LLC Interest		Discounted Cash Flow	Discount Rate	4.73% - 8.93% (6.83%)
	$ 4,689,242	Multiples Analysis	Multiple of EBITDA	5.55x - 9.85x (7.70x)
Preferred Stock		Option Pricing Model	Volatility	40% - 60% (50%)
	10,527,285	Transaction Indication of Value	Recap Price	$11.10
Common Stock			Discount Rate	13.50% - 15.50% (14.50%)
		Discounted Cash Flow	Multiple of EBITDA	3.25x - 4.25x (3.75x)
		Multiples Analysis	Unadjusted	$0.09 - $0.95 ($0.52)
		Transaction Indication of Value	Price/MHz-PoP Enterprise Value ($mm)	$872 - $969 ($920.5)
		Liquidation Analysis	Recovery Rate	40% - 100% (70%)
	9,207,983	Net Asset Value	N/A	$28
Senior Secured Loans	4,069,243	Discounted Cash Flow	Discount Rate	10.25% - 13.08% (11.67%)
Asset-Backed Securities	7,036	NAV Approach	Discount Rate	70.00%
Total	**$ 28,500,789**			

Investment	Fair value at December 31, 2021	Valuation technique	Unobservable inputs	Range of input value(s) (weighted average)
LLC Interest		Discounted Cash Flow	Discount Rate	1.49% - 5.43% (3.46%)
		Net Asset Value	N/A	N/A
	$ 7,572,374	Multiples Analysis	Multiple of EBITDA	6.3x - 8.2x (7.25x)
Common Stock		Discounted Cash Flow	Discount Rate	14.5% -16.5% (15.5%)
		Multiples Analysis	Multiple of EBITDA	2.75x - 3.75x (3.25x)
			Unadjusted Price/MHz-PoP	$0.09 - $0.95 ($0.52)
		Transaction Indication of Value	NAV / sh multiple	0.75x - 1.00x (0.875x)
		Liquidation Analysis	Enterprise Value ($mm)	$841
	8,743,279		Recovery Rate	75% - 100% (94%)
Senior Secured Loans		Discounted Cash Flow	Discount Rate	11.00%
	4,962,478	Transaction Indication of Value	Cost Price	N/A
Asset-Backed Securities		Discounted Cash Flow	Discount Rate	21.00%
	405,040	Third Party Indication of Value	Broker Quote	Various
Warrants	—	Black-Scholes Model	Volatility Assumption	181.3%
Total	**$ 21,683,171**			

The significant unobservable inputs used in the fair value measurement of the Company's LLC interests are: discount rate and multiples of EBITDA. Significant increases (decreases) in those inputs in isolation could result in a significantly lower (higher) fair value measurement. The significant unobservable inputs used in the fair value measurement of the Company's common equity securities are: multiple of EBITDA, price/MHz-PoP multiple, liquidity discount, discount rate, enterprise value, and transaction price. Significant increases (decreases) in any of those inputs in isolation could result in a significantly lower (higher) fair value measurement. The significant unobservable inputs used in the fair value measurement of the Company's bank loan securities are: discount rate and spread adjustment. Significant increases (decreases) in either of those inputs in isolation could result in a significantly lower (higher) fair value measurement.

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The significant unobservable inputs used in the fair value measurement of the Company's asset-backed securities are: discount rate and broker quote indication of value. Significant increases (decreases) in either of those inputs in isolation could result in a significantly lower (higher) fair value measurement. The significant unobservable input used in the fair value measurement of the Company's warrant securities is: volatility assumption. Significant increases (decreases) in this input in isolation could result in a significantly lower (higher) fair value measurement.

Derivative Transactions

The Company is subject to equity price risk, interest rate risk and foreign currency exchange rate risk in the normal course of pursuing its investment objective. The Company may invest without limitation in warrants and may also use derivatives, primarily swaps (including equity, variance and volatility swaps), options and futures contracts on securities, interest rates, commodities and/or currencies, as substitutes for direct investments the Company can make. The Company may also use derivatives such as swaps, options (including options on futures), futures, and foreign currency transactions (e.g., foreign currency swaps, futures and forwards) to any extent deemed by the Adviser to be in the best interest of the Company, and to the extent permitted by the 1940 Act, to hedge various investments for risk management and speculative purposes.

Options

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The Company purchases options, subject to certain limitations. The Company may invest in options contracts to manage its exposure to the stock and bond markets and fluctuations in foreign currency values. Writing puts and buying calls tend to increase the Company's exposure to the underlying instrument while buying puts and writing calls tend to decrease the Company's exposure to the underlying instrument, or economically hedge other Company investments. The Company's risks in using these contracts include changes in the value of the underlying instruments, nonperformance of the counterparties under the contracts' terms and changes in the liquidity of the secondary market for the contracts. Options are valued at the last sale price, or if no sales occurred on that day, at the last quoted bid price. As of and during the year ended December 31, 2022 and 2021, the Company did not hold options.

Investment Transactions

Investment transactions are accounted for on trade date. Realized gains (losses) on investments sold are recorded on the basis of specific identification method for both financial statement and U.S. federal income tax purposes. Payable for investments purchased and receivable for investments sold on the Statements of Assets and Liabilities, if any, represents the cost of purchases and proceeds from sales of investment securities, respectively, for trades that have been executed but not yet settled.

Income Recognition

Corporate actions (including cash dividends from common stock and equity tranches of asset-backed securities) are recorded on the ex-dividend date, net of applicable withholding taxes, except for certain foreign corporate actions, which are recorded as soon after the ex-dividend date as such information becomes available. Interest income is recorded on the accrual basis. The Company does not accrue as a receivable for interest or dividends on loans, asset-backed securities and other securities if there is a reason to doubt the Company's ability to collect such income. For loans with contractual PIK (payment-in-kind) interest income, which represents contractual interest accrued and added to the loan balance that generally becomes due at maturity, we will not accrue PIK interest if we believe that the PIK interest is no longer collectible. Loan origination fees, original issue discount and market discount are capitalized and such amounts are amortized as interest income over the respective term of the loan or security. Upon the prepayment of a loan or security, any unamortized loan origination fees and original issue discount are recorded as interest income.

Accretion of discounts and amortization of premiums on taxable bonds, loans and asset-backed securities are computed to the call or maturity date, whichever is shorter, using the effective yield method. Withholding taxes on foreign dividends have been provided for in accordance with the Company's understanding of the applicable country's tax rules and rates.

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Organization and Offering Costs

Organization costs are paid by the Adviser and include the cost of incorporating, such as the cost of legal services and other fees pertaining to our organization. Offering costs include legal fees, promotional costs and other costs pertaining to the public offering of our shares of common stock and are also paid by the Adviser. Prior to the termination of the offering, as we raised proceeds, these organization and offering costs were expensed and became payable to the Adviser. Organization and offering costs are limited to 1% of total gross proceeds raised and are not due and payable to the Adviser to the extent they exceed that amount. Please refer to Note 4 for additional information on Organization and Offering Costs.

Paid-in Capital

The proceeds from the issuance of common stock as presented on the Company's Statements of Changes in Net Assets is presented net of selling commissions and fees for the years ended December 31, 2022, 2021 and 2020. Selling commissions and fees of $0, $0, and $0 were paid for the years ended December 31, 2022, 2021 and 2020, respectively.

Earnings Per Share

In accordance with the provisions of ASC Topic 260—*Earnings per Share* ("ASC Topic 260"), basic earnings per share is computed by dividing earnings available to common stockholders by the weighted average number of shares outstanding during the period. Other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per share on a diluted basis.

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The following table sets forth the computation of the weighted average basic and diluted net increase in net assets per share from operations:

	For the year ended December 31,		
	2022	**2021**	**2020**
Net increase (decrease) in net assets resulting from operations	$(4,065,174)	$ 5,706,143	$(20,899,278)
Weighted average common shares outstanding	9,893,732	10,254,666	10,525,271
Earnings (loss) per common share-basic and diluted	$ (0.41)	$ 0.56	$ (1.98)

Distributions

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Distributions to the Company's stockholders will be recorded as of the record date. Subject to the discretion of the Board and applicable legal restrictions, the Company intends to authorize and declare ordinary cash distributions on a weekly basis and pay such distributions on a quarterly basis. Net realized capital gains, if any, will generally be distributed or deemed distributed at least every 12-month period.

On June 24, 2020, the Board approved a change in its dividend and capital gains distribution schedule from monthly distributions to quarterly distributions, effective immediately. The first quarterly distribution was paid on October 12, 2020 to shareholders of record as of September 30, 2020. The dividends are expected to be declared in the amount of $0.09 per share of the Company's common stock to the stockholders of record at each quarter end.

Recent Accounting Pronouncements

In March 2020, the FASB issued Accounting Standards Update ("ASU") No. 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting" which provides optional exceptions for applying GAAP to contract modifications, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. ASU No. 2020-04 is elective and effective for all entities as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the impact of ASU No. 2020-04. Please refer to Note 8 for additional information.

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Note 3 — Investment Portfolio

The following table shows the composition of the Company's invested assets by industry classification at fair value at December 31, 2022:

	Fair value	Percentage
Assets		
Healthcare	$26,101,074	49.0%
Real Estate	11,613,222	21.7%
Telecommunication Services	6,183,457	11.6%
Consumer Products	3,088,750	5.8%
Financials	3,180,161	6.0%
Energy	1,752,941	3.3%
Real Estate Investment Trusts (REITs)	1,018,779	1.9%
Media/Telecommunications	310,562	0.6%
Chemicals	42,500	0.1%
Service	2,269	0.0%
Total Assets	**$53,293,715**	**100.0%**

The following table shows the composition of the Company's invested assets by industry classification at fair value at December 31, 2021:

	Fair value	Percentage
Assets		
Healthcare	$31,167,298	51.7%
Real Estate	12,659,057	21.0%
Telecommunication Services	5,668,835	9.4%
Financials	4,338,790	7.2%
Consumer Products	2,812,212	4.7%
Real Estate Investment Trusts (REITs)	1,942,593	3.2%
Energy	1,204,904	2.0%
Media/Telecommunications	394,950	0.7%
Chemicals	42,500	0.1%
Service	5,172	0.0%
Total Assets	**$60,236,311**	**100.0%**

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The following table summarizes the amortized cost and the fair value of the Company's invested assets by class of financial asset as of December 31, 2022:

	Amortized Cost	Fair value	Percentage of Portfolio (at Fair Value)
Assets			
Senior Secured Loans—First Lien	$ 14,645,106	$11,575,821	21.7%
Senior Secured Loans—Second Lien	2,976,056	2,652,372	5.0%
Asset-Backed Securities	388,541	7,036	0.0%
Corporate Bonds	3,358,783	2,704,917	5.1%
Common Stocks	17,073,102	19,514,684	36.6%
LLC Interests	3,666,112	4,689,242	8.8%
Preferred Stocks	11,829,987	11,967,910	22.5%
Warrants	74,284	181,733	0.3%
Total Assets	**$ 54,011,971**	**$53,293,715**	**100.0%**

The following table summarizes the amortized cost and the fair value of the Company's invested assets by class of financial asset as of December 31, 2021:

	Amortized Cost	Fair value	Percentage of Portfolio (at Fair Value)
Assets			
Senior Secured Loans—First Lien	$ 21,439,866	$22,144,887	36.7%
Senior Secured Loans—Second Lien	2,957,993	3,072,569	5.1%
Asset-Backed Securities	422,271	405,040	0.7%
Corporate Bonds	6,817,768	6,826,266	11.3%

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Common Stocks	14,308,512	18,329,113	30.4%
LLC Interests	7,000,000	7,572,374	12.6%
Preferred Stocks	1,750,000	1,725,000	2.9%
Warrants	74,284	161,062	0.3%
Total Assets	**$ 54,770,694**	**$60,236,311**	**100.0%**

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The following table shows the composition of the Company's invested assets by geographic classification at December 31, 2022:

Geography	Fair value	Percentage
Assets		
Cayman Islands(1)	$ 7,036	0.0%
Luxembourg[(1)]	1,318,346	2.5%
United States	51,968,333	97.5%
Total Assets	**$53,293,715**	**100.0%**

(1) Investment denominated in USD.

The following table shows the composition of the Company's invested assets by geographic classification at December 31, 2021:

Geography	Fair value	Percentage
Assets		
Cayman Islands[(1)]	$ 405,040	0.7%
Great Britain[(1)]	432,000	0.7%
Luxembourg[(1)]	2,500,169	4.1%
United States	56,899,102	94.5%
Total Assets	**$60,236,311**	**100.0%**

(1) Investment denominated in USD.

Note 4 — Related Party Transactions and Arrangements

Investment Advisory Fee

Payments for investment advisory services under the Company's investment advisory agreement (the "Investment Advisory Agreement") and administrative services agreement (the "Administration Agreement") are equal to (a) a base management fee calculated at an annual rate of 2.0% of the average value of the Company's gross assets at the end of the two most recently completed calendar quarters and (b) an incentive fee based on the Company's performance. Effective June 5, 2017, the Investment Advisory Agreement and the Administration Agreement were amended to exclude cash and cash equivalents from the calculation of gross assets for the purpose of calculating investment advisory and administration fees.

For the years ended December 31, 2022, 2021 and 2020, the Company incurred investment advisory fees payable to the Adviser of $1,096,487, $1,220,044 and $1,192,535, respectively. Amounts waived for investment advisory fees or administrative fees pertaining to periods prior to June 10, 2016 are not recoupable, but amounts waived for investment advisory fees or administrative fees pertaining to periods from and after June 10, 2016 are subject to recoupment by the Adviser within three years from the date that such fees were otherwise payable, provided that the recoupment will be limited to the amount of such voluntarily waived fees from and after June 10, 2016 and will not cause the sum of the Company's investment advisory fees, administration fees, Other Expenses (as defined under "Expense Limits and Reimbursements" below), and any recoupment to exceed the annual rate of 3.40% of average gross assets. Effective December 20, 2017, the Adviser ended its voluntary waiver of advisory fees.

Incentive Fee

The incentive fee consists of two parts. The first part, which is referred to as the subordinated incentive fee on income, is calculated and payable quarterly in arrears, and equals 20.0% of "pre-incentive fee net investment income" for the immediately preceding quarter and is subject to a hurdle rate, expressed as a rate of return on the Company's net assets, as defined in the Investment Advisory Agreement, equal to 1.875% per quarter. As a result, the Adviser will not earn this incentive fee for any quarter until the Company's pre-incentive fee net investment income for such quarter exceeds the hurdle rate of 1.875%. Once the Company's pre-incentive fee net investment income in any quarter exceeds the hurdle rate, the Adviser will be entitled to a "catch-up" fee equal to

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the amount of the pre-incentive fee net investment income in excess of the hurdle rate, until the Company's pre-incentive fee net investment income for such quarter equals 2.34375% of the Company's net assets at the end of such quarter. This "catch-up" feature allows the Adviser to recoup the fees foregone as a result of the existence of the hurdle rate in that quarter. Thereafter, the Adviser will receive 20.0% of the Company's pre-incentive fee net investment income from the quarter.

The second part of the incentive fee, which is referred to as the incentive fee on capital gains, is determined and payable in arrears as of the end of each calendar year (or upon termination of the Investment Advisory Agreement). This fee equals 20.0% of the Company's incentive fee capital gains, which will equal the Company's realized capital gains on a cumulative basis from formation, calculated as of the end of the applicable period, computed net of all realized capital losses (proceeds less amortized cost) and unrealized capital depreciation on a cumulative basis, less the aggregate amount of any previously paid capital gains incentive fees. The Company will accrue for the capital gains incentive fee, which, if earned, will be paid annually. The Company will accrue for the capital gains incentive fee based on net realized and unrealized gains; however, under the terms of the Investment Advisory Agreement, the fee payable to the Adviser will be based on realized gains and no such fee will be payable with respect to unrealized gains unless and until such gains are actually realized.

For the years ended December 31, 2022, 2021 and 2020, the Company incurred \$0, \$0 and recognized a reduction of \$0 of incentive fees on capital gains, respectively. Since inception, the Company has accrued \$0 of incentive fees on capital gains in aggregate. Effective December 20, 2017, the Adviser ended its voluntary waiver of incentive fees. No such fees have been paid with respect to realized gains to the Adviser as of December 31, 2022.

Administration Fee

Pursuant to the Administration Agreement with the Adviser, the Company also reimburses the Adviser for expenses necessary for its performance of services related to the Company's administration and operations. The amount of the reimbursement will be the lesser of (1) the Company's allocable portion of overhead and other expenses incurred by the Adviser in performing its obligations under the Administration Agreement and (2) 0.40% of the Company's average gross assets, (excluding cash and cash equivalents). The Adviser is required to allocate the cost of such services to the Company based on objective factors such as assets, revenues, time allocations and/or other reasonable metrics. The Board assesses the reasonableness of such reimbursements based on the breadth, depth and quality of such services as compared to the estimated cost to the Company of obtaining similar services from third-party service providers known to be available. In addition, the Board will consider whether any single third-party service provider would be capable of providing all such services at comparable cost and quality. Finally, the Board will compare the total amount paid to the Adviser for such services as a percentage of the Company's net assets to the same ratio as reported by other comparable BDCs.

For the years ended December 31, 2022, 2021 and 2020, the Company incurred administration fees payable to the Adviser of \$226,948, \$244,754 and \$245,534, respectively. Amounts waived for management fees or administrative services expenses pertaining to periods prior to June 10, 2016 are not recoupable, but amounts waived for management fees or administrative services, expenses pertaining to periods from and after June 10, 2016 are subject to recoupment by the Adviser within three years from the date that such fees were otherwise payable, provided that the recoupment will be limited to the amount of such voluntarily waived fees from and after June 10, 2016 and will not cause the sum of the Company's advisory fees, administration fees, Other Expenses, and any recoupment to exceed the annual rate of 3.40% of average gross assets. Effective December 20, 2017, the Adviser ended its voluntary waiver of administration fees.

Organization and Offering Costs

Organization costs include the cost of incorporating, such as the cost of legal services and other fees pertaining to our organization, and are paid by the Adviser. For the years ended December 31, 2022, 2021 and 2020, the Adviser did not incur or pay organization costs on our behalf.

Offering costs include legal fees, promotional costs and other costs pertaining to the public offering of our shares of common stock, and are capitalized and amortized to expense over one year. The Company's continuous public offering ended on February 14, 2018.

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Organization costs and offering costs are limited to 1% of total gross proceeds raised in the offering and are not due and payable to the Adviser to the extent they exceed that amount. As of December 31, 2022, the cumulative aggregate amount of \$5,327,574 of organization and offering costs exceeds 1% of total proceeds raised. Subsequent to the termination of the offering, the Adviser forfeited the right to reimbursement of the remaining \$4,305,091 of these costs.

Fees Paid to Officers and Directors

Each director who oversees all of the portfolios in the Fund Complex receives an annual retainer of \$150,000 payable in quarterly installments and allocated among each portfolio in the Fund Complex based on relative net assets. The annual retainer for a director who does not oversee all of the portfolios in the Fund Complex is prorated based on the portion of the \$150,000 annual retainer allocable to the portfolios overseen by such director. Directors are reimbursed for actual out-of-pocket expenses relating to attendance at meetings. In addition, the Chairman of the Board and the Chairman of the Audit and Qualified Legal Committee each receive an additional payment of \$10,000 payable in quarterly installments and allocated among each portfolio in the Fund Complex based on relative net assets. The Directors do not receive any separate compensation in connection with service on

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Committees or for attending Board or Committee Meetings. They do not have any pension or retirement plan. The "Fund Complex" consists of all of the RICs advised by the Adviser and any affiliates as of the period covered by this report. The Company pays no compensation to any of its officers, all of whom are employed by the Adviser, its affiliates or Skyview Group, Inc. ("Skyview").

For the years ended December 31, 2022, 2021 and 2020, the Company recorded an expense relating to director fees of $18,170, $17,781 and $20,123, respectively, which represents the allocation of the director fees to the Company. As of December 31, 2022, there was no expenses payable relating to director fees.

Expense Limits and Reimbursements

Pursuant to an expense limitation agreement, the Adviser is contractually obligated to waive fees and, if necessary, pay or reimburse certain other expenses to limit the ordinary "Other Expenses" to 1.0% of the quarter-end value of the Company's gross assets through the one year anniversary of the effective date of the registration statement (the "Expense Limitation Agreement"). Under the Expense Limitation Agreement, "Other Expenses" are all expenses with the exception of advisor and administration fees, organization and offering costs and the following: (i) interest, taxes, dividends tied to short sales, brokerage commissions, and other expenditures which are capitalized in accordance with GAAP; (ii) expenses incurred indirectly as a result of investments in other investment companies and pooled investment vehicles; (iii) other expenses attributable to, and incurred as a result of, our investments; (iv) expenses payable to the Adviser, as administrator, for providing significant managerial assistance to our portfolio companies; and (v) other extraordinary expenses (including litigation expenses) not incurred in the ordinary course of our business. The obligation will automatically renew for one-year terms unless it is terminated by the Company or the Adviser upon written notice within 60 days of the end of the current term or upon termination of the Investment Advisory Agreement. The Expense Limitation Agreement will continue through at least April 30, 2023.

Any expenses waived or reimbursed by the Adviser pursuant to the Expense Limitation Agreement are subject to possible recoupment by the Adviser within three years from the date of the waiver or reimbursement. The recoupment by the Adviser will be limited to the amount of previously waived or reimbursed expenses and cannot cause the Company's expenses to exceed any expense limitation in place at the time of recoupment or waiver.

Reimbursable Expenses Table

The cumulative total of fees waived by the Adviser under the Expense Limitation Agreement, which are recoupable as of December 31, 2022 is $1,022,343. This balance, and the balances in the tables below, only include amounts pertaining to the Expense Limitation Agreement, and do not include waived advisory and administration fees subject to recoupment discussed earlier in Note 4. The following table reflects the fee waivers and expense reimbursements due from the Adviser as of December 31, 2022, which may become subject to recoupment by the Adviser.

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Period ended	Yearly cumulative other expense	Yearly expense limitation	Yearly cumulative expense reimbursement	Quarterly recoupable/ (recouped) amount	Recoupment eligibility expiration
December 31, 2022	$ 913,273	$ 535,679	$ 377,594	$ 92,216	December 31, 2025
September 30, 2022	$ 678,333	$ 392,955	$ 285,378	$ 124,667	September 30, 2025
June 30, 2022	$ 434,019	$ 273,308	$ 160,711	$ 98,950	June 30, 2025
March 31, 2022	$ 211,896	$ 150,135	$ 61,761	$ 61,761	March 31, 2025

The following table reflects the fee waivers and expense reimbursements due from the Adviser as of December 31, 2021, September 30, 2021, June 30, 2021 and March 31, 2021, which may become subject to recoupment by the Adviser.

Period ended	Yearly cumulative other expense	Yearly expense limitation	Yearly cumulative expense reimbursement	Quarterly recoupable/ (recouped) amount	Recoupment eligibility expiration
December 31, 2021	$ 892,640	$ 597,379	$ 295,261	$ 94,762	December 31, 2024
September 30, 2021	$ 664,052	$ 463,553	$ 200,499	$ 68,134	September 30, 2024
June 30, 2021	$ 436,866	$ 304,501	$ 132,365	$ 68,919	June 30, 2024
March 31, 2021	$ 220,126	$ 156,680	$ 63,446	$ 63,446	March 31, 2024

The following table reflects the fee waivers and expense reimbursements due from the Adviser as of December 31, 2020, September 30, 2020, June 30, 2020 and March 31, 2020, which may become subject to recoupment by the Adviser.

Period ended	Yearly cumulative other expense	Yearly expense limitation	Yearly cumulative expense reimbursement	Quarterly recoupable/ (recouped) amount	Recoupment eligibility expiration
December 31, 2020	$ 989,447	$ 639,959	$ 349,488	$ 101,541	December 31, 2023
September 30, 2020	687,228	439,281	247,947	94,039	September 30, 2023
June 30, 2020	445,585	291,677	153,908	(30,539)	June 30, 2023
March 31, 2020	257,226	72,779	184,447	184,447	March 31, 2023

During the year ended December 31, 2022, $147,269 of expense reimbursements that were eligible for recoupment by the Adviser expired.

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There can be no assurance that the Expense Limitation Agreement will remain in effect or that the Adviser will reimburse any portion of the Company's expenses in future quarters not covered by the Expense Limitation Agreement. Amounts shown do not include the amounts committed by the Adviser to voluntarily reimburse the Company for unrealized losses, all of which are not recoupable.

Net Increase from Amounts Committed by Affiliates

For the years ended December 31, 2022 and December 31, 2021, the Adviser did not voluntarily reimburse the Company for unrealized losses sustained. Cumulatively since inception, the Adviser has committed $2,275,000 to voluntarily reimburse the Company for such losses. Had these commitments not been made, since inception, the net asset value ("NAV") as of December 31, 2022 would have been lower by approximately this amount.

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Amounts committed and paid by the Adviser to reimburse for unrealized losses are nonrecurring, and investors should not expect the Adviser to make similar commitments or payments in the future.

Receivable from Adviser / Payable to Adviser

As of December 31, 2022 and December 31, 2021, $92,216 and $95,458 were owed from the Adviser to the Company, respectively, largely related to the expense limitation agreement.

As of December 31, 2022 and December 31, 2021, the Company owed $314,993 and $378,587, respectively, to the Adviser, largely related to advisory fees, and administration fees.

Indemnification

Under the Company's organizational documents, the officers and Directors have been granted certain indemnification rights against certain liabilities that may arise out of performance of their duties to the Company. Additionally, in the normal course of business, the Company may enter into contracts with service providers that contain a variety of indemnification clauses. The Company's maximum exposure under these arrangements is dependent on future claims that may be made against the Company and, therefore, cannot be estimated.

Note 5 — U.S. Federal Income Tax Information

The Company has elected to be treated for federal income tax purposes, and intends to qualify annually, as a RIC under Subchapter M of the Code. To maintain its qualification as a RIC, the Company must, among other things, meet certain source-of-income and asset diversification requirements and distribute to its stockholders, for each taxable year, at least 90% of its "investment company taxable income," which is generally the Company's net ordinary income plus the excess, if any, of realized net short-term capital gains over realized net long-term capital losses. As a RIC, the Company will not be subject to corporate-level federal income taxes on any income that it timely distributes to its stockholders. The Company intends to make distributions in an amount sufficient to maintain its RIC status each year and to avoid any federal income taxes on income so distributed. The Company will also be subject to nondeductible federal excise taxes if it does not distribute at least 98% of net ordinary income, 98.2% of any capital gain net income, if any, and any recognized and undistributed income from prior years on which it paid no federal income taxes.

The character of income and capital gains to be distributed is determined in accordance with the Code, U.S. Treasury regulations, and other applicable authority, which may differ from GAAP. These differences include (but are not limited to) investments organized as partnerships for tax purposes, total return swaps, loan investments, and losses deferred due to wash sale transactions. Reclassifications are made to the Company's capital accounts to reflect income and gains available for distribution (or available capital loss carryovers) under the Code, U.S. Treasury regulations, and other applicable authority. These reclassifications have no impact on net investment income, realized gains or losses, or net asset value of the Company. The calculation of net investment income per share in the Financial Highlights table excludes these adjustments.

As of December 31, 2022, 2021 and 2020, the Company made the following permanent book tax differences and reclasses:

	2022	2021	2020
Paid in capital excess of par value	$(533,512)	$ 2,104,942	$(1,621,021)
Distributions in excess of net investment income[(1)]	(308,998)	1,143,870	1,541,871
Accumulated realized gains[(1)]	842,510	(3,248,812)	79,150

(1) Amounts are included in distributable earnings (accumulated loss) on the Statements of Assets and Liabilities.

During the year ended December 31, 2022, the differences between book and tax accounting were due primarily to non-deductible excise taxes and partnerships, basis adjustments of loan investments, distribution re-designations and non-REIT return of capital.

For the years ended December 31, 2022, 2021 and 2020, the Company's tax year end, components of distributable earnings on a tax basis are as follows:

	2022	2021	2020
Undistributed ordinary income	$ —	$ 72,812	$ 687,291
Net tax appreciation/(depreciation)	(1,567,035)	2,708,891	(6,021,808)
Undistributed capital gains	—	—	—
Other temporary differences	(883,602)	(910,576)	1,315,827

For the years ended December 31, 2022, 2021 and 2020, the Company had $(30,814,250), $(30,077,894) and $(24,156,099) of capital loss carryovers, respectively.

The tax character of shareholder distributions attributable to the fiscal years ended December 31, 2022, 2021 and 2020, were as follows:

Paid Distributions attributable to:	2022	2021	2020
Ordinary income	$1,526,458	$3,633,179	$4,409,400
Return of capital	1,999,373	—	—
Long term gain	—	—	—

Unrealized appreciation and depreciation at December 31, 2022, 2021 and 2020, based on cost of investments for U.S. federal income tax purposes were as follows:

	Gross appreciation	Gross (depreciation)	Net appreciation/ (depreciation)	Cost
December 31, 2022	$ 7,373,938	$ (8,940,973)	$(1,567,035)	$54,860,750
December 31, 2021	4,599,564	(1,890,673)	2,708,891	57,527,420
December 31, 2020	7,723,451	(13,745,259)	(6,021,808)	70,690,423

The tax adjustments that impact cost are wash sales, partnerships and basis adjustments on loan investments.

Uncertainty in Income Taxes

The Company will evaluate its tax positions to determine if the tax positions taken meet the minimum recognition threshold in connection with accounting for uncertainties in income tax positions taken or expected to be taken for the purposes of measuring and recognizing tax benefits or liabilities in the financial statements. Recognition of a tax benefit or liability with respect to an uncertain tax position is required only when the position is "more likely than not" to be sustained assuming examination by taxing authorities. The Company's tax returns are subject to examination by the Internal Revenue Service for a period of three fiscal years after they are filed. The Company recognizes interest and penalties, if any, related to unrecognized tax liabilities as income tax expense in the Statements of Operations. During the years ended December 31, 2022, 2021 and 2020, the Company did not incur any interest or penalties. Furthermore, management of the Company is also not aware of any tax positions for which it is reasonably possible that the total amounts of unrecognized tax benefits will significantly change in the next 12 months.

Note 6 — Share Repurchase Program

On a quarterly basis, the Company intends to offer to repurchase shares of common stock on such terms as may be determined by the Board in its complete and absolute discretion unless, in the judgment of directors who are not "interested persons" of the Company (as defined in the 1940 Act), such repurchases would not be in the best interests of the Company's stockholders or would violate applicable law. The Company will conduct such repurchase offers in accordance with the requirements of Rule 13e-4 of the Exchange Act, and the 1940 Act. Any offer to repurchase shares of common stock will be conducted solely through tender offer materials furnished to each stockholder.

The Company currently intends to limit the number of shares of common stock to be repurchased during any calendar year to the number of shares of common stock it can repurchase with the proceeds it receives from the sale of shares of common stock under its distribution reinvestment plan. At the discretion of the Board, the Company may also use cash on hand, cash available from borrowings and cash from liquidation of securities investments as of the end of the applicable period to repurchase shares of common stock. In addition, the Company will limit the number of shares of common stock to be repurchased in any calendar year to 10.0% of the weighted average number of shares of common stock outstanding in the prior calendar year, or 2.5% in each quarter, though the actual number of shares of common stock that the Company offers to repurchase may be less in light of the limitations noted above. The Company intends to offer to repurchase such shares of common stock at a price (i) not less than the net asset value per share (the "NAV Per Share") of the Company's common stock next calculated following the Expiration Date, and (ii) not more than 2.5% greater than the NAV Per Share as of such date. The Board may amend, suspend or terminate the share repurchase program at any time, upon 30 days' notice.

The Company conducted its quarterly tender offer for the first quarter of 2022 from February 23, 2022, until expiration of March 23, 2022 at 4:00 p.m. New York City time, during which the Company offered to purchase for cash up to 2.5% of its outstanding shares of common stock. During the first quarter tender offer, 85,999 shares of the Company were tendered for repurchase, constituting approximately 0.86% of the Company's outstanding shares.

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The Company conducted its quarterly tender offer for the second quarter of 2022 from May 20, 2022, until expiration of June 21, 2022 at 4:00 p.m. New York City time, during which the Company offered to purchase for cash up to 2.5% of its outstanding shares of common stock. During the second quarter tender offer, 102,662 shares of the Company were tendered for repurchase,constituting approximately 1.03% of the Company's outstanding shares.

The Company conducted its quarterly tender offer for the third quarter of 2022 from August 19, 2022, until expiration of September 19,2022 at 4:00 p.m. New York City time, during which the Company offered to purchase for cash up to 2.5% of its outstanding shares of common stock. During the third quarter tender offer, 195,785 shares of the Company were tendered for repurchase, constituting approximately 1.97% of the Company's outstanding shares.

The Company conducted its quarterly tender offer for the fourth quarter of 2022 from November 18, 2022, until expiration of December 19, 2022 at 4:00p.m. New York City time, during which the Company offered to purchase for cash up to 2.5% of its outstanding shares of common stock. During the fourth quarter tender offer, 94,263 shares of the Company were tendered for repurchase, constituting approximately 0.95% of the Company's outstanding shares.

For the year ended December 31, 2022, the Company repurchased 0 shares as part of its death and disability repurchase program.

Note 7 — Credit Facility and Leverage Facilities

On October 19, 2017, the Company entered into a financing arrangement (the "Financing Arrangement") with BNP Paribas Prime Brokerage International, Ltd., BNP Prime Brokerage, Inc., and BNP Paribas (together, the "BNPP Entities"). Under the Financing Agreement, the BNPP Entities may make margin loans to the Company at a rate of one-month LIBOR + 1.30%. The BNPP Entities have the right to cap the amount of margin loans with prior notice to the Company. The Financing Arrangement may be terminated by either the Company or the BNPP Entities with 179 days notice. On April 15, 2020, the Financing Arrangement was paid down and closed. At December 31, 2022, there were no current outstanding or fair value amounts.

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For the years ended December 31, 2022, 2021 and 2020, the components of total interest expense were as follows:

	Year ended December 31, 2022	Year ended December 31, 2021	Year ended December 31, 2020
Direct interest expense	$ —	$ —	$ 176,911
Commitment fees	—	—	(204)
Amortization of financing costs	—	—	—
Total interest expense	$ —	$ —	$ 176,707
Average daily amount outstanding	—	—	22,670,341[(1)]
Weighted average interest rate	—	—	2.67%[(1)]

(1) The Financing Arrangement with BNP was fully paid down and closed as of April 15, 2020, the average daily amount outstanding is calculated through April 15, 2020. The 2.67% represents the weighted average interest rate from January 1, 2020 through April 15, 2020.

The Company is required to maintain 200% asset coverage with respect to its borrowings outstanding. Asset coverage is calculated by subtracting the Company's total liabilities, not including any amount representing bank loans and senior securities, from the Company's total assets and dividing the result by the principal amount of the borrowings outstanding. As of the dates indicated below, the Company's borrowings outstanding and asset coverage was as follows:

Year Ended	Total Amount Outstanding	% of Asset Coverage
12/31/2022	$ —	— %
12/31/2021	—	— %
12/31/2020	—	— %
12/31/2019	63,219,694	241%
12/31/2018	67,767,021	227%
12/31/2017	46,540,921	304%
12/31/2016	11,200,000	701%
12/31/2015	—	n/a
12/31/2014	—	n/a

BNP Paribas Total Return Swap

On June 13, 2017, the Company entered into the TRS with BNP Paribas over one or more loans, with a maximum aggregate notional amount of the portfolio debt securities subject to the TRS of $40 million. The agreements between the Company and BNP Paribas, which collectively establish the TRS, are referred to herein as the "TRS Agreement."

On April 2, 2018, the Company amended and restated the TRS Agreement with BNP Paribas. The amended and restated TRS Agreement, effective April 10, 2018 increased the maximum aggregate notional amount of the portfolio debt securities subject to the TRS to $60 million. On June 10, 2020, the TRS expired.

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Under the terms of the TRS, the Company or BNP Paribas were required to post additional collateral, on a dollar-for-dollar basis, in certain circumstances, including in the event of depreciation or appreciation in the value of the underlying loans. The limit on the additional collateral that the Company was required to post pursuant to the TRS was equal to the difference between the full notional amount of the loans underlying the TRS and the amount of cash collateral already posted by the Company. The amount of collateral required to be posted was determined primarily on the basis of the aggregate value of the underlying securities.

The Company had the option to terminate the TRS at any time more than one month prior to the TRS's scheduled termination date upon providing no less than 30 days' prior notice to BNP Paribas.

For purposes of the asset coverage ratio test applicable to the Company as a BDC, the Company would have treated the outstanding notional amount of the TRS, less the initial amount of any cash collateral required to be posted by the Company under the TRS, as a senior security for the life of that instrument. As of and for the year ended December 31, 2022, the Company has $0 in receivable from BNP Paribas.

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Further, for purposes of Section 55(a) under the 1940 Act, the Company treats each security underlying the TRS as a qualifying asset if such security is a loan and the obligor on such loan is an eligible portfolio company, and as a non-qualifying asset if the obligor is not an eligible portfolio company.

As of December 31, 2022 and 2021, there were no positions held in the TRS.

As a result of decreases in the market value of certain of the Company's assets pledged at derivative counterparties, the Company was required to post additional collateral relating to its margin requirements. The Company experienced delays posting collateral with one counterparty and received an Event of Default notice dated March 23, 2020; however, the Company covered the margin call on March 24, 2020 and received a formal waiver on the Event of Default notice from the counterparty dated April 2, 2020.

Note 8 — Economic Dependency and Commitments and Contingencies

The Adviser has entered into a Services Agreement with Skyview, effective February 25, 2021, pursuant to which the Adviser will receive administrative and operational support services to enable it to provide the required advisory services to the Company. The Adviser, and not the Company, will compensate all Adviser and Skyview personnel who provide services to the Company.

From time to time, the Company may be involved in legal proceedings in the normal course of its business. Although the outcome of such litigation cannot be predicted with any clarity, management is of the opinion, based on the advice of legal counsel, that final dispositions of any litigation should not have a material adverse effect on the financial position of the Company as of December 31, 2022.

Unfunded commitments to provide funds to portfolio companies are not recorded in the Company's Statements of Assets and Liabilities. Since these commitments may expire without being drawn upon, the total commitment amount does not necessarily represent future cash requirements. The Company has sufficient liquidity to fund these commitments. As of December 31, 2022, the Company had no unfunded debt commitments.

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties that provide general indemnification. The Company's maximum exposure under these agreements is unknown, as this would involve future claims that may be made against the Company that have not occurred. The Company believes the risk of material obligations under these indemnities to be low.

Note 9 — Market and Other Risk Factors

The primary risks of investing in the Company are described below in alphabetical order:

Concentration Risk

The Company is classified as a non-diversified investment company within the meaning of the 1940 Act, which means that it is not limited by the 1940 Act with respect to the proportion of the Company's assets that it may invest in securities of a single issuer. To the extent that the Company assumes large positions in the securities of a small number of issuers, the Company's net asset value may fluctuate to a greater extent than that of a diversified investment company as a result of changes in the financial condition or the market's assessment of the issuer. The Company may also be more susceptible to any single economic or regulatory occurrence than a diversified investment company. Beyond the asset diversification requirements associated with the Company's qualification as a RIC under the Code and certain contractual diversification requirements under a credit facility or other agreements, the Company does not have fixed guidelines for diversification, and its investments could be concentrated in relatively few portfolio companies. As a result, the aggregate returns the Company realizes may be significantly adversely affected if a small number of investments perform poorly or if the Company needs to write down the value of any one investment. Additionally, the Company's investments may be concentrated in relatively few industries. As a result, a downturn in any particular industry in which the Company is invested could also significantly impact the aggregate returns realized.

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Covenant-Lite Loans Risk

Loans in which the Company invests include covenant-lite loans, which carry more risk to the lender than traditional loans as they may contain fewer or less restrictive covenants on the borrower than traditionally included in loan documentation or may contain other borrower friendly characteristics. The Company may experience relatively greater difficulty or delays in enforcing its rights on its holdings of certain covenant-lite loans and debt securities than its holdings of loans or securities with the usual covenants.

Counterparty Credit Risk

Counterparty credit risk is the potential loss the Company may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Counterparty credit risk is measured as the loss the Company would record if its counterparties failed to perform pursuant to the terms of their obligations to the Company. Because the Company may enter into over-the-counter forwards, options, swaps and other derivative financial instruments, the Company may be exposed to the credit risk of its counterparties. To limit the counterparty credit risk associated with such transactions, the Company conducts business only with financial institutions judged by the Adviser to present acceptable credit risk.

Credit Risk

Debt securities are subject to the risk of non-payment of scheduled interest and/or principal. Non-payment would result in a reduction of income to the Company, a reduction in the value of the obligation experiencing non-payment and a potential decrease in the Company's net asset value.

Investments rated below investment grade are commonly referred to as high-yield, high risk or "junk debt." They are regarded as predominantly speculative with respect to the issuing company's continuing ability to meet principal and/or interest payments. Investments in high yield debt and high yield senior loans may result in greater net asset value fluctuation than if the Company did not make such investments. Corporate debt obligations, including senior loans, are subject to the risk of non-payment of scheduled interest and/or principal.

Non-payment would result in a reduction of income to the Company, a reduction in the value of the corporate debt obligation experiencing non-payment and a potential decrease in the net asset value of the Company. Some of the loans the Company makes or acquires may provide for the payment by borrowers of Payment-In-Kind ("PIK") interest or accreted original issue discount at maturity. Such loans have the effect of deferring a borrower's payment obligation until the end of the term of the loan, which may make it difficult for the Company to identify and address developing problems with borrowers in terms of their ability to repay debt. Particularly in a rising interest rate environment, loans containing PIK and original issue discount provisions can give rise to negative amortization on a loan, resulting in a borrower owing more at the end of the term of a loan than what it owed when the loan was originated. Any such developments may increase the risk of default on the Company's loans by borrowers.

Because loans are not ordinarily registered with the SEC or any state securities commission or listed on any securities exchange, there is usually less publicly available information about such instruments. In addition, loans may not be considered "securities" for purposes of the anti-fraud protections of the federal securities laws and, as a result, as a purchaser of these instruments, the Company may not be entitled to the anti-fraud protections of the federal securities laws. In the course of investing in such instruments, the Company may come into possession of material nonpublic information and, because of prohibitions on trading in securities of issuers while in possession of such information, the Company may be unable to enter into a transaction in a publicly-traded security of that issuer when it would otherwise be advantageous for us to do so. Alternatively, the Company may choose not to receive material nonpublic information about an issuer of such loans, with the result that the Company may have less information about such issuers than other investors who transact in such assets.

Foreign Securities Risk

Investments in foreign securities involve certain factors not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of the Company are maintained) and the various foreign currencies in which the Company's portfolio securities will be denominated and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the U.S. and foreign securities markets, including the absence of uniform accounting, auditing and financial reporting standards and practices and disclosure requirements, and less government supervision and regulation; (iii) political, social or economic instability; and (iv) the extension of credit, especially in the case of sovereign debt.

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Illiquid Securities Risk

The Company will generally make investments in private companies. Substantially all of these investments will be subject to legal and other restrictions on resale or will otherwise be less liquid than publicly traded securities. The illiquidity of the Company's investments may make it difficult for the Company to sell such investments if the need arises. In addition, if it is required to liquidate all or a portion of its portfolio quickly, the Company may realize significantly less than the value at which it has previously recorded its investments. In addition, it may face other restrictions on its ability to liquidate an investment in a portfolio company to the extent that it has material non-public information regarding such portfolio company or if an investment is held by one of its subsidiaries and is subject to contractual limitations on sale, such as the limitations on transfer of assets under certain circumstances under a credit facility.

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The Company may seek to address its short-term liquidity needs by carefully managing the settlements of its portfolio transactions, including transactions in loans, by maintaining short-term liquid assets sufficient to meet reasonably anticipated obligations, and by maintaining a credit facility.

Interest Rate Risk

Interest Rate risk is the risk that fixed income securities will decline in value because of changes in interest rates. When interest rates decline, the value of fixed rate securities already held by the Company can be expected to rise. Conversely, when interest rates rise, the value of existing fixed rate portfolio securities can be expected to decline. A company with a longer average portfolio duration will be more sensitive to changes in interest rates than a fund with a shorter average portfolio duration Recent and potential future changes in government monetary policy may affect the level of interest rates.

Investments in Foreign Markets Risk

Investments in foreign markets involve special risks and considerations not typically associated with investing in the United States. These risks include revaluation of currencies, high rates of inflation, restrictions on repatriation of income and capital, and adverse political and economic developments. Moreover, securities issued in these markets may be less liquid, subject to government ownership controls, tariffs and taxes, subject to delays in settlements, and their prices may be more volatile. The Company may be subject to capital gains and repatriation taxes imposed by certain countries in which they invest. Such taxes are generally based on income and/or capital gains earned or repatriated. Taxes are accrued based upon net investment income, net realized gains and net unrealized appreciation as income and/or capital gains are earned.

Leverage Risk

The Company may use leverage in its investment program, including the use of borrowed funds and investments in certain types of options, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. To the extent the Company purchases securities with borrowed funds, its net assets will tend to increase or decrease at a greater rate than if borrowed funds are not used. If the interest expense on borrowings were to exceed the net return on the portfolio securities purchased with borrowed funds, the Company's use of leverage would result in a lower rate of return than if the Company were not leveraged.

LIBOR Transition and Associated Risk

LIBOR is the average offered rate for various maturities of short-term loans between major international banks who are members of the British Bankers Association. LIBOR is the most common benchmark interest rate index used to make adjustments to variable-rate loans. It is used throughout global banking and financial industries to determine interest rates for a variety of financial instruments (such as debt instruments and derivatives) and borrowing arrangements.

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Due to manipulation allegations in 2012 and reduced activity in the financial markets that it measures, in July 2017, the Financial Conduct Authority (the "FCA"), the United Kingdom financial regulatory body, announced a desire to phase out the use of LIBOR by the end of 2021 and that it will stop encouraging banks to provide the quotations needed to sustain LIBOR. The ICE Benchmark Administration Limited, the administrator of LIBOR, ceased publishing most LIBOR maturities, including some US LIBOR maturities, on December 31, 2021, and is expected to cease publishing the remaining and most liquid US LIBOR maturities on June 30, 2023. It is expected that market participants have or will transition to the use of alternative reference or benchmark rates prior to the applicable LIBOR publication cessation date. Additionally, although regulators have encouraged the development and adoption of alternative rates, such as the Secured Overnight Financing Rate ("SOFR"), the future utilization of LIBOR or of any particular replacement rate remains uncertain.

Although the transition process away from LIBOR has become increasingly well defined in advance of the anticipated discontinuation dates, the impact on certain debt securities, derivatives and other financial instruments remains uncertain. It is expected that market participants will adopt alternative rates such as SOFR or otherwise amend financial instruments referencing LIBOR to include fallback provisions and other measures that contemplate the discontinuation of LIBOR or other similar market disruption events, but neither the effect of the transition process nor the viability of such measures is known. Further, uncertainty and risk remain regarding the willingness and ability of issuers and lenders to include alternative rates and revised provisions in new and existing contracts or instruments. To facilitate the transition of legacy derivatives contracts referencing LIBOR, the International Swaps and Derivatives Association, Inc. launched a protocol to incorporate fallback provisions. While the transition process away from LIBOR has become increasingly well defined in advance of the expected LIBOR cessation dates, there are obstacles to converting certain longer term securities and transactions to a new benchmark or benchmarks and the effectiveness of one alternative reference rate versus multiple alternative reference rates in new or existing financial instruments and products has not been determined. Furthermore, the risks associated with the cessation of LIBOR and transition to replacement rates may be exacerbated if an orderly transition to alternative reference rates is not completed in a timely manner. Certain proposed replacement rates to LIBOR, such as SOFR, which is a broad measure of secured overnight US Treasury repo rates, are materially different from LIBOR, and changes in the applicable spread for financial instruments transitioning away from LIBOR will need to be made to accommodate the differences. Furthermore, the risks associated with the expected discontinuation of LIBOR and transition to replacement rates may be exacerbated if an orderly transition to an alternative reference rate is not completed in a timely manner. As market participants transition away from LIBOR, LIBOR's usefulness may deteriorate and the effects could be experienced until the permanent cessation of the majority of U.S. LIBOR rates in 2023. The transition process may lead to increased volatility and illiquidity in markets that currently rely on LIBOR to determine interest rates. LIBOR's deterioration may adversely affect the liquidity and/or market value of securities that use LIBOR as a benchmark interest rate.

Alteration of the terms of a debt instrument or a modification of the terms of other types of contracts to replace LIBOR or another interbank offered rate ("IBOR") with a new reference rate could result in a taxable exchange and the realization of income and gain/loss for U.S. federal income tax purposes. The Internal Revenue Service ("IRS") has issued final regulations regarding the tax consequences of the transition from IBOR to a new reference rate in debt instruments and non-debt contracts. Under the final regulations, alteration or modification of the terms of a debt instrument to replace an operative rate that uses a discontinued IBOR with a qualified rate (as defined in the final regulations) including true up payments equalizing the fair market value of contracts before and after such IBOR transition, to add a qualified rate as a fallback rate to a contract whose operative rate uses a discontinued IBOR or to replace a fallback rate that uses a discontinued IBOR with a qualified rate would not be taxable. The IRS may provide additional guidance, with potential retroactive effect.

Operational and Technology Risk

The risk that cyber-attacks, disruptions, or failures that affect the Funds' service providers, counterparties, market participants, or issuers of securities held by the Funds may adversely affect the Funds and its shareholders, including by causing losses for the Funds or impairing Fund operations.

Options Risk

There are several risks associated with transactions in options on securities. For example, there are significant differences between the securities and options markets that could result in an imperfect correlation between these markets, causing a given transaction not to achieve its objectives. A transaction in options or securities may be unsuccessful to some degree because of market behavior or unexpected events.

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When the Company writes a covered call option, the Company forgoes, during the option's life, the opportunity to profit from increases in the market value of the security covering the call option above the sum of the premium and the strike price of the call, but retains the risk of loss should the price of the underlying security decline. The writer of an option has no control over the time when it may be required to fulfill its obligation and once an option writer has received an exercise notice, it must deliver the underlying security in exchange for the strike price.

When the Company writes a covered put option, the Company bears the risk of loss if the value of the underlying stock declines below the exercise price minus the put premium. If the option is exercised, the Company could incur a loss if it is required to purchase the stock underlying the put option at a price greater than the market price of the stock at the time of exercise plus the put premium the Company received when it wrote the option. While the Company's potential gain in writing a covered put option is limited to distributions earned on the liquid assets securing the put option plus the premium received from the purchaser of the put option, the Company risks a loss equal to the entire exercise price of the option minus the put premium.

Pandemics and Associated Economic Disruption Risk

An outbreak of respiratory disease caused by a novel coronavirus was first detected in China in December 2019 and subsequently spread globally. This coronavirus has resulted and may continue to result in the closing of borders, enhanced health screenings, healthcare service preparation and delivery, quarantines, cancellations, disruptions to supply chains and customer activity, as well as general anxiety and economic uncertainty. The impact of this coronavirus may be short-term or may last for an extended period of time and has resulted in a substantial economic downturn. Health crises caused by outbreaks of disease, such as the coronavirus, may exacerbate other pre-existing political, social and economic risks. This outbreak, and other epidemics and pandemics that may arise in the future, could negatively affect the global economy, as well as the economies of individual countries, individual companies and the market in general in significant and unforeseen ways. For example, a widespread health crisis such as a global pandemic could cause substantial market volatility, exchange trading suspensions and closures, impact the Company's ability to complete tender offer requests, and affect Company performance. Any such impact could adversely affect the Company's performance, the performance of the issuers in which the Company invests, lines of credit available to the Company and may lead to losses on your investment in the Company. In addition, the increasing interconnectedness of markets around the world may result in many markets being affected by events or conditions in a single country or region or events affecting a single or small number of issuers.

The United States responded to the coronavirus pandemic and resulting economic distress with fiscal and monetary stimulus packages, including the CARES Act passed in late March 2020. The CARES Act provides for over $2.2 trillion in resources to small businesses, state and local governments, and individuals adversely impacted by the COVID-19 pandemic. Further, in March 2021, the government passed the American Rescue Plan Act of 2021, a $1.9 trillion stimulus bill to accelerate the United States' recovery from the economic and health effects of the COVID-19 pandemic. In addition, in mid-March 2020, the Fed cut interest rates to historically low levels and announced a new round of quantitative easing, including purchases of corporate and municipal government bonds. The Fed also enacted various programs to support liquidity operations and funding in the financial markets, including expanding its reverse repurchase agreement operations, which added $1.5 trillion of liquidity to the banking system; establishing swap lines with other major central banks to provide dollar funding; establishing a program to support money market funds; easing various bank capital buffers; providing funding backstops for businesses to provide bridging loans for up to four years; and providing funding to help credit flow in asset-backed securities markets. In addition, the Fed extended credit to small- and medium-sized businesses. As the Fed "tapers" or reduces the amount of securities it purchases pursuant to quantitative easing, and/or if the Fed raises the federal funds rate, there is a risk that interest rates will rise, which could expose fixed-income and related markets to heightened volatility and could cause the value of a fund's investments, and the fund's NAV, to decline, potentially suddenly and significantly. As a result, the Company may experience high redemptions and, as a result, increased portfolio turnover, which could increase the costs that the Company incurs and may negatively impact the Company's performance. There is no assurance that the U.S. government's support in response to COVID-19 economic distress will offset the adverse impact to securities in which the Company may invest and future governmental support is not guaranteed.

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Senior Loans Risk

The risk that the issuer of a senior loan may fail to pay interest or principal when due, and changes in market interest rates may reduce the value of the senior loan or reduce the Company's returns. The risks associated with senior loans are similar to the risks of high yield debt securities. Senior loans and other debt securities are also subject to the risk of price declines and to increases in interest rates, particularly long-term rates. Senior loans are also subject to the risk that, as interest rates rise, the cost of borrowing increases, which may increase the risk of default. In addition, the interest rates of floating rate loans typically only adjust to changes in short-term interest rates; long-term interest rates can vary dramatically from short-term interest rates. Therefore, senior loans may not mitigate price declines in a long-term interest rate environment. The Company's investments in senior loans are typically below investment grade and are considered speculative because of the credit risk of their issuers.

LIBOR is the average offered rate for various maturities of short-term loans between major international banks who are members of the British Bankers Association. LIBOR is the most common benchmark interest rate index used to make adjustments to variable-rate loans. It is used throughout global banking and financial industries to determine interest rates for a variety of financial instruments (such as debt instruments and derivatives) and borrowing arrangements. Due to manipulation allegations in 2012 and reduced activity in the financial markets that it measures, in July 2017, the Financial Conduct Authority, the United Kingdom financial regulatory body, announced a desire to phase out the use of LIBOR by the end of 2021. Please refer to "LIBOR Transition and Associated Risk" for more information.

Structured Finance Securities Risk

A portion of the Company's investments may consist of equipment trust certificates, collateralized mortgage obligations, collateralized bond obligations, collateralized loan obligations ("CLO") or similar instruments. Such structured finance securities are generally backed by an asset or a pool of assets, which serve as collateral. Depending on the type of security, the collateral may take the form of a portfolio of mortgage loans or bonds or other assets. The Company and other investors in structured finance securities ultimately bear the credit risk of the underlying collateral. In some instances, the structured finance securities are issued in multiple tranches, offering investors various maturity and credit risk characteristics, often categorized as senior, mezzanine and subordinated/equity according to their degree of risk. The riskiest securities are the equity tranche, which bears the bulk of defaults from the bonds or loans serving as collateral, and thus may protect the other, more senior tranches from default. If there are defaults or the relevant collateral otherwise underperforms, scheduled payments to senior tranches of such securities take precedence over those of mezzanine tranches, and scheduled payments to mezzanine tranches take precedence over those to subordinated/equity tranches. A senior tranche typically has higher ratings and lower yields than the underlying securities, and may be rated investment grade. Despite the protection from the equity tranche, other tranches can experience substantial losses due to actual defaults, increased sensitivity to defaults due to previous defaults and the disappearance of protecting tranches, market anticipation of defaults and aversion to certain structured finance securities as a class.

Short-Selling Risk

Short sales by the Company that are not made where there is an offsetting long position in the asset that it is being sold short theoretically involve unlimited loss potential since the market price of securities sold short may continuously increase. Short selling allows the Company to profit from declines in market prices to the extent such decline exceeds the transaction costs and costs of borrowing the securities. However, since the borrowed securities must be replaced by purchases at market prices in order to close out the short position, any appreciation in the price of the borrowed securities would result in a loss. Purchasing securities to close out the short position can itself cause the price of securities to rise further, thereby exacerbating the loss. The Company may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Company might have difficulty purchasing securities to meet margin calls on its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Further, if other short positions of the same security are closed out at the same time, a "short squeeze" can occur where demand exceeds the supply for the security sold short. A short squeeze makes it more likely that the Adviser will need to replace the borrowed security at an unfavorable price.

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Valuation Risk

Certain of the Company's assets are fair valued, including the Company's investment in equity issued by TerreStar Corporation ("TerreStar"). TerreStar does not currently generate revenue and primarily derives its value from holding licenses of two wireless spectrum assets. The license with respect to one such spectrum asset was previously terminated by the FCC and subsequently restored on April 30, 2020 on a limited conditional basis. The restoration of such license requires TerreStar to meet certain deployment milestones for wireless medical telemetry service ("WMTS") during a 39-month period. Upon satisfaction of the deployment milestones, TerreStar will be able use such spectrum for other services besides WMTS as long as those services do not interfere with WMTS and TerreStar continues to provide WMTS.

If TerreStar is unsuccessful in satisfying such deployment milestones, or if other services cannot be implemented in a manner that does not interfere with WMTS, the value of the TerreStar equity would likely be materially negatively impacted. In determining the fair value of TerreStar, the Adviser has assigned a high probability of success on both conditions based on consultation with the company and its consultants.

Note 10 — Affiliated Investments

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Under Section 2(a)(3) of the 1940 Act, a portfolio company is defined as "affiliated" if a fund owns five percent or more of its outstanding voting securities or if the portfolio company is under common control. The table below shows affiliated issuers of the Company as of December 31, 2022:

Affiliated investments	Shares at December 31, 2021	Fair value as of December 31, 2021	Transfers in (at cost)	Purchases	Sales	Realized gains (losses)	Change in unrealized appreciation (depreciation)	Fair value as of December 31, 2022	Shares at December 31, 2022	Affiliated Dividend income
NexPoint Residential Trust, Inc.	23,173	$ 1,942,593	$ —	$ 17,648	$ (27,342)	$ —	$ (914,120)	$ 1,018,779	23,409	$ 9,114
NexPoint Capital REIT, LLC	—	—	—	1,215,000	—	—	(38,976)	1,176,024	100	—
NexPoint Real Estate Finance, Inc.	315,631	6,075,895	—	3,274,285	(337,168)	337,168	(1,696,450)	7,653,730	481,670	626,170
NexPoint Real Estate Finance Operating Partnership, LP	—	—	—	3,274,285	(3,274,285)	—	—	—	—	—
SFR WLIF III, LLC	1,651,112	1,563,916	—	—	(1,200,000)	—	60,552	424,468	451,112	39,773
SFR WLIF II, LLC	3,348,888	3,196,246	—	—	(3,274,284) [1]	(74,604)	152,642	—	—	—
Total affiliated investments	5,338,804	$12,778,650	$ —	$7,781,218	$(8,113,079)	$262,564	$(2,436,352)	$10,273,001	956,291	$675,057

(1) Denotes SFR II's LLC Interests conversion into NREF common shares.

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Note 11 — Financial Highlights

Selected data for a share outstanding throughout the year ended December 31, 2022, 2021, 2020, 2019 and 2018 is as follows:

	For the Year Ended December 31, 2022	For the Year Ended December 31, 2021	For the Year Ended December 31, 2020	For the Year Ended December 31, 2019	For the Year Ended December 31, 2018
Common shares per share operating performance:					
Net asset value, beginning of period	$ 6.32	$ 6.13	$ 8.53	$ 8.36	$ 9.68
Income from investment operations:					
Net investment income[(1)]	0.18	0.19	0.24	0.30	0.36
Net realized and unrealized gain (loss)	(0.59)	0.37	(2.22)	0.59	(0.96)
Total from investment operations	(0.41)	0.56	(1.98)	0.89	(0.60)
Less distribution declared to common shareholders:					
From net investment income	(0.16)	(0.37)	(0.42)	(0.60)	(0.73)
From net realized gains	—	—	—	(0.12)	—
From return of capital	(0.20)	—	—	—	—
Total distributions declared to common shareholders	(0.36)	(0.37)	(0.42)	(0.72)	(0.73)
Capital share transaction					
Issuance of common stock[(2)]	—	—	—	—	0.01
Shares tendered[(1)]	— [(3)]	— [(3)]	— [(3)]	— [(3)]	— [(3)]
Net asset value, end of period	$ 5.55	$ 6.32	$ 6.13	$ 8.53	$ 8.36
Net asset value total return[(4)]	(6.65)%	9.12%	(23.17)%	10.86%	(6.75)%
Ratio and supplemental data:					
Net assets, end of period (in 000's)	$ 53,694	$ 62,939	$ 64,190	$ 88,936	$ 86,311
Shares outstanding, end of period	9,677,593	9,956,228	10,475,168	10,425,431	10,322,327
Common share information at end of period:					
Ratios based on weighted average net assets of common shares:					
Gross operating expenses	3.82%	3.78%	3.99%	5.36%	4.32%
Fees and expenses waived or reimbursed	(0.63)%	(0.45)%	(0.54)%	(0.16)%	(0.43)%
Net operating expenses	3.19%	3.33%	3.45%	5.20%	3.89%
Net investment income (loss) before fees waived or reimbursed	2.43%	2.50%	3.41%	3.33%	3.28%
Net investment income (loss) after fees waived or reimbursed	3.06%	2.95%	3.95%	3.50%	3.71%
Ratio of interest and credit facility expenses to average net assets	— %	— %	0.27%	1.37%	0.76%
Ratio of incentive fees to average net assets	— %	— %	— %	— %	(0.60)%
Portfolio turnover rate	16%	13%	83%	42%	55%
Asset coverage ratio	— %	— %	— %	241%	227%
Weighted average commission rate paid[(5)]	$ —	$ —	$ 0.0328	$ 0.0331	$ 0.0380

(1) Per share data was calculated using weighted average shares outstanding during the period.

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(2) The continuous issuance of common stock may cause an incremental increase in net asset value per share due to the sale of shares at the then prevailing public offering price and the receipt of net proceeds per share by the Company in excess of net asset value per share on each subscription closing date. The per share data was derived by computing (i) the sum of (A) the number of shares issued in connection with subscriptions and/or distribution reinvestment on each share transaction date times (B) the differences between the net proceeds per share and the net asset value per share on each share transaction date, divided by (ii) the total shares outstanding at the end of the period. The Company's continuous public offering ended on February 14, 2018.

(3) Amount rounds to less than $0.005 per share.

(4) Total returns are historical and assume changes in share price and reinvestment of dividends and capital gains distributions, and assume no sales charge. Distributions, if any, are assumed for purposes of this calculation to be reinvested at prices obtained under the Company's Dividend Reinvestment Plan. Had the Adviser not absorbed a portion of expenses, total returns would have been lower.

(5) Represents the total dollar amount of commissions paid on portfolio transactions divided by total number of portfolio shares purchased and sold for which commissions were charged.

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Note 12 — Selected Quarterly Financial Data (Unaudited)

	Quarter ended			
	December 31, 2022	September 30, 2022	June 30, 2022	March 31, 2022
Total investment income	$ 584,515	$ 993,592	$ 1,099,896	$1,014,610
Total investment income per common share	0.06	0.10	0.11	0.10
Net investment income	113,631	555,608	629,257	491,122
Net investment income per common share	0.01	0.06	0.06	0.05
Net realized and unrealized gain (loss)	257,082	(3,208,231)	(3,557,538)	653,895
Net realized and unrealized gain (loss) per common share	0.03	(0.32)	(0.36)	0.07
Net increase (decrease) in net assets resulting from operations	370,713	(2,652,623)	(2,928,281)	1,145,017
Basic and diluted earnings (loss) per common share	0.04	(0.27)	(0.29)	0.11
Net asset value per common share at end of quarter	5.55	5.60	5.96	6.35

	Quarter ended			
	December 31, 2021	September 30, 2021	June 30, 2021	March 31, 2021
Total investment income	$ 568,465	$1,374,141	$1,047,775	$1,107,478
Total investment income per common share	0.06	0.13	0.10	0.10
Net investment income	(2,205)	846,923	534,156	544,553
Net investment income per common share	0.01	0.08	0.05	0.05
Net realized and unrealized gain (loss)	133,319	(865,376)	2,785,269	1,729,504
Net realized and unrealized gain (loss) per common share	0.01	(0.08)	0.27	0.17
Net increase (decrease) in net assets resulting from operations	131,114	(18,453)	3,319,425	2,274,057
Basic and diluted earnings (loss) per common share	0.02	0.00	0.32	0.22
Net asset value per common share at end of quarter	6.32	6.40	6.49	6.25

The sum of quarterly per share amounts may not equal per share amounts reported for the years ended December 31, 2022 and 2021. This is due to changes in the number of weighted average shares outstanding and the effects of rounding for each period.

Note 13 — Subsequent Events

The Company has evaluated subsequent events through the date on which these financial statements were issued.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of NexPoint
Capital, Inc.

Opinion on the Financial Statements

We have audited the accompanying statements of assets and liabilities, including the schedules of investments, of NexPoint Capital, Inc. (the "Company") as of December 31, 2022 and 2021, the related statements of operations, changes in net assets, and cash flows for each of the three years in the period then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations, changes in its net assets, and its cash flows for each of the three years in the period then ended, in conformity with accounting principles generally accepted in the United States of America.

The Company's financial highlights included in Note 11 to the financial statements for the year ended December 31, 2019, and prior, were audited by other auditors whose report dated April 14, 2020, expressed an unqualified opinion on those financial highlights.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our procedures included confirmation of securities owned as of December 31, 2022 and 2021, by correspondence with the custodian, brokers, agent banks, and issuers; when replies were not received from brokers, we performed other auditing procedures. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

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Registered with the Public Company Accounting Oversight Board

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Valuation of Portfolio Investments—Certain Level 3 Portfolio Investments in Loans, Asset Backed Securities, Common Stocks, LLC Interests and Warrants Valued Using Significant Unobservable Inputs Developed by Management

Critical Audit Matter Description

As discussed in Note 2 to the financial statements, the Company held investments classified as Level 3 investments under accounting principles generally accepted in United States of America. These investments are valued using various valuation techniques to estimate the fair value of investments based on the specific characteristics of the investments and certain significant unobservable inputs. The fair value of the Company's Level 3 investments was approximately $28.5 million of the Company's $53.3 million total investments at fair value as of December 31, 2022.

We identified the valuation of Level 3 investments as a critical audit matter because of the judgments necessary for management to select valuation techniques and to use significant unobservable inputs to estimate the fair value. This required a high degree of auditor judgment and extensive audit effort, including the need to involve fair value specialists who possess significant valuation experience to evaluate the appropriateness of the valuation techniques and the significant unobservable inputs, when performing audit procedures to audit management's estimate of fair value of Level 3 investments.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to valuation techniques and unobservable inputs used by management to estimate the fair value of Level 3 investments included the following, among others:

- Evaluating the appropriateness of the valuation techniques used and testing the significant unobservable inputs by comparing them to external sources.
- Evaluating the appropriateness of significant changes in valuation techniques or significant unobservable inputs used in the valuations.
- Testing the accuracy of the underlying data used by the Company in its analysis.
- Comparing the significant assumptions used by management to current industry and economic trends.
- Performing sensitivity analysis of significant assumptions to evaluate changes in the fair value estimate.

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- Utilizing our fair value specialists to develop an independent estimate of the fair value in instances where the selection of valuation techniques or significant unobservable inputs were more subjective, and compared our estimates to management's estimates.
- Utilizing our fair value specialists to develop an independent fair value range for certain investments and comparison of management's estimate to each of the independently developed fair value ranges.
- Developing the independent fair value range involved testing the data used in the models and developing significant unobservable inputs in order to evaluate the reasonableness of management's fair value estimate for a portion of the Level 3 investments.
- For investments where management's process for determining the fair value was tested, professionals with specialized skill and knowledge were used to assist in evaluating the reasonableness of comparative yields and discount rates used by management for certain investments.
- Evaluating management's ability to reasonably estimate fair value by comparing management's historical estimates to subsequent transactions, taking into account changes in market or investment specific conditions, where applicable.

We have served as auditor of one or more of NexPoint Advisors, LP's investment companies since 2018.

COHEN & COMPANY, LTD.
Cleveland, Ohio
March 24, 2023
Auditor Firm ID: 925

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Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

None.

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Item 9A. ***Controls and Procedures***

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the Company's filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Investment Company Act of 1940, as amended, is recorded, processed, summarized and reported within the periods specified in the rules and forms of the Securities and Exchange Commission. Such information is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. The Company's management, including the principal executive officer and principal financial officer, recognizes that any set of controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. As of the period covered by this report, we, including our president and chief financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based upon that evaluation, our president and chief financial officer concluded that our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There have been no material changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by Item 10 is hereby incorporated by reference from the Company's definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders, to be filed with the SEC within 120 days following the end of the Company's fiscal year.

Item 11. Executive Compensation

The information required by Item 11 is hereby incorporated by reference from the Company's definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders, to be filed with the SEC within 120 days following the end of the Company's fiscal year.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by Item 12 is hereby incorporated by reference from the Company's definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders, to be filed with the SEC within 120 days following the end of the Company's fiscal year.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by Item 13 is hereby incorporated by reference from the Company's definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders, to be filed with the SEC within 120 days following the end of the Company's fiscal year.

Item 14. Principal Accountant Fees and Services

The information required by Item 14 is hereby incorporated by reference from the Company's definitive Proxy Statement relating to the Company's 2023 Annual Meeting of Stockholders, to be filed with the SEC within 120 days following the end of the Company's fiscal year.

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PART IV

Item 15: Exhibits

(a)(1) **Financial Statements**

(1) Financial Statements — Refer to Item 8 starting on page 81

(2) Financial Statement Schedules — None

(3) Exhibits

Number	Description
3.1	Amended and Restated Certificate of Incorporation (Incorporated by reference to Exhibit (a)(3) to Post-Effective Amendment No. 1 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on December 12, 2014)
3.2	Amended and Restated Bylaws (Incorporated by reference to Exhibit (b)(3) to Post-Effective Amendment No. 1 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on December 12, 2014)
4.1	Forms of Subscription Agreement (Incorporated by reference to the Prospectus Appendix A. Appendix B and Appendix C filed with Post-Effective Amendment No. 7 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on May 11, 2017)
4.2	Distribution Reinvestment Plan (Incorporated by reference to Exhibit (e) to Post-Effective Amendment No. 1 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on December 12, 2014)
10.1	Amended and Restated Investment Advisory Agreement (Incorporated by reference to Exhibit (g)(1) to Post-Effective Amendment No. 8 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on September 30, 2017)
10.2	Sub-Administration and Accounting Agreement (Incorporated by reference to Company's Registration Statement on Form N-2 (File No. 333-216277) filed on February 27, 2017)
10.3	Amended and Restated Administration Agreement (Incorporated by reference to Exhibit (k)(2) to Post-Effective Amendment No. 8 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on September 30, 2017)
10.4	Dealer Manager Agreement (Incorporated by reference to Post-Effective Amendment No. 4 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on March 2, 2016)
10.5	Form of Participating Broker-Dealer Agreement (Included as Exhibit A to the Dealer Manager Agreement)
10.6	Custodian Agreement (Incorporated by reference to Post-Effective Amendment No. 4 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on March 2, 2016)
10.7	Form of Agency Agreement (Incorporated by reference to Pre-Effective Amendment No. 3 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on July 24, 2014)
10.8	Escrow Agreement (Incorporated by reference to Post-Effective Amendment No. 4 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on March 2, 2016)
10.9	Expense Limitation Agreement (Incorporated by reference to Post-Effective Amendment No. 4 to the Company's Registration Statement on Form N-2 (File No. 333-196096) filed on March 2, 2016)
10.10	Control Agreement, dated and effective as of September 9, 2017, by and between NexPoint Capital, Inc. and BNP Paribas Prime Brokerage International, Ltd. and State Street Bank and Trust Company ((Incorporated by reference to Exhibit 10.10 to Registrants Quarterly Report on 10-Q (File No. 814-01074) filed on November 9, 2017)

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Number	Description
10.11	Master Confirmation for Loan Total Return Swap Transactions, dated and effective as of September 13, 2017, by and between NexPoint Capital Inc. and BNP Paribas Prime Brokerage International, Ltd. (Incorporated by reference to Exhibit 10.11 to Registrants Quarterly Report on 10-Q (File No. 814-01074) filed on November 9, 2017)
10.13	U.S. PB Agreement, dated and effective as of October 19, 2017, by and between NexPoint Capital, Inc. and BNP Paribas Prime Brokerage, Inc. (Incorporated by reference to Exhibit 10.2 to Registrants Current Report on 8-K (File No. 814-01074) filed on October 19, 2017)
10.14	International PB Agreement, dated and effective as of October 19, 2017, by and between NexPoint Capital, Inc., BNP Paribas Prime Brokerage International, Ltd., and BNP Paribas acting through its New York branch (Incorporated by reference to Exhibit 10.3 to Registrants Current Report on 8-K (File No. 814-01074) filed on October 19, 2017)
10.15	U.S. Triparty Agreement, dated and effective as of October 19, 2017, by and between NexPoint Capital, Inc., BNP Paribas Prime Brokerage, Inc. and Street Bank and Trust Company (Incorporated by reference to Exhibit 10.4 to Registrants Current Report on 8-K (File No. 814-01074) filed on October 19, 2017)
10.16	International Triparty Agreement, dated and effective as of October 19, 2017, by and between NexPoint Capital, Inc., BNP Paribas Prime Brokerage International, Ltd., and State Street Bank and Trust Company, as custodian (Incorporated by reference to Exhibit 10.5 to Registrants Current Report on 8-K (File No. 814-01074) filed on October 23, 2017)
10.17	Amended and Restated Master Confirmation for Loan Total Return Swap Transactions, dated and effective as of April 2, 2018, by and between NexPoint Capital, Inc. and BNP Paribas (Incorporated by reference to Exhibit 10.1 to Registrants Current Report on 8-K (File No. 814-01074) filed on April 2, 2018)
31.1*	Certifications by President pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
31.2*	Certifications by Chief Financial Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*
32.1*	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
101.INS*	Inline XBRL Instance Document—the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

NEXPOINT CAPITAL, INC.

Date: March 24, 2023

By: /s/ Frank Waterhouse
Name: Frank Waterhouse
Title: Treasurer, Chief Accounting Officer and Principal Financial Officer

KNOW ALL MEN BY THESE PRESENT, each person whose signature appears below hereby constitutes and appoints each of Frank Waterhouse and Dustin Norris as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ James D. Dondero James D. Dondero	President (Principal Executive Officer)	March 24, 2023
/s/ Frank Waterhouse Frank Waterhouse	Chief Financial Officer (Treasurer, Principal Accounting Officer and Principal Financial Officer)	March 24, 2023
/s/ Dr. Bob Froehlich Dr. Bob Froehlich	Director	March 24, 2023
/s/ John Honis John Honis	Director	March 24, 2023
/s/ Ethan Powell Ethan K. Powell	Director	March 24, 2023
/s/ Bryan A. Ward Bryan A. Ward	Director	March 24, 2023

EXHIBIT 8

1 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
2

	)	**Case No. 19-34054-sgj-11**
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	June 8, 2023
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
	)	HMIT'S MOTION FOR LEAVE TO
	)	FILE VERIFIED ADVERSARY
	)	PROCEEDING (3699)
______________________________	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Reorganized Debtor:	John A. Morris Gregory V. Demo Hayley R. Winograd PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Reorganized Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For Hunter Mountain Investment Trust:	Sawnie A. McEntire Timothy J. Miller PARSONS MCENTIRE MCCLEARY, PLLC 1700 Pacific Avenue, Suite 4400 Dallas, TX 75201 (214) 237-4303
For Hunter Mountain Investment Trust:	Roger L. McCleary PARSONS MCENTIRE MCCLEARY, PLLC One Riverway, Suite 1800 Houston, TX 77056 (713) 960-7305

1 APPEARANCES, cont'd.:

2 For Hunter Mountain Investment Trust: Deborah Deitsch-Perez
3 STINSON
2200 Ross Avenue, Suite 2900
4 Dallas, TX 75201
(214) 560-2218

5 For Muck Holdings, et al.: Brent Ryan McIlwain
6 HOLLAND & KNIGHT, LLP
300 Crescent Court, Suite 1100
7 Dallas, TX 75201
(214) 964-9481

8 For James P. Seery, Jr.: Mark Stancil
9 Joshua Seth Levy
WILLKIE FARR & GALLAGHER, LLP
10 1875 K Street, NW
Washington, DC 20006
11 (202) 303-1133

12 Recorded by: Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
13 1100 Commerce Street, 12th Floor
Dallas, TX 75242
14 (214) 753-2062

15 Transcribed by: Kathy Rehling
311 Paradise Cove
16 Shady Shores, TX 76208
(972) 786-3063

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25 Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 DALLAS, TEXAS - JUNE 8, 2023 - 9:42 A.M.

2 THE CLERK: All rise. United States Bankruptcy Court

3 for the Northern District of Texas, Dallas Division, is now in

4 session, The Honorable Stacey Jernigan presiding.

5 THE COURT: Good morning. Please be seated. All

6 right. We are here this morning for a setting in Highland.

7 This is on a motion of Hunter Mountain for leave to file an

8 adversary proceeding. I will start out by getting appearances

9 from lawyers in the courtroom.

10 MR. MCENTIRE: Yes, Your Honor. Sawnie McEntire

11 along with my partner Roger McCleary and Tim Miller on behalf

12 of Hunter Mountain Investment Trust, Ltd.

13 THE COURT: Thank you.

14 MR. MORRIS: Good morning, Your Honor. John Morris,

15 Pachulski Stang Ziehl & Jones, for the Reorganized Highland,

16 for the Highland Claimant Trust. I'm joined by Mr. Pomerantz,

17 Mr. Demo, and Ms. Winograd.

18 THE COURT: Good morning.

19 MR. STANCIL: Good morning, Your Honor. Mark Stancil

20 from Willkie Farr & Gallagher for Mr. Seery. I'm joined by my

21 colleague Josh Levy.

22 THE COURT: Good morning.

23 MR. MCILWAIN: Good morning, Your Honor. Brent

24 McIlwain from Holland & Knight here for Muck Holding, LLC,

25 Jessup Holdings, LLC, Farallon Capital Management, LLC, and

1 Stonehill Capital Management, LLC.
2 THE COURT: Thank you. All right. Is that all of
3 our lawyer appearances? I know we have observers on the
4 WebEx, but I assume you are just observers. We scheduled this
5 to be a live hearing for participants.
6 All right. Well, we had some ground rules for how this
7 would go forward today. We, of course, have had two -- I call
8 them hearings on what kind of hearing we're going to have.
9 We've had two status conferences. And so our ground rules
10 were set. Three hours of total presentation time for each the
11 Movant and the aggregate Respondents. We also had an order
12 regarding what discovery would or would not be allowed.
13 And to my surprise, there were a flurry of pleadings.
14 We're a few minutes late getting out here because we were
15 trying to digest what was filed late yesterday and into the
16 night.
17 So I understand we have a controversy about a couple of
18 expert witnesses who were listed on Monday on the Movants'
19 exhibit and witness list. And I've seen a motion to exclude
20 the expert witnesses' testimony. And I think we need to
21 address that right off the bat. I don't want to take too much
22 time on this, because, again, we're going to finish today, and
23 I won't let this housekeeping matter eat into our three hours,
24 but I want to get going. So I'll hear from Movant, Mr.
25 McEntire.

1 MR. STANCIL: Your Honor, may --
2 THE COURT: Go ahead.
3 MR. STANCIL: We moved to exclude, so I would propose
4 that my colleague, Mr. Levy, address this motion very briefly
5 if --
6 THE COURT: Well, I guess --
7 MR. STANCIL: Or I will do as --
8 THE COURT: -- that actually makes sense.
9 MR. STANCIL: Okay.
10 THE COURT: I was thinking Mr. McEntire teed up the
11 issue, but I suppose you did with the motion to exclude. So,
12 Counsel?
13 MR. LEVY: Thank you, Your Honor. Josh Levy on
14 behalf of Mr. Seery.
15 So, we think our papers largely speak for themselves, but
16 two additional points we'd like to raise. In the response
17 filed by Hunter Mountain this morning, and this is Docket
18 Entry 3828, in Paragraph 11, they argue that this is a bench
19 hearing on colorability, not a trial where junk science is a
20 concern. But junk science is precisely what they're trying to
21 introduce here. They have raised two expert witnesses, one
22 who purports to be an expert in compensation but has no
23 experience whatsoever in evaluating compensation, and they
24 provide no methodology for their conclusion.
25 For example, they claim to have identified red flags.

1 They never explain what those red flags are, why they are red
2 flags, or how they determined they were red flags. This is
3 junk science, precisely what the Federal Rules are designed to
4 exclude.
5 But that shouldn't detract from the broader procedural
6 point that this is the first time we're hearing about expert
7 witnesses, at 10:00 p.m. three days before the hearing. This
8 is a trial by ambush. This motion was filed in March, we've
9 been litigating this motion for over two months now, and this
10 is the first time we're hearing about any expert witnesses.
11 As Your Honor noted, we've had multiple conferences.
12 We've had rules setting the ground rules for this hearing.
13 We've had orders setting the scope of discovery. But now
14 Hunter Mountain is trying to pull a bait-and-switch. After
15 never mentioning any experts, after obtaining orders limiting
16 the scope of discovery, they then wait until right before the
17 hearing to disclose their experts, ensuring that these experts
18 are insulated from any kind of discovery and can ambush us at
19 the hearing.
20 I'm happy to answer any other questions, but we believe
21 they should be excluded and the accompanying exhibits should
22 also be excluded.
23 THE COURT: All right. Thank you. And the
24 accompanying exhibits, I don't review exhibits before a trial
25 or a hearing because I don't know what's going to be objected

1 to and admitted. So do you want to point out, were there
2 expert reports in the proposed exhibits?
3 MR. LEVY: These were charts and analyses prepared by
4 their experts, not actual expert reports.
5 THE COURT: Okay.
6 MR. LEVY: In their witness and exhibit list, Hunter
7 Mountain included several paragraphs that I guess serves as
8 what would be their expert reports. And then it would be
9 Exhibits 39 through 52, which consist of CVs, materials
10 reviewed, and then what they term "data charts" prepared by
11 their experts.
12 THE COURT: 39 through 52? Oh, I'm looking at the
13 wrong exhibit notebook. Oh.
14 (Pause.)
15 THE COURT: Okay. Here we go. All right. No
16 questions at this time.
17 Mr. McEntire?
18 MR. MCENTIRE: Yes, Your Honor. May I proceed?
19 THE COURT: You may.
20 MR. MCENTIRE: Again, my presentation and response is
21 subject to our objection concerning that any evidence is being
22 admitted for any purpose, other than what we believe is the
23 proper standard of review. So my response and our offer of
24 these experts is subject to that objection.
25 With that said, Mr. Levy's argument he just presented to

1 the Court presupposes that my client has a duty under 9014 to
2 provide a report, which we do not; to provide detailed
3 disclosures, which we do not, because 9014 is specifically
4 exempted from the scope of Rule 26. What we did, we didn't
5 have to do. What we did, and I made the decision to provide
6 them some disclosure and identification of who they were,
7 their backgrounds, and --
8 THE COURT: Well, let me stop you.
9 MR. MCENTIRE: Certainly.
10 THE COURT: "What we did, we didn't have to do." The
11 Local Rules, first of all, do require an exhibit and witness
12 list. And --
13 MR. MCENTIRE: We've provided that.
14 THE COURT: I know. I know. But you -- I thought I
15 heard you --
16 MR. MCENTIRE: No, no.
17 THE COURT: -- saying you didn't have to do that.
18 You do have to do that.
19 MR. MCENTIRE: No, no, no.
20 THE COURT: But I guess what you're saying is --
21 MR. MCENTIRE: What we provided was more than what
22 the Local Rules require.
23 THE COURT: How so?
24 MR. MCENTIRE: We provided CVs. We provided their
25 backgrounds. We disclosed in the actual witness description

1 who they were and the key components of their opinions. And
2 we refer to their data charts. That is not something that the
3 Local Rule requires.
4 THE COURT: Okay. Well, let me back up. We have our
5 Local Rules, but then we had our two status conferences --
6 MR. MCENTIRE: Yes.
7 THE COURT: -- on what the format of the hearing --
8 MR. MCENTIRE: Yes.
9 THE COURT: -- would be.
10 MR. MCENTIRE: Yes.
11 THE COURT: And, of course, there was extensive
12 discussion, evidence or no evidence? What did the legal
13 standard, colorability, require?
14 MR. MCENTIRE: Yes.
15 THE COURT: And I came out in the end and said, if
16 people want to put on witnesses, they're entitled to put on
17 witnesses. I think there may be a mixture of a fact question
18 and law question on colorability. So, and then I set a three-
19 hour time limit and I said, if someone wants to depose Mr.
20 Seery and Mr. Dondero, they can, but no more discovery other
21 than that. Okay?
22 MR. MCENTIRE: I understand.
23 THE COURT: Why then did you not say, well, wait,
24 Judge, if it's going to be evidence, we're just letting you
25 know, in full disclosure, we might call a couple of experts,

1 and this may impact your decision on what kind of discovery
2 can happen. And this may impact your decision on whether
3 three hours each side is enough.
4 MR. MCENTIRE: Well, Your Honor, in fairness, I don't
5 think we had made a final decision to actually designate any
6 experts. And at the time, the focus was on other witnesses.
7 But there was no exclusion, there was no limitation at all on
8 my right to bring an expert. And the Rules are very clear.
9 And the Court's --
10 THE COURT: But I specifically limited discovery, and
11 it was on your motion. It was on your motion we set the
12 hearing on --
13 MR. MCENTIRE: Actually, --
14 THE COURT: You know, did you need a continuance,
15 because if we were going to have evidence, maybe you needed a
16 continuance. And then there was a discovery issue raised.
17 MR. MCENTIRE: To be clear, Your Honor, I'm looking
18 at your orders.
19 THE COURT: Got them in front of me.
20 MR. MCENTIRE: Your order of May 26, 2023. You said,
21 You can put on your witnesses and the Court is going to rule.
22 You made no limitations as to who the witnesses would be.
23 Your order did not limit the scope of witnesses to simply Mr.
24 Seery or Mr. Dondero. In fact, any suggestion that you did
25 limit the witnesses is contrary --

1 THE COURT: Now, which order are you looking at?
2 MR. MCENTIRE: I'm looking at the May 26, 2023 order,
3 Page 51, Lines 3 through 14.
4 THE COURT: Okay.
5 MR. MCENTIRE: You also stated --
6 THE COURT: I have -- have I entered three orders on
7 this? I've got a May 10th order. I've got a May 22nd order.
8 MR. MCENTIRE: And I would also point out, Your
9 Honor, --
10 THE COURT: Could you answer my question? I want to
11 look at what you're looking at.
12 MR. MCENTIRE: Certainly.
13 THE COURT: Here we -- this is the one. Okay. Aha.
14 Okay. May 26.
15 MR. MCENTIRE: Page 51, Lines 3 through 14.
16 THE COURT: I've entered three orders on what kind of
17 hearing we're going to have. Okay. So you're looking where?
18 MR. MCENTIRE: Page 51, Lines 3 through 14. "You can
19 put on your witnesses."
20 THE COURT: Page 51?
21 MR. MCENTIRE: Yes, ma'am.
22 THE COURT: Oh. You're looking at a transcript, not
23 the order.
24 MR. MCENTIRE: That's right. I apologize.
25 THE COURT: Okay.

1 MR. MCENTIRE: Yeah, I'm looking at the transcript
2 from the hearing.
3 THE COURT: Okay. Well, I'm looking at my order.
4 MR. MCENTIRE: And the order, the order also
5 specifies no limitation at all in connection with the -- the
6 --
7 THE COURT: But my order was based on what was
8 discussed that day.
9 MR. MCENTIRE: And what was --
10 THE COURT: If you had said, hmm, Judge, if you're
11 going to allow evidence, we may call a couple of experts, then
12 there would have been a whole discussion about that and did I
13 need to limit the discovery, as I did. And there would have
14 been a whole discussion of, well, three hours, three hours
15 each side, is that going to be enough if we have experts?
16 MR. MCENTIRE: The discovery ruling that you made was
17 on my motion, and at the time I was not seeking to take any
18 expert depositions. And you denied my request to take ample
19 discovery. You limited my right to take only one deposition,
20 without documents.
21 The issue of taking expert discovery was not even on the
22 table. However, you made it very --
23 THE COURT: Well, that's my point precisely. The
24 whole purpose of the hearing was, what kind of hearing are we
25 going to have on June 8th?

1 MR. MCENTIRE: I understand. And our position --
2 THE COURT: We had already had one status conference
3 on argument only versus evidence. And I allowed you all to
4 file some briefing, which you did. And then I issued an order
5 after the briefing, saying, I think I should allow evidence on
6 the colorability question. I'm not forcing anyone to put on
7 evidence, but if you want to put on evidence, you can.
8 And then you filed your motions and we had the next status
9 conference on what kind of hearing we're going to have. And
10 there was more argument: We don't think the evidence is
11 appropriate, but if evidence is appropriate, we want you to
12 continue the hearing to allow all kinds of discovery. I don't
13 know what. And it was right before Memorial Day, and I hated
14 the fact that a bunch of subpoenas were going to go out and
15 ruin people's holidays. But there was no discussion then of,
16 okay, but just so you know, since you have made the ruling
17 that evidence can come in, we're going to have a couple of
18 experts.
19 MR. MCENTIRE: As I've already mentioned, Your Honor,
20 we had not made a decision to call experts at that time. We
21 made a decision to call the experts shortly before we filed
22 our designations.
23 The point here is this. The Rules do not require me to
24 provide any more disclosure than I have. I have gone over and
25 above the Local Rules.

1 If the Court believes that it would have allowed more time
2 for this hearing, I would advise the Court that opposing
3 counsel vehemently opposed any type of postponement or
4 continuance. The discovery that I was requesting was
5 discovery from fact witnesses. Experts were not at issue at
6 that time. Experts are --
7 THE COURT: Because --
8 MR. MCENTIRE: -- at issue now.
9 THE COURT: -- nobody knew that experts might be
10 called.
11 MR. MCENTIRE: I have a right to call experts, Your
12 --
13 THE COURT: It changes the whole complexion.
14 MR. MCENTIRE: But I have a right to call experts,
15 under the Rules. I have a right, a fundamental due process --
16 let me -- may I finish, Your Honor? A fundamental due process
17 right to call experts. Their attempt to charge some type of
18 *Daubert* challenge is nothing but a shotgun blast on the wall,
19 having no meaning at all. At a minimum, I have a right to put
20 the witnesses on the stand and we'll have a *Daubert* hearing.
21 If they want more time, they need to ask for it. They
22 didn't ask for it. Their solution is to strike my experts,
23 which is improper. It would be improper for this Court to
24 strike my experts when they have been properly tendered under
25 the Local Rules. They have not cited an alternative remedy.

1 If they want the alternative remedy, they need to ask the
2 Court.
3 THE COURT: My next question is: How do you propose
4 to get this all done in only three hours?
5 MR. MCENTIRE: We intend to move quickly.
6 THE COURT: But, see, now they, I'm guessing,
7 prepared their case assuming there weren't going to be
8 experts. And they, if they're good lawyers, which I know you
9 all are, they have their script of the kind of things they
10 were going to ask the witnesses.
11 MR. MCENTIRE: Well, did they have a --
12 THE COURT: And now they've got to carve out time for
13 two last-minute experts?
14 MR. MCENTIRE: They had an option. And one of the
15 options was they could have called me up on Tuesday and asked
16 for their depositions and I probably would have agreed.
17 THE COURT: I already said no depositions except
18 Seery and Dondero.
19 MR. MCENTIRE: Then they could have come and filed a
20 different kind of motion with the Court.
21 Their only remedy that they're seeking is a draconian one.
22 There are other options that are more consistent with the
23 implementation of due process here, Your Honor, not striking
24 my experts, which were properly identified under the Local
25 Rules.

1 If the Court is going to strike my experts, note our
2 objection. We are tendering our experts. We will put -- like
3 to put a proffer on for the Fifth Circuit or for the appellate
4 process. But if the Court is going to strike our experts,
5 then it needs to do so. We object because we have done
6 everything correctly.
7 THE COURT: Okay. Here's another problem. I have
8 not had time to process their motion to exclude. Beyond the
9 procedural issues, they are saying junk science, that there's
10 inadequate expertise on the part of I guess at least one of
11 them regarding executive compensation. I haven't had -- they
12 filed their motion to exclude at 4:00-something yesterday.
13 Okay?
14 MR. MCENTIRE: I understand.
15 THE COURT: Now, yeah, I could have stayed up all
16 night. I stayed up pretty late anyway, by the way. But --
17 MR. MCENTIRE: Well, first of all, --
18 THE COURT: -- I haven't even had the time to process
19 and intelligently rule on their motion --
20 MR. MCENTIRE: I appreciate that, and I'll respect --
21 THE COURT: -- as far as the --
22 MR. MCENTIRE: I'll respect the Court's statement.
23 THE COURT: -- junk science argument.
24 MR. MCENTIRE: I'll respect the Court's statement.
25 Their process and the procedure they've adopted is improper,

1 because if you're going to have a *Daubert* hearing, that's a
2 live hearing. Or they're going to have to have evidence to
3 support their challenge. This is simply a conclusory shotgun
4 blast on the wall, Your Honor.
5 If you even want to consider a *Daubert* challenge, the
6 proper procedure is to put the witnesses on the stand and have
7 an opportunity to have a proffer of evidence and a cross-
8 examination. That's the proper procedure. Throwing something
9 and innuendo and rhetoric and conclusions is not a proper
10 *Daubert* motion at all. The Court could deny their *Daubert*
11 motion just on those grounds.
12 THE COURT: I'm not going to rule on a motion that
13 I've barely had a chance to read, not to mention your response
14 that was filed at 8:00-something this morning.
15 MR. MORRIS: It was.
16 MR. MCENTIRE: It was. Well, then the option is you
17 need to continue the proceeding to allow the experts to take
18 the stand.
19 THE COURT: Well, I know you have thought on that,
20 but here is something I'm contemplating doing. We'll go
21 forward with the hearing in the manner my order said we would
22 go forward with it. My, I guess, Order #3 of my three orders.
23 And at the end of the evidence, you can argue in closing, each
24 of you, why we should keep the evidence open to come back
25 another day on only the experts. But time matters. If you've

1 all already used your three hours on each side, then are we
2 going to come back for five minutes on each of them? I mean,
3 I don't know.
4 And then, of course, I would have to, if I ruled in that
5 way, I believe I would have to give them a chance to depose
6 these people.
7 MR. MCENTIRE: I think that would be reasonable.
8 THE COURT: Okay. But you think you can get all of
9 your evidence in, other than your experts, and your opening
10 statement, if any, your closing argument, if any, in three
11 hours?
12 MR. MCENTIRE: I'll do my best.
13 THE COURT: Well, if you -- it's not a matter of --
14 I'm just saying this may all be an academic argument, because
15 I'm not increasing this to more than three hours each. We've
16 fully vetted that.
17 MR. MCENTIRE: Well, what the Court is then doing by
18 virtue of your ruling is that you're making me actually
19 present my evidence in a shortened form today, two hours, two
20 and a half hours, not knowing how -- whether or not you are
21 actually going to allow experts.
22 So, without the certainty, I will have to abbreviate my
23 entire presentation, giving them the advantage of putting more
24 evidence on than I, in an effort to anticipate a positive
25 ruling, which you're not prepared to provide yet. And so I'm

1 actually being penalized.

2 THE COURT: Counsel, we had two status conferences on

3 what kind of hearing we were going to have.

4 MR. MCENTIRE: I understand.

5 THE COURT: Now, the fact that you had not decided

6 your strategy for this hearing, that's not my fault. Again,

7 we had two hearings on what kind of hearing we were going to

8 have today. We could have fully vetted this. I could have

9 heard about the experts, I could have decided if we were going

10 to continue the hearing past June 8th, could have decided if

11 we were going to allow more depositions.

12 MR. MCENTIRE: Your Honor, --

13 THE COURT: I could have fully studied the merits of

14 the motion to exclude and decided if this is junk science or

15 not.

16 MR. MCENTIRE: I would request a ruling at this time,

17 Your Honor, on the experts. If you are not inclined to

18 provide a ruling to me on the experts at this time, I would

19 effectively be penalized on my time limits. I will have to

20 set aside enough time to put the experts on, not knowing, not

21 knowing whether you're going to give me the opportunity to do

22 so until the end of the day. And that would be -- that would

23 be punishment.

24 THE COURT: Isn't this going to be just preparing

25 your case you would have -- I mean, going forward with your

1 case the way you would have?
2 MR. MCENTIRE: No, I don't -- really don't think so.
3 I think there's --
4 THE COURT: I mean, --
5 MR. MCENTIRE: There's a difference.
6 THE COURT: -- you did not prepare your witnesses and
7 your possible cross-examination with the expectation of I'll
8 get my two experts in?
9 MR. MCENTIRE: My -- of course. But the point is,
10 then I'm going to have to set aside a half an hour or maybe
11 even longer from my other witness preparations, not knowing
12 whether you'll even give me that time.
13 THE COURT: Isn't the other side going to have to do
14 the very same thing?
15 MR. MCENTIRE: No.
16 THE COURT: Why not? They don't know how I'm going
17 to rule. I don't know how I'm going to rule. I have not
18 studied the motion to exclude the way I should.
19 MR. MCENTIRE: Okay. Well, Your Honor, we request a
20 ruling now. But if the Court is not inclined to do so, please
21 note our objection.
22 THE COURT: All right. I'll give the Movants the
23 last word. And I say "Movants" plural. I'm trying to
24 remember where I saw a joinder and when I did not. Did I see
25 a joinder? I can't remember.

1 MR. MORRIS: Can we just have a moment, Your Honor?
2 THE COURT: Okay. Okay.
3 MR. MCILWAIN: Your Honor, my clients did file a
4 joinder, but --
5 THE COURT: Okay.
6 MR. MCILWAIN: -- I'm going to let them handle this.
7 THE COURT: Okay.
8 (Pause.)
9 THE COURT: Counsel?
10 MR. LEVY: Thank you, Your Honor. Two brief points
11 we'd like to make. The first is on the Rules. So, Hunter
12 Mountain is focused on Rule 26(a) regarding reports. However,
13 Rule 26(b) applies to contested matters under Rule 9014. And
14 as we explain in Paragraph -- we explain in our brief, that --
15 or, in Paragraph 19 of our brief, that under Rule 26(b) we're
16 entitled to depose the experts.
17 And so we agree with Your Honor's suggestion that if
18 there's going to be any sort of experts, then we need the
19 opportunity to depose them. This is Rule 26(b)(4)(A), which
20 expressly does apply to contested matters under Bankruptcy
21 Rule 9014(b).
22 The second point is we agree with the approach Your Honor
23 has proposed. We think, for today, both sides can put on
24 their full cases without expert witnesses. Both sides can
25 have the full three hours, which should address Hunter

1 Mountain's concern. And if Your Honor decides at the
2 conclusion of the hearing that expert testimony would be
3 helpful, then we could take the opportunity to depose their
4 experts and then come back for an additional half-hour for
5 each side to address any expert testimony that Your Honor
6 believes would be helpful.
7 THE COURT: Okay. Is your proposal that you each
8 today would be limited to two and a half/two and a half? Or
9 three/three, and then another hour, 30 minutes/30 minutes, if
10 I --
11 MR. LEVY: Three/three.
12 THE COURT: -- decide to allow any experts?
13 MR. LEVY: Yeah. Three. Three and three for each
14 side, the hearing contemplated by Your Honor's orders, today.
15 And if Your Honor decides that expert testimony would be
16 helpful, we could come back for an hour, for half an hour on
17 each side, regarding experts.
18 THE COURT: All right. Mr. McEntire, what about
19 that?
20 Oh, I'm sorry, did you --
21 MR. STANCIL: Oh, I'm sorry. Just one additional
22 point, Your Honor. We would ask that Your Honor's ruling on
23 the ultimate admissibility of this be limited to what they've
24 actually put in front of us. The day for the hearing is
25 today, so I think I'd like -- I'd suspect Your Honor would

1 like to avoid another raft of submissions. So we would just
2 ask that they live or die with what they've said in the way of
3 methodology, disclosures, and the like.
4 THE COURT: Okay. Mr. McEntire, this seems like the
5 best of all worlds, maybe.
6 MR. MCENTIRE: Well, it may be the best of the worlds
7 in which we're operating.
8 My first position is that the experts are admissible,
9 period. And the Rules do not require anything more than what
10 we've already done. In fact, we've done more than we were
11 supposed to.
12 THE COURT: What is your argument about 26(b)(4),
13 which --
14 MR. MCCLEARY: If they want to take a deposition,
15 they could have called me up and asked for it.
16 MR. STANCIL: Your Honor, I was --
17 THE COURT: Wait a second. They were under a court
18 order. Okay?
19 MR. MCENTIRE: They could have -- they could have
20 sought --
21 THE COURT: They were under my order. Okay? They
22 would have been violating my order if they had done it.
23 MR. STANCIL: I was also, Your Honor, I was in a --
24 THE COURT: Not to mention that it was --
25 MR. STANCIL: I was in an airplane from 9:00 a.m.

1 Tuesday until 9:00 p.m. Tuesday.
2 THE COURT: I'm surprised a lot of you got here, with
3 the Martian atmosphere that I saw pictures of.
4 Yes. That's not realistic, to think that you disclose an
5 expert on Monday for a Thursday hearing and they can call you
6 up and --
7 MR. MCENTIRE: The other --
8 THE COURT: -- quickly put together a deposition.
9 So, --
10 MR. MCENTIRE: Sure. The other option, --
11 THE COURT: Uh-huh.
12 MR. MCENTIRE: -- of course, Your Honor, as I
13 mentioned before, and I'm not going to repeat myself, is they
14 -- there's other forms of relief they could seek. But under
15 the circumstances, and in light of your apparent leaning on
16 the issue, then this is the best under the circumstances that
17 they've suggested. We'd like an hour each.
18 I would also point out that -- well, anyway, that's it,
19 Your Honor. Thank you.
20 THE COURT: All right. So we are going to go forward
21 as planned, three hours/three hours. No experts today. In
22 making your closings -- well, this is kind of awkward. I'm
23 trying to think if we really have closing arguments, when you
24 don't know if it's -- it doesn't seem to make sense. Like, I
25 guess we could have closing arguments if you want, subject to

1 supplementing your closing arguments if we come back a second
2 day with the experts. Okay?
3 And I'm not making a ruling today on the motion to
4 exclude. I'm going to hear what I hear. And maybe what we'll
5 do is I'll give you a placeholder hearing if we're going to
6 come back on the experts. Then I'll go back and read the
7 motion, the response, and make my ruling on are we coming back
8 for another day of experts. Okay? Got it?
9 And with regard to the comment about not adding to, I
10 think that's a fair point. You can't add new exhibits that
11 the expert might talk about or that you might want me to
12 consider between now and whenever the tentative day two is.
13 MR. MCENTIRE: Understand. We agree with that.
14 THE COURT: Okay.
15 MR. MCCLEARY: Your Honor, there is one -- one
16 exhibit that has a small typo transcription of a number on it.
17 So we would like to substitute for that. It's a minor detail.
18 But I'll provide opposing counsel with that. But it's very
19 minor.
20 THE COURT: You have it today, I presume?
21 MR. MCCLEARY: Yes, we have it.
22 THE COURT: Okay. So as long as you hand it to them
23 today.
24 MR. STANCIL: No objection, Your Honor. We do -- I
25 think someone is back at the office working on a short reply

1 on our motion, which I assume we could file in support of -- I
2 mean, we filed our motion. They filed an opposition. I
3 assume we would be entitled under the Rules to file a short
4 reply on the actual exclusion issue.
5 THE COURT: That is fair, but let's talk about
6 timing. You said someone is back at the office working on it.
7 Could you get it on file by Monday?
8 MR. STANCIL: Yes, ma'am.
9 THE COURT: Okay. Then that'll be allowed if it's
10 filed by the end of the day Monday.
11 MR. MCCLEARY: Your Honor, I'm providing a copy of
12 Exhibit 43 to opposing counsel, which is the substitute
13 exhibit.
14 And obviously, we'd like to have an opportunity to respond
15 to what their filing is on Monday.
16 THE COURT: No. I mean, motion, response, reply.
17 That's all our Rules permit. Okay? Motion, response, reply.
18 Okay.
19 MR. MCCLEARY: Yes, Your Honor.
20 THE COURT: All right. Well, with that, do the
21 parties want to make opening statements? If so, Mr. McEntire,
22 you go first.
23 MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint
24 I would like to utilize, if I could.
25 THE COURT: You may.

1 MR. MORRIS: Your Honor, before we get to that, the
2 Plaintiff has objected to virtually every single exhibit that
3 we have. Should we deal with the evidence first, because I
4 don't want to refer to documents or evidence in my opening
5 that they're objecting to. They've literally objected to
6 every single exhibit except one, although I think they're
7 withdrawing certain of those objections.
8 I don't -- I don't know if the Court has had an
9 opportunity to see the objection that was filed to the
10 exhibits.
11 THE COURT: That was what was filed like at 11:00
12 last night or so?
13 MR. MORRIS: That's right.
14 THE COURT: Okay.
15 MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock
16 this morning, I actually typed out a response that I'd like to
17 hand up to the Court. But we've got to resolve the
18 evidentiary issues before we get to this.
19 THE COURT: Okay. Well, --
20 MR. MORRIS: And I don't know what their position is
21 going to be --
22 THE COURT: -- as a housekeeping matter, let's do
23 that first. And let's start with the Movants' exhibits. Do
24 we have any stipulations on admissibility of Movants'
25 exhibits?

1 MR. MORRIS: So, if I understand correctly, Your
2 Honor, you'd like to know if we object to any of their
3 exhibits first?
4 THE COURT: Yes. And --
5 MR. MORRIS: Okay.
6 THE COURT: -- we'll hold --
7 MR. MORRIS: Because we have very limited objections.
8 THE COURT: Yes. We're going to keep on hold for now
9 your exhibits to the expert-related, --
10 MR. MORRIS: Yes.
11 THE COURT: -- your objections to the expert-related
12 ones.
13 MR. MORRIS: Right. I think -- I think --
14 THE COURT: So let's not talk about, for this moment,
15 --
16 MR. MORRIS: 39 --
17 THE COURT: -- 39 through 52.
18 MR. MORRIS: Okay.
19 THE COURT: But as for 1 through 38 or 53 through 80,
20 do the Respondents have objections?
21 MR. LEVY: Yes, Your Honor. We have very limited
22 objections.
23 THE COURT: Okay.
24 MR. LEVY: So, the three to which we object in their
25 entirety are Exhibits 24, 25, and 76, all of which we object

1 to on relevance grounds.
2 Exhibits 24 and 25 are email correspondence between
3 counsel in an unrelated state court matter where Mr. Seery is
4 responding to a third-party subpoena regarding the
5 preservation of his text messages on his iPhone. This has
6 absolutely nothing to do with whether or not the Movants have
7 stated a colorable claim for breach of fiduciary duties.
8 What this appears to be is related to an entirely separate
9 motion raised by Dugaboy regarding the preservation of Mr.
10 Seery's iPhone. So we object to Exhibits 24 and 25 because
11 they have simply nothing to do with the issues in this
12 hearing.
13 We also object to Exhibit 76, which is a filing from two
14 years ago in a different bankruptcy matter, from *Acis*,
15 regarding an injunction in place in that -- in that plan about
16 issues that -- that occurred before the bankruptcy was in
17 place. So this is just an entirely different case from issues
18 that arose many, many years ago that, again, has nothing to do
19 with this case.
20 THE COURT: This was whether the *Acis* plan injunction
21 barred some lawsuit?
22 MR. LEVY: Exactly.
23 THE COURT: Okay. Okay. Is that all?
24 MR. LEVY: We also have limited objections to certain
25 exhibits that we think are admissible for the -- for the fact

1 they're said, but not the truth of the matter asserted.
2 For example, Exhibits 1 and 2 are complaints filed in
3 those actions. We have no objection to those coming in, but
4 not for the truth of the matter asserted. These are advocacy
5 pieces and pleadings. They're not actually substantive
6 evidence.
7 And we would have similar -- similar objections to
8 Exhibits 4, 6, 11, --
9 THE COURT: Wait. 4 is James Dondero Handwritten
10 Notes, May 2021.
11 MR. LEVY: Yes.
12 THE COURT: Okay.
13 MR. LEVY: So, we have no objection to that coming
14 into evidence.
15 THE COURT: Uh-huh.
16 MR. LEVY: But there are -- those are hearsay.
17 They're not admissible standing by themselves for the truth of
18 the matter asserted.
19 THE COURT: Okay.
20 MR. LEVY: And Exhibit 6 are news articles.
21 Similarly, they're hearsay, but we have no objection to them
22 coming in. They're admissible for the fact that they're
23 published, but not the truth of the matter asserted.
24 THE COURT: Okay.
25 MR. LEVY: Exhibit 11, which is a motion filed by the

1 Debtor. Similarly, it's for -- we have no objection to
2 anything on the docket coming in, but anything that's an
3 advocacy piece, like a motion as opposed to an order, we think
4 is not admissible for the truth of the matter asserted.
5 And that would be a similar objection, then, for Exhibit
6 58, which is a complaint.
7 Exhibits 59, 60, and 61 are -- are letters by counsel for
8 Mr. Dondero to the U.S. Trustee's Office. We similarly have
9 no objection to that coming in, but not for the truth of the
10 matter asserted.
11 And Exhibits 62 and 63, Exhibit 62 is an attorney
12 declaration attaching, similarly, documents that are -- that
13 are advocacy pieces.
14 And Exhibit 63 appears to be an asset chart prepared by
15 counsel. So it would be a similar objection.
16 And Exhibit 66 also is a declaration attaching documents.
17 No objections to those coming in, but not for the truth of
18 the matter asserted.
19 Exhibits 72, 73, and 74 are all -- well, 72 are press
20 articles. 73 and 74 are briefs. We don't object to that
21 coming in, but we object to it being admitted for the truth of
22 the matter asserted.
23 And similarly, Exhibit 80 is a pleading in an SDNY
24 bankruptcy. We have no objection to that coming in, but not
25 for the truth of the matter asserted.

1 And finally, Exhibits 81, 82, 83 don't specify particular
2 documents. They appear to largely be reservations of rights.
3 And so we would likewise reserve our right to object once we
4 see any specific documents --
5 THE COURT: Okay.
6 MR. LEVY: -- admitted under these exhibits.
7 THE COURT: Okay. Mr. --
8 MR. LEVY: And I understand my colleague has an
9 objection to Exhibit 5.
10 MR. MORRIS: Exhibit 5, which is the subject, I
11 believe, of an unopposed sealing motion. That document has to
12 do with purported restrictions on certain securities. Since
13 it's subject to a sealing motion, I don't want to say too much
14 more than that, other than that -- we don't think it should be
15 admitted, because you can just see from the information on the
16 document that it was created after the termination of a shared
17 services agreement.
18 However, I'm hopeful that we can resolve the issue by
19 simply stipulating that in December 2020 MGM was on a
20 restricted list. What that means, what the consequences of
21 it, the rest of it can be the subject of discussion. But if
22 they're trying to get that document in for that particular
23 fact, we would stipulate to it in order to resolve that
24 dispute.
25 THE COURT: All right. Well, that's lots to respond

1 to, Mr. McCleary. Why don't we start with the outright
2 objections: 24, 25. It's apparently text messages related to
3 Mr. Seery's iPhone. I know we've got another motion pending
4 out there that's not set today regarding Mr. Seery's iPhone.
5 MR. MCCLEARY: Yes, Your Honor. Well, as the Court
6 is aware, we've attempted to get discovery from Mr. Seery in
7 relation to the allegations in this lawsuit. And by the way,
8 all of our exhibits that we're tendering are subject to our
9 objections that this should not be an evidentiary hearing. I
10 just want to make that clear.
11 THE COURT: Understood.
12 MR. MCCLEARY: Okay. Thank you. So, we're not
13 waiving that.
14 The Exhibits 24 and 25 are relevant to the fact that he's
15 -- he's not preserving information that is relevant to the
16 claims in this lawsuit. And that also is something that is a
17 factor in the colorability of our claims in this case.
18 THE COURT: How?
19 MR. MCCLEARY: Well, there is an effort, we believe,
20 underway to not have information available for us to discover.
21 And it reflects that they have been involved in providing --
22 we think supports -- providing material nonpublic information
23 to other people that would be in his phone. And we want him
24 to preserve it. And we think the fact that he is not is
25 evidence that supports the colorability of our claims.

1 THE COURT: So, --

2 MR. MCENTIRE: Your Honor, this --

3 THE COURT: No. No. I'm processing that. You're

4 wanting the Court to receive into evidence a text that may say

5 something like, I delete messages periodically on my phone, to

6 support your claim that you have a colorable claim that some

7 sort of improper insider disclosure of information and insider

8 trading is going on? He said he had an automatic delete

9 feature on his phone; therefore, he -- that must be evidence

10 of a colorable claim for insider trading. That's the

11 argument?

12 MR. MCENTIRE: May I add to it, supplement, Your

13 Honor? Mr. Seery, in his deposition, indicated that he did

14 receive a text message that he had recently reviewed from

15 Stonehill in February of 2021. To the extent, however, that

16 is inconsistent with the fact that he has an automatic delete

17 button, suggesting to me that certain text messages have been

18 selectively saved and some other messages have been not

19 selectively saved.

20 THE COURT: We don't have that motion set today.

21 MR. MCENTIRE: This is not -- that has nothing to do

22 with the motion. It has to do with the fact that what is

23 being presented to the Court in response, the Respondents'

24 argument, is a selected window, a selected picture, that is --

25 distorts the reality of what we think has been destroyed

1 evidence.
2 Mr. Seery can't save one message that may be helpful to
3 them and not save others that may not be. And it is
4 inconsistent with the notion that this automatic delete button
5 was already in effect, so why does he have one favorable
6 message? That's why it's relevant.
7 THE COURT: Maybe he stopped using the automatic
8 delete after --
9 MR. MCENTIRE: No, he didn't at this time, Your
10 Honor.
11 THE COURT: Well, --
12 MR. MCENTIRE: That's the relevance.
13 THE COURT: So, --
14 MR. MCCLEARY: And he should never have used it, Your
15 Honor, given his role and responsibilities.
16 THE COURT: We don't have that motion set today.
17 What is the content of these emails? February 16th, March
18 10th, 2023? What is the content, for me to really zero in --
19 MR. LEVY: I have --
20 THE COURT: -- on relevance or not.
21 MR. LEVY: -- copies of the emails, if that would be
22 helpful --
23 THE COURT: Okay.
24 MR. LEVY: -- to Your Honor.
25 THE COURT: Well, you know, now I'm seeing them, so I

1 don't know what the big deal is if --
2 MR. LEVY: As Your Honor can see, these are emails
3 between counsel regarding preservation, which has nothing to
4 do with whether there are colorable claims for fiduciary
5 duties.
6 I'll add that -- and to show that this has nothing to do
7 with this case and it is an attempt to generate a fishing
8 expedition for documents in an entirely unrelated motion, we
9 had a meet-and-confer where we represented to the counsel
10 bringing that motion that we have been able to recover the
11 text messages from the iCloud.
12 And so this is really just a sideshow. It has nothing to
13 do with the issues of the colorability of claims for breach of
14 fiduciary duties. It should not be introduced into evidence
15 in this hearing.
16 THE COURT: All right. I'm going to sustain the
17 objection, but this is without prejudice to you re-urging
18 admission of these messages at the hearing on the motion
19 regarding Mr. Seery's phone. Okay? Now, --
20 MR. MCCLEARY: That's as to 24 and 25, Your Honor?
21 THE COURT: Correct. And let's go now to the other
22 one, the Exhibit 76, the *Acis*-related document, the relevance
23 of that. Statement of Interested Party in Response to Motion
24 of NexPoint to Confirm Discharge or Plan Injunction Does Not
25 Bar Suit, or Alternatively, for Relief from All Applicable

1 Injunctions.
2 What is the relevance for today's matter?
3 MR. MCCLEARY: Your Honor, this is background of
4 pleadings and just background information generally to support
5 the allegations made in the case and the background.
6 THE COURT: What do you mean, background?
7 MR. MCCLEARY: Kind of the history relative to the
8 claims trading and relative to the claims of the use of
9 insider information.
10 THE COURT: Okay. Be more specific, because I
11 certainly have a background education on *Acis* litigation.
12 (Pause.)
13 MR. MCCLEARY: Yeah. Your Honor, this is a data
14 point that is referred to in one of our experts' data charts,
15 I believe, so --
16 THE COURT: All right. So let's just carry that to
17 --
18 MR. MCCLEARY: Yes.
19 THE COURT: I'm just going to mark it as carried
20 along with 39 through 62, related to the experts.
21 (HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)
22 THE COURT: Okay. What about all of these objections
23 that we don't object *per se* but we want it clear that the
24 documents are not being offered for the truth of the matter
25 asserted because there's hearsay?

1 MR. MCENTIRE: Your Honor, I'll let Mr. McCleary
2 address all of those.
3 I want to point out one exception, and that is Exhibit #4,
4 which are handwritten notes from Mr. Jim Dondero. Those are
5 not -- they are being offered for the truth of the matter
6 asserted because it's an admission of a party opponent in
7 these proceedings, and that's Farallon. They reflect
8 significant statements and admissions by Farallon, which are
9 not hearsay. It's an exception to the hearsay rule. And
10 they're being offered for more -- they are being offered for
11 the truth of the matter asserted, because -- and it's
12 admissible in that format.
13 THE COURT: But are you referring to hearsay within
14 hearsay? Because there would be, I guess -- I guess the
15 handwritten notes of Mr. Dondero are his hearsay, and then
16 you're saying there's --
17 MR. MCENTIRE: So, this is reflecting statements made
18 to Mr. Dondero that are admissions of a party opponent.
19 MR. LEVY: None of that has been established. These
20 are not notes from anybody at Farallon or Stonehill which
21 could potentially be a party admission. These are notes by
22 Mr. Dondero about what was purportedly said by somebody else,
23 and there's no evidence that these were kept in the regular
24 course of business.
25 This is hearsay and hearsay within hearsay. And this

1 could be established in testimony, but it can't be admitted --
2 the document can't be admitted to speak on behalf of a third
3 person who's not here.
4 MR. MCENTIRE: Well, first of all, I agree, we'd need
5 to lay a foundation. But that's not the purpose of this
6 discussion right now. I am simply advising the Court that
7 once I lay a foundation, it comes in for all purposes. It
8 comes in as an admission of a party opponent.
9 MR. LEVY: It is not an admission of a party
10 opponent. It is not notes or statements by any actual
11 defendant. These are notes by Mr. Dondero being introduced
12 for his own benefit. It is not a party admission.
13 THE COURT: Okay. I'm going to carry that one. If
14 one of the witnesses that's on the witness stand -- well,
15 presumably Mr. Dondero will be called -- we can get context at
16 that time and decide if it's appropriate to let it in and let
17 you cross-examine him on them if that's going to come in. All
18 right? So we'll carry this one.
19 Anything else, though, unique, or can we consider as a
20 batch all these other objections to -- most of them being
21 pleadings, not all of them but a lot of them -- that the
22 Respondents just want it clear that they're not being offered
23 for the truth of the matter asserted? Your response?
24 MR. MCCLEARY: They're, again, largely data points
25 relied on by experts in the course of coming up with their

1 opinions and just setting the background and history of the
2 claims trading.
3 THE COURT: Well, then which ones are data points?
4 Because I just need to carry those, right? If they're not
5 being offered for any other reason.
6 MR. MCCLEARY: Well, I would have to -- we would have
7 to refer to the charts of the experts, Your Honor, to
8 determine that on all of them.
9 MR. MCENTIRE: In order to facilitate this, may I
10 make a suggestion, Your Honor? We'll agree that if we're
11 going to offer anything that he's identified other than for
12 the purposes indicated, we will advise the Court. Otherwise,
13 we'll accept the limitations imposed. And as we go through,
14 if we offer an exhibit that is more than the truth -- if we
15 are offering it for the truth of the matter asserted, we will
16 advise the Court, and then we could take it up then. I'm just
17 trying to get the ball rolling.
18 THE COURT: Okay. Well, that's still going to be a
19 time-consuming thing, maybe. But, okay. Just, when we start
20 the clock here -- very shortly, I hope -- I want people clear
21 that when you make objections, that counts against your three
22 hours. Okay? All right?
23 MR. LEVY: Okay. Understood, Your Honor.
24 MR. MCCLEARY: Your Honor, we have certainly made
25 objection to some of their exhibits.

1 THE COURT: All right. Well, shall we turn to those
2 now?
3 MR. MCCLEARY: Yes, Your Honor.
4 MR. MORRIS: Your Honor, they objected to every
5 single exhibit except one, so let's be clear.
6 THE COURT: Okay.
7 MR. MORRIS: If they're withdrawing them, that's
8 fine.
9 MR. MCCLEARY: Well, --
10 MR. MORRIS: But let's be clear.
11 MR. MCCLEARY: -- we are not withdrawing our general
12 objection to all the evidence, of course. Just --
13 THE COURT: Okay. Let me just say for the record
14 right now, I understand and you are preserving for all
15 purposes your ability to argue on appeal that it was error for
16 the Court to consider any evidence. Okay? You have not
17 waived that argument by --
18 MR. MCCLEARY: Thank you.
19 THE COURT: -- now --
20 MR. MCCLEARY: Thank you. We can have --
21 THE COURT: -- agreeing to the admission of anybody's
22 exhibit or offering your own exhibits.
23 MR. MCCLEARY: And we could have a running objection
24 on that basis, on relevance to all the witnesses and the
25 evidence that they offer on that basis. I would request that.

1 THE COURT: Well, okay, let me be clear. Relevance.
2 Your argument is that no evidence is relevant because the
3 Court doesn't need to consider any evidence --
4 MR. MCCLEARY: Yes, Your Honor.
5 THE COURT: -- on the colorability issue. You've got
6 a running objection. It's not destroyed for appeal purposes.
7 Okay?
8 MR. MCCLEARY: Thank you, Your Honor. Then, subject
9 to that, in terms --
10 MR. MORRIS: I'm sorry to interrupt, but --
11 MR. MCCLEARY: Sure.
12 MR. MORRIS: -- would it be helpful if I gave the
13 Court my list so she can see --
14 MR. MCCLEARY: Sure.
15 MR. MORRIS: -- what the --
16 MR. MCCLEARY: Sure.
17 MR. MORRIS: Okay. May I approach, Your Honor?
18 THE COURT: You may. I'm not sure, if everything has
19 been objected to, I'm not sure how --
20 MR. MORRIS: Because I've tried -- I've tried to
21 organize it in a way that would be helpful.
22 THE COURT: Okay.
23 (Pause.)
24 MR. MCCLEARY: Okay. Your --
25 THE COURT: I'm ready.

1 MR. MCCLEARY: -- Honor, yes.
2 THE COURT: Uh-huh.
3 MR. MCCLEARY: So, we are withdrawing our objections,
4 other than the general objections to relevance based on the
5 evidentiary nature of the proceeding, to Exhibits 1 and 2.
6 With respect to 3, this is a verified petition to take
7 deposition for suit and seek documents filed on July 22, 2021.
8 We object on the grounds of relevance and hearsay to that. Is
9 that --
10 THE COURT: Well, --
11 MR. MORRIS: I don't -- I don't understand this one.
12 THE COURT: This --
13 MR. MCCLEARY: Is that, I'm sorry, is that your #11?
14 MR. MORRIS: Yeah.
15 MR. MCCLEARY: All right. We withdraw our objection
16 to #3, subject to our general objection.
17 On Exhibit 4, we object to relevance and hearsay on a
18 verified amended petition to take deposition before suit and
19 seek documents.
20 THE COURT: Okay. This is my time to hear your
21 argument. And we're going to be here --
22 MR. MORRIS: Can I -- can I do this here? It's going
23 to be much quicker.
24 THE COURT: What do you mean? Do what here?
25 MR. MORRIS: So, if you just follow the chart that I

1 gave the Court, --

2 THE COURT: Uh-huh.

3 MR. MORRIS: -- Section A is a list of exhibits that

4 they've objected to. Those exhibits are in the right-hand

5 column.

6 At the same time, they are offering the exact same

7 exhibits into evidence on their exhibit list. I don't

8 understand how they can offer their exhibits and object to

9 ours.

10 MR. MCCLEARY: Counsel. I'm sorry. We've already

11 told them that, subject to our general objection, we'll

12 withdraw the objections to those exhibits.

13 MR. MORRIS: Right. So can we agree that all

14 objections to Section A are withdrawn?

15 MR. MCCLEARY: Subject to the general objection, yes.

16 MR. MORRIS: Thank you.

17 THE COURT: Okay. So, --

18 MR. MORRIS: That's going to be much quicker.

19 THE COURT: -- 11, 34, 2, 46, 42, 38, 41, 39, 40,

20 and various attachments to Highland Exhibits 5 are withdrawn.

21 So, admitted by stipulation.

22 (Debtors' Exhibits 2, 11, 34, 38, 39, 40, 41, 42, 46 are

23 received into evidence. Certain attachments to Debtors'

24 Exhibit 5 are received into evidence.)

25 MR. MORRIS: And to make this easy, Your Honor, at

1 some point I hope later today, but perhaps tomorrow, we'll
2 slap a caption on this, we'll file it on the docket, so that,
3 you know, an appellate court, if necessary, can follow along.
4 But I think that we've just stipulated that all of the
5 exhibits identified in Section A of this document are -- the
6 objections have been withdrawn.
7 THE COURT: Okay.
8 MR. MCCLEARY: Subject to the general objections.
9 MR. MORRIS: Right. That gets us -- I'm going to
10 jump to Section C, because I think the same is true. Section
11 C identifies all exhibits that each party has taken from the
12 docket. And you can see from Footnote 4, the Court can take
13 judicial notice under Federal Rule of Evidence 201, we've just
14 had the discussion about whether or not any of them would be
15 limited for purposes of the truth of the matter asserted, but
16 all of the exhibits identified in Section C I think the Court
17 can take judicial notice of because they're on a docket.
18 THE COURT: Response?
19 MR. MORRIS: And so I would respectfully request that
20 they withdraw their objections to anything in Section C.
21 THE COURT: Response, Mr. McCleary?
22 MR. MCCLEARY: I understand the Court can take
23 judicial notice of those, Your Honor, but they do contain
24 irrelevant and hearsay information also.
25 MR. MORRIS: The hearsay, I think that we just had

1 the discussion. I mean, if there's something that he wants to
2 really point out at this point that I can respond to. But we
3 would agree that advocacy pieces shouldn't be offered for the
4 truth of the matter asserted. Court orders, on the other
5 hand, are law of the case.
6 THE COURT: So, I mean, it's the very same situation
7 we just addressed with your own exhibits. You have a lot of
8 court filings. And they didn't have a problem with it, as
9 long as everyone knew advocacy was not being accepted for the
10 truth of the matter asserted.
11 MR. MCCLEARY: Well, --
12 THE COURT: Isn't this the same thing?
13 MR. MCCLEARY: -- they're not offering it for the
14 truth of the matter asserted. That's one thing. And
15 certainly the Court can take judicial notice. We do object to
16 the extent they're offering Exhibits 6 through 10 for the
17 truth of the matter asserted.
18 MR. MORRIS: Well, let me check those.
19 THE COURT: Well, --
20 MR. MCCLEARY: I'm sorry. 6, 7, uh -- (pause).
21 THE COURT: Those are orders of --
22 MR. MORRIS: Yeah.
23 THE COURT: -- courts.
24 MR. MORRIS: Yeah. They're orders of the Court.
25 MR. MCCLEARY: The orders are not relevant, Your

1 Honor.

2 THE COURT: Explain.

3 MR. MCCLEARY: Well, they have not demonstrated that

4 the orders that they seek to introduce are relevant. They

5 have orders regarding, for example, the contempt proceedings

6 that are irrelevant to these proceedings. And prejudicial

7 under 403.

8 THE COURT: All right. Shall I take a five- or ten-

9 minute break? Let me -- I think I've been very generous by

10 not starting the clock yet on the three hours/three hours.

11 MR. MCCLEARY: Appreciate that.

12 THE COURT: But here's how we do things in bankruptcy

13 court. And I don't mean to talk down to anyone. I don't

14 know, you may appear in bankruptcy court every day of your

15 life. But we expect counsel to get together ahead of time and

16 stipulate to the admissibility of as many exhibits as you can.

17 If there's a preservation of rights here and there, fine. But

18 we --

19 MR. MCCLEARY: Maybe if we take --

20 THE COURT: You know, --

21 MR. MCCLEARY: We can try to --

22 THE COURT: -- helping everyone to understand, --

23 MR. MCCLEARY: Sure.

24 THE COURT: -- we have thousands of cases in our

25 court.

1 MR. MCCLEARY: Sure.
2 THE COURT: And this is just something we have to do
3 to give all parties their day in court when they need time.
4 And so --
5 MR. MCCLEARY: If you'd like us to take ten minutes
6 and try to narrow this, we certainly --
7 THE COURT: Okay. With everybody understanding you
8 should have taken the ten minutes before we got here. But,
9 again, when I say three hours, --
10 MR. MORRIS: Yeah.
11 THE COURT: -- that's what I meant. Okay?
12 MR. MCCLEARY: Yes, Your Honor.
13 THE COURT: So we'll take a ten-minute break.
14 THE CLERK: All rise.
15 (A recess ensued from 10:42 a.m. until 10:54 a.m.)
16 THE CLERK: All rise.
17 THE COURT: All right. Please be seated. Have we
18 reached agreements on some of these exhibits?
19 MR. MCCLEARY: Your Honor, we have agreed on the ones
20 that we can agree on, and we announced that to the Court with
21 respect to the Paragraph A items that the Court's already
22 ruled on.
23 I would like to point out to the Court that we just got
24 their objections handed to us right before the hearing. We
25 filed ours last night. So we didn't --

1 THE COURT: At 11:00-something, right?
2 MR. MCCLEARY: Yes, Your Honor, but we did --
3 THE COURT: Okay. Well, okay. So I guess your point
4 is you want to make sure I'm annoyed with everyone, not just
5 selective of you.
6 MR. MCCLEARY: Well, --
7 THE COURT: I mean, exhibit lists were filed Monday.
8 So I don't know why on Tuesday people were not on the phone
9 saying, you know, or Wednesday morning at the latest.
10 MR. MCCLEARY: Sure. And we haven't had much of an
11 opportunity, in fairness, to consider their objections and
12 respond because we just received them right at the time of the
13 hearing, just before the hearing started.
14 Your Honor, we would urge our objections to Exhibit #4.
15 We've objected to this petition to take deposition before suit
16 and seek documents on the basis of relevance and hearsay.
17 They have a number of pleadings in other matters that have
18 nothing to do with, frankly, the colorability standard in this
19 case. And this is an example.
20 THE COURT: Okay. This is the time for me to hear
21 specific objections and what the basis is, and not just --
22 MR. MORRIS: Can we go back --
23 THE COURT: -- a category.
24 MR. MCCLEARY: Yeah.
25 MR. MORRIS: Can we go back to my way? Because it's

1 just going to be much faster. It really will be. Right? We
2 -- Category 1, A and C, we dealt with. Category B, --
3 THE COURT: Well, we dealt with A.
4 MR. MORRIS: Right. And --
5 THE COURT: All of those are withdrawn, and they are
6 admitted by stipulation.
7 MR. MORRIS: Right.
8 MR. MCCLEARY: Subject to --
9 THE COURT: Category C, --
10 MR. MCCLEARY: -- the general objections.
11 THE COURT: -- I'm not sure we're to closure on.
12 MR. MORRIS: Um, --
13 THE COURT: Are we to closure on C? Are you
14 stipulating?
15 MR. MCCLEARY: No. We are not stipulating on C.
16 MR. MORRIS: Let's do them one at a time.
17 MR. MCCLEARY: I have not had an opportunity to -- to
18 --
19 MR. MORRIS: Let's do them one at a time.
20 MR. MCCLEARY: Have not had an opportunity to look at
21 each and every one of these, Your Honor. Because we did just
22 get these.
23 THE COURT: Okay.
24 MR. MCCLEARY: But generally --
25 THE COURT: If we have not wrapped this up in 15

1 minutes, we're just going to start, and you can object the
2 old-fashioned way. But I'm telling all lawyers here,
3 objections count against your time. Okay?
4 MR. MORRIS: And I'd move for the admission of all of
5 our exhibits right now, then.
6 THE COURT: Okay.
7 MR. MORRIS: So let him -- let -- put him on the
8 clock and let's go.
9 THE COURT: Okay. So, 15 minutes. Let start going
10 through everything except Category A.
11 MR. MORRIS: Number 4?
12 MR. MCCLEARY: Number 4, Your Honor, we object on the
13 basis of relevance and hearsay.
14 MR. MORRIS: Okay. My response to that, Your Honor,
15 and this will be my response -- this is in Section B of my
16 outline --
17 THE COURT: Uh-huh.
18 MR. MORRIS: Okay? They object to Exhibits 3, 4, 5,
19 and 9. These are Mr. Dondero's prior sworn statements. You
20 just heard his lawyer stand here and tell the Court that
21 somehow his handwritten notes should be admissible as an
22 admission. You know what he did? He testified four different
23 times under oath. That's Exhibits 3, 4, 5, and 9. Sworn
24 statements.
25 They come into evidence not as hearsay but under Federal

1 Rule of Evidence 801(d)(1). It's beyond -- the notion that
2 they can prove a colorable claim and that it's not relevant
3 that he's got diametrically different -- he's got four
4 different statements, now five with his notes, he's got five
5 different statements. Doesn't that go to the colorability of
6 these claims?
7 We believe it does. That's the basis for the introduction
8 of these documents into evidence.
9 THE COURT: Okay. Mr. McCleary, your response?
10 MR. MCCLEARY: Well, it's a verified amended
11 petition, Your Honor, in another matter, to -- before suit to
12 seek documents. Has nothing to do with the merits of this
13 case and our motion for leave. So we object on the grounds of
14 relevance and hearsay.
15 THE COURT: Well, since they're prior sworn
16 statements of Mr. Dondero, --
17 MR. MCCLEARY: Well, then they might -- if they want
18 to use it later to impeach, they can try to do that, but they
19 have to lay the foundation.
20 THE COURT: What about 801(d)(1)?
21 MR. MCCLEARY: Again, relevance, Your Honor.
22 THE COURT: Okay. I overrule. Those are --
23 MR. MCCLEARY: And Mr. --
24 MR. MORRIS: Okay.
25 THE COURT: Those are going to be admitted.

1 MR. MCCLEARY: By the way, on hearsay, Mr. Dondero is
2 not Hunter Mountain. So when he argues that these are
3 admissions, they're not admissions by Hunter Mountain.
4 MR. MORRIS: Your Honor, the only piece of evidence,
5 literally the only piece of evidence they have are the words
6 out of Mr. Dondero's mouth. There is no evidence, there will
7 be no evidence of a *quid*, a *pro*, or a *quo*. There will be no
8 evidence other than what Mr. Dondero testifies to --
9 MR. MCCLEARY: Well, --
10 MR. MORRIS: -- about what he was told. There will
11 be no evidence that there was a meaningful relationship
12 between Mr. Seery and Ms. -- and Farallon and Stonehill.
13 There will be no evidence, none, that Farallon and Stonehill
14 rubber-stamped Mr. Seery's compensation package. Nothing.
15 The only thing we have are going to be the words out of Mr.
16 Dondero's mouth and these notes that just showed up. And
17 these statements --
18 MR. MCCLEARY: Your Honor?
19 THE COURT: Okay. Counsel, I mean, it just feels
20 like --
21 MR. MORRIS: It's --
22 THE COURT: -- if notes get in, then sworn statements
23 of Mr. Dondero should get in. Right?
24 MR. MCCLEARY: Your Honor, he's making arguments,
25 closing arguments, opening arguments, trying to run out the

1 clock. We objected to relevance, and we stand on our
2 objection.
3 THE COURT: Okay.
4 MR. MCCLEARY: And on hearsay.
5 THE COURT: I'll admit 3, 4, 5, and 9.
6 (Debtors' Exhibits 3, 4, 5, and 9 are received into
7 evidence.)
8 MR. MORRIS: Section E.
9 MR. MCCLEARY: I'm sorry. So our objections are
10 overruled?
11 THE COURT: They are overruled.
12 MR. MCCLEARY: On 3, 4, 5?
13 THE COURT: And 9.
14 MR. MORRIS: Section E of my outline.
15 MR. MCCLEARY: What about 6?
16 THE COURT: That's not --
17 MR. MORRIS: Well, --
18 THE COURT: Well, I don't --
19 MR. MORRIS: -- it would -- it would --
20 THE COURT: Let's go back to C. I'm not clear if
21 we're to closure on Section C.
22 MR. MORRIS: I'll let Counsel go through --
23 THE COURT: And 6 is within Section C.
24 MR. MORRIS: I'll let Counsel go through each one,
25 one at a time.

1 MR. MCCLEARY: No. That's all right. If you want to
2 go through, you have them lumped in. Yeah, I think it'd
3 probably be quickest if, frankly, we just go down the list,
4 Your Honor. Frankly.
5 THE COURT: Well, you've got ten minutes left.
6 MR. MCCLEARY: Okay. We object to #6, memorandum and
7 opinion order granting Dondero's motion to remand, on the
8 basis of relevance and hearsay.
9 THE COURT: Overruled. I can take judicial notice
10 under 201 of that. So 6 is admitted.
11 (Debtors' Exhibit 6 is received into evidence.)
12 MR. MCCLEARY: We object to Exhibits 7 and 8 on the
13 grounds of relevance. 7 on relevance and hearsay, and 8 on
14 relevance.
15 MR. MORRIS: I'll take 7 first, Your Honor.
16 THE COURT: Okay.
17 MR. MORRIS: It's an order dismissing Mr. Dondero's
18 202 petition. That 202 petition sought discovery on the basis
19 of the exact same so-called insider trading claims that Hunter
20 Mountain is asserting today.
21 I think it's not only relevant, it's almost dispositive
22 that a Texas state court heard the exact same -- or, actually,
23 not the exact same, because Mr. Dondero changed his story so
24 many times -- but heard a version, I think Versions 1, 2, and
25 3, of this insider trading and would not even give them

1 discovery.

2 So when the Court considers whether or not there's a

3 colorable claim here, I think it ought to think about what a

4 Texas state court decided on not whether or not they have

5 colorable claims, whether or not they're even entitled to

6 discovery. I think it's very relevant. Move for its

7 admission right now.

8 MR. MCCLEARY: Your Honor, it's ironic, because at

9 that hearing counsel for the Respondents was arguing that it

10 ought to be this Court that considers what discovery is

11 appropriate.

12 THE COURT: Okay. Well, obviously, you can argue

13 about that, but, again, I think I can take judicial notice of

14 this. Right?

15 MR. MCCLEARY: Well, we argue that it's not relevant,

16 Your Honor, and it is the --

17 THE COURT: Okay.

18 MR. MCCLEARY: 7 is not relevant and is hearsay.

19 THE COURT: Okay.

20 MR. MORRIS: Number 8, --

21 THE COURT: Objection is overruled.

22 MR. MCCLEARY: Overruled?

23 THE COURT: And so 7 is admitted.

24 (Debtors' Exhibit 7 is received into evidence.)

25 MR. MCCLEARY: 8 is our verified petition. And we

1 object on the grounds of relevance.
2 MR. MORRIS: You know, Your Honor, if I really had
3 the time and the patience to do this, I think I'd find this
4 document attached to Mr. McEntire's affidavit that's on their
5 exhibit list.
6 But to speed this up just a little bit, how could their
7 202 petition that sought discovery on the basis of the very
8 same insider trading allegation not be relevant? It's a
9 judicial order. You can take notice of it. And it's
10 incredibly relevant that a second Texas state court heard the
11 same allegations that they're presenting to you as colorable
12 and said no, you're not getting discovery.
13 MR. MCCLEARY: We don't know why they made that
14 order, Your Honor. They could have simply accepted the
15 opposition's arguments that this Court had jurisdiction and
16 should consider what discovery ought to be done.
17 THE COURT: Overruled.
18 MR. MCCLEARY: It's not relevant to our --
19 THE COURT: I admit 8.
20 MR. MORRIS: Next?
21 MR. MCCLEARY: Overruled?
22 THE COURT: Yes.
23 (Debtors' Exhibit 8 is received into evidence.)
24 MR. MCCLEARY: The declaration of James Dondero. I
25 think we withdrew the Dondero --

1 THE COURT: Right.
2 MR. MCCLEARY: -- declarations. If it --
3 THE COURT: It's --
4 MR. MCCLEARY: Numbered -- I'm sorry, #9.
5 THE COURT: 9. I've already checked it as admitted.
6 MR. MCCLEARY: If you want to -- if you want to offer
7 #9, they can offer it.
8 THE COURT: It's admitted. I've already --
9 MR. MCCLEARY: Okay.
10 THE COURT: -- said.
11 MR. MCCLEARY: Number 10. It's an order denying our
12 second Rule 202 petition. And we object to it on relevance,
13 Your Honor.
14 THE COURT: Same objection. It's overruled. It's
15 admitted.
16 (Debtors' Exhibit 10 is received into evidence.)
17 MR. MCCLEARY: Number 12, 13, and -- 12 and 13 are
18 correspondence regarding resignation letters. We object on
19 grounds of relevance.
20 THE COURT: Wait. Did we skip 11 for a reason?
21 MR. MCCLEARY: Pardon me?
22 THE COURT: Did we skip 11 for a reason?
23 MR. MCCLEARY: We only have it --
24 THE COURT: Oh, wait. It's already admitted by
25 stipulation.

1 MR. MCCLEARY: Yeah, and we have --
2 MR. MORRIS: That's the one --
3 MR. MCCLEARY: We have our general objection.
4 MR. MORRIS: That's the one exhibit that they didn't
5 object to.
6 THE COURT: Okay.
7 MR. MCCLEARY: We only had our general objection with
8 respect to that.
9 THE COURT: Okay. Thank you. Thank you.
10 MR. MCCLEARY: On 12 --
11 THE COURT: Uh-huh.
12 MR. MCCLEARY: -- and 13, those are correspondence
13 regarding resignations. We object on the grounds of
14 relevance.
15 MR. MORRIS: So, the relevance of that, Your Honor,
16 is to show that when Mr. Dondero sent this email to Mr. Seery
17 in December 2020, he had absolutely no relationship to
18 Highland, had absolutely no duty to Highland, had absolutely
19 no reason to send this email to Highland. He wasn't in
20 control of Highland. He wasn't --
21 If they'll stipulate to this, that's fine. He wasn't in
22 control. He had no authority to do anything. He couldn't
23 effectuate trades. He wasn't there. And that's what these
24 documents are intended to prove.
25 THE COURT: Okay. Why are we -- this is --

1 MR. MCCLEARY: Because there are --
2 THE COURT: Some of this stuff, I mean, --
3 MR. MCCLEARY: There are other agreements.
4 THE COURT: -- is no big deal. Right?
5 MR. MCCLEARY: Sub-advisory agreements, other
6 agreements that he had under which he had a responsibility to
7 make the communications regarding material nonpublic
8 information that he made. So this is simply irrelevant, Your
9 Honor.
10 THE COURT: I overrule. I mean, again, I don't --
11 MR. MCCLEARY: Okay.
12 (Debtors' Exhibits 12 and 13 are received into evidence.)
13 MR. MCCLEARY: Number 14, --
14 THE COURT: You're both giving me just a lot of
15 background that I already have, but of course a Court of
16 Appeals --
17 MR. MORRIS: That's why we --
18 THE COURT: -- isn't going to have it.
19 MR. MORRIS: Yep.
20 MR. MCCLEARY: Well, #14, Exhibit 14, we object on
21 the grounds of relevance and hearsay.
22 THE COURT: Okay. Wait a minute. We skipped 13
23 because -- why? Oh, wait, that was, I'm sorry, 12 and 13 --
24 MR. MORRIS: Yes.
25 THE COURT: -- where I've overruled the objection and

1 admitted.

2 Okay. Go ahead.

3 MR. MCCLEARY: 14, we object on the grounds of

4 relevance and hearsay, Your Honor.

5 MR. MORRIS: I'm just going to make this real quick,

6 Your Honor. Here's the thing. This Court knows it. It's

7 actually facts that cannot be disputed because they're subject

8 of court orders.

9 As the Court will recall, beginning in late November 2020

10 continuing through late December 2020, Mr. Dondero was engaged

11 in a continuous pattern of interference with Highland's

12 business and trading. It was the subject of the TRO, which is

13 why the TRO is relevant.

14 Your Honor will recall that at the end of November Mr.

15 Dondero attempted to stop Mr. Seery from trading in Avaya

16 stock. On December 3rd is when he sent this threatening

17 email, text message, to Mr. Dondero [sic]. It caused us to

18 get the TRO.

19 Your Honor will recall on December 16, 2020, that's when

20 we had the hearing on Mr. Dondero's motion to try to stop Mr.

21 Seery from trading in the CLOs that the Court dismissed as

22 frivolous and granted the directed verdict of Highland.

23 So, that's December 16. He sends this email about MGM on

24 December 17th. And what happens on December 18th? More

25 interference with Highland's business. It's a matter of --

1 beyond dispute. It's law of the case at this point because
2 that's the subject of the contempt order. And the Court found
3 that, after -- after hours, on December 18th, Hunter Covitz
4 told Mr. Dondero that Mr. Seery was again trying to trade in
5 Avaya stock, and within a day or two Mr. Dondero was again
6 interfering it, and that's what led to the second -- to the
7 first contempt order.
8 So all of these documents are relevant to show motive and
9 what was happening. This email was not sent for any
10 legitimate purpose. The evidence is just overwhelming. And
11 it's not -- it's not like, oh, that's an argument we're
12 making. Between the TRO and the contempt order, it's law of
13 the case. He was interfering with Highland's business nonstop
14 for thirty days, including the day before he sent this email
15 and the day after he sent the email.
16 THE COURT: Okay.
17 MR. MCCLEARY: Your Honor, this is a lawsuit or an
18 effort to file a lawsuit on behalf of Hunter Mountain
19 Investment Trust, not James Dondero. And as much as Counsel
20 wants to make this about Jim Dondero and attack him, this is a
21 different case. So this exhibit has nothing to do with the
22 claims in this lawsuit. It's not relevant. And hearsay.
23 MR. MORRIS: The only evidence is Mr. Dondero. It's
24 -- could not be more relevant.
25 THE COURT: Okay. I overrule. I'm admitting this.

1 And so we're --

2 MR. MCCLEARY: Uh, --

3 THE COURT: It's 14. It's -- how far?

4 MR. MCCLEARY: 14. Exhibit 15 is where we are, Your

5 Honor.

6 THE COURT: Okay.

7 (Debtors' Exhibit 14 is received into evidence.)

8 THE COURT: 15.

9 MR. MORRIS: Oh, that's -- that's the contempt order.

10 And so these contain the judicial findings that are now beyond

11 dispute that Mr. Dondero was engaged in interfering with

12 Highland's business after the TRO was entered on December

13 10th.

14 THE COURT: Okay. Again, my own orders, --

15 MR. MCCLEARY: Your Honor, it's not --

16 THE COURT: -- I can take judicial notice of --

17 MR. MCCLEARY: It's --

18 THE COURT: -- under the Federal Rules of Evidence.

19 MR. MCCLEARY: It's --

20 THE COURT: 201.

21 MR. MCCLEARY: We simply object as not relevant. We

22 object based on Federal Rule of Evidence 403. Any possible

23 relevance is outweighed by the prejudice. And we object on

24 the grounds of hearsay, Your Honor.

25 THE COURT: Prejudice? Prejudice? They're orders I

1 issued. I'm going to be prejudiced by my own orders?

2 MR. MCCLEARY: Uh, well, --

3 THE COURT: I don't --

4 MR. MCCLEARY: -- Hunter Mountain will be.

5 THE COURT: Okay. I'll overrule.

6 (Debtors' Exhibit 15 is received into evidence.)

7 THE COURT: I'll tell you what. We're out of our --

8 well, we've get probably 30 seconds left. Anything that we

9 can maybe knock out to not have eat into your three hours?

10 Both of you?

11 MR. MCCLEARY: Your Honor, we filed written

12 objections to all of these exhibits. We urge those

13 objections. 16.

14 THE COURT: I know, but this is your chance to argue

15 why your objections have merit. I can -- we can just --

16 MR. MCCLEARY: Because, well, obviously, we're

17 talking about pleadings and filings in other matters. The

18 evidence that they're trying to use to impugn Jim Dondero,

19 which has nothing to do with the merits of HMIT's claims and

20 allegations of insider trades.

21 THE COURT: Okay. A lot of this is articles.

22 Articles, articles, articles about MGM.

23 MR. MCCLEARY: On the articles, Your Honor, subject

24 to our general objection, we'll withdraw the objections to the

25 articles if they'll agree to the articles that we've offered.

1 MR. MORRIS: Your Honor, we didn't lodge an objection
2 to their articles.
3 MR. MCCLEARY: Okay.
4 MR. MORRIS: And just so, if anybody is keeping track
5 at home, this is Item B on the list that I created earlier
6 this morning.
7 THE COURT: Okay. So, 25 through 30 are articles.
8 Those are admitted by stipulation. Nothing is about the truth
9 of the matter asserted. They're just articles that were out
10 there for --
11 MR. MORRIS: Right. I would just --
12 MR. MCCLEARY: Yes.
13 THE COURT: -- the world.
14 MR. MORRIS: Just so we're clear, it's Exhibits 25, 6
15 -- 25, 26, 27, 28, 29, and 30.
16 THE COURT: Right.
17 (Debtors' Exhibits 25 through 30 are received into
18 evidence.)
19 MR. MORRIS: And so, yes, those are all articles.
20 They have their articles. Exhibit 72.
21 THE COURT: Oh, and 34 is another one. So that's
22 admitted as well.
23 MR. MORRIS: Yes.
24 MR. MCCLEARY: Yes, Your Honor.
25 (Debtors' Exhibit 34 is received into evidence.)

1 THE COURT: Okay. Well, we're out of time, so as for
2 the others, they can offer them the old-fashioned way if they
3 want to, you can object the old-fashioned way, and it eats
4 into both of your three hours.
5 MR. MCCLEARY: Yes, Your Honor.
6 THE COURT: Okay. Let's hear opening statements.
7 And by the way, before we wrap up today, I'm going to say
8 out loud everything I've admitted so we're all crystal clear
9 on what's in the record. This has been a bit chaotic.
10 MR. MCCLEARY: Okay. Understood.
11 THE COURT: So, Caroline is going to be the keeper of
12 our time over here. And if the judge ever interrupts you,
13 she's going to stop the timer. Okay?
14 MR. MCENTIRE: Thank you.
15 THE COURT: I hope I won't any more, but you may
16 proceed.
17 MR. MCENTIRE: No, I appreciate it. Thank you. Can
18 you see it, Your Honor?
19 THE COURT: I can, yes. Thanks.
20 MR. MCENTIRE: Can opposing counsel see it?
21 MR. MORRIS: Yes, sir.
22 MR. MCENTIRE: All right.
23 THE COURT: And I'm just going to ask everyone who
24 has a PowerPoint today, can I get a hard copy --
25 MR. MCENTIRE: Certainly.

1 THE COURT: -- before we close?

2 MR. MCENTIRE: Certainly.

3 THE COURT: Okay. Thank you.

4 OPENING STATEMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT

5 TRUST

6 MR. MCENTIRE: May it please the Court, Your Honor,

7 at this time I'll be providing the opening statement on behalf

8 of Hunter Mountain Investment Trust. It is a Delaware trust.

9 Mark Patrick, who's in the courtroom, is the Administrator.

10 He will be one of the witnesses that you'll hear today.

11 Hunter Mountain Investment Trust is the former 99.5

12 percent equity holder, currently classified as a Class 10

13 contingent beneficiary under the Claimant Trust Agreement. It

14 is active in supporting various entities that in turn support

15 charities throughout North Texas.

16 Your Honor, this is not an ordinary claims-trading case.

17 I know the Court made those references in one of the hearings,

18 and I wanted to more clearly respond. This has different

19 indicia. An ordinary claims-trading case is normally outside

20 the purview of the bankruptcy court. What makes this

21 different is that we're involving, we believe and allege,

22 breaches of fiduciary duty of the Debtor-in-Possession's CEO

23 and the Trustee.

24 It involves also aiding and abetting by the entities that

25 actually acquired the claims. And that falls into the

1 category of willful misconduct.
2 It also involves injury to the Reorganized Debtor and to
3 the Claimant Trust. Ordinarily, a claims trade would not
4 involve injury to the estate or the reorganized debtor. Here,
5 we have alleged that it has. And the injury takes the form of
6 unearned excessive fees that Mr. Seery has garnered as a
7 result of his relationship and arrangements, as we have
8 alleged, with the Claims Purchasers.
9 During the course of my presentation today, I'll be
10 referring to the Claims Purchasers as the collective of
11 Farallon, Stonehill, Muck, and Jessup.
12 I would like to briefly discuss some of the issues that
13 have already been presented to the Court, just to make sure
14 that this record is clear.
15 Can you please continue?
16 We don't believe the *Barton* Doctrine is applicable. I
17 believe that precedent is very clear that the *Barton* Doctrine
18 deals with proceedings in other courts, and the various
19 standards and requirements of *Barton* do not apply if in fact
20 we're coming to the Court and filing the proceeding in the
21 court where the Trustee was actually appointed.
22 And so I think that the law is clear. And this is Judge
23 Houser here in the Northern District of Texas in the case *In*
24 *re Provider Meds*. And she makes very clear that the standard
25 for granting leave to sue here is actually less stringent than

1 a 12(b)(6) plausibility standard. So if there is any issue as
2 to what standard this Court should be applying to the -- to
3 this process, we believe it's a 12(b)(6) standard, confined to
4 the four corners of the document.
5 If the Court wishes to consult the documents that are
6 referred to in the four corners of the petition or complaint,
7 it may do so.
8 But the standard here is even more flexible than a
9 standard plausibility. Our evidence, though, achieves the
10 standard of plausibility as well.
11 The *In re Deepwater Horizon* case is another important
12 case. That's a Fifth Circuit case. A plaintiff's claim is
13 colorable if it can allege standing and the elements necessary
14 to state a claim on which relief could be granted. Defining a
15 colorable claim as one with some possible validity. I don't
16 have to prove my case today. I didn't have to prove my case
17 in the prior hearings. I have to prove sufficient
18 allegations, not evidence, but sufficient allegations to show
19 that it has some possible basis of validity.
20 Possible basis of validity. We're not here talking about
21 likelihoods. We're not here talking about *prima facie*
22 evidence. We're not here talking about probabilities. We're
23 talking about something less than plausibility. But, again,
24 we achieve plausibility.
25 A colorable claim is defined as one which is plausible or

1 not without merit. These are various cases from around the
2 country. The colorable claim requirement is met if a
3 committee has asserted claims for relief that, on appropriate
4 proof, would allow recovery. On appropriate proof. We're not
5 required to put on that proof today, Your Honor.
6 Courts have determined that a court need not conduct an
7 evidentiary hearing, but must ensure that the claims do not
8 lack any merit whatsoever. We submit that our claims have
9 substantial merit and deserve the opportunity to initiate our
10 proceedings, have an opportunity to conduct discovery. And if
11 they want to file a 12(b)(6) motion before this judge, before
12 you, they can do so. If they want to file a motion for
13 summary judgment, they can do so. But at this juncture, they
14 cannot, and at this juncture this Court should not consider
15 evidence in making its determination.
16 Standing under Delaware law. The Funds have collectively
17 really hit the standing issue hard. I think it's easily
18 resolved. First of all, it's clear that a beneficial owner
19 has standing to bring a derivative action. Under Delaware
20 law, a beneficial owner has a right to bring a derivative
21 action on behalf of the -- against the trustee.
22 So the issue is, am I a beneficial owner? As a contingent
23 beneficiary in Class 10, and that's the Court's inquiry here,
24 do I qualify as a beneficial owner? And I think that Delaware
25 law is clear that, by not limiting it to only vested

1 interests, by not limiting it only to immediate beneficiaries,
2 they are not -- they are not extending the scope of the
3 statute to contingent beneficiaries. And this is consistent
4 with the laws around the country, because even Texas
5 recognizes that an unvested contingent beneficiary has a
6 property right to protect.
7 Even Mr. Seery admitted in his deposition that a unvested
8 contingent interest is in the nature of a property right. If
9 you have a property right, that property right can be abused.
10 If you have a property right, that property right, whether
11 it's inchoate or not, it can be abused, it can be
12 misappropriated, and you could become aggrieved. And that is
13 the constitutional standard for standing: Is Hunter Mountain
14 Investment Trust aggrieved? And the answer is yes.
15 Contingent beneficiaries from around the country, in
16 addition to Mr. Seery's admission that we have a property
17 interest, contingent beneficiary has standing. This is the
18 *Smith v. Clearwater* case on Slide 11. Very clearly, they say
19 that even if it's subject to a future event. Their argument
20 is that Mr. Seery has not certified Hunter Mountain as in the
21 money. We believe we are in the money. That's a different
22 issue. We believe he should certify, in the discharge of his
23 duties. That's a different issue.
24 But even assuming his case -- his argument for a moment,
25 their argument is that since he's not done that act, which we

1 also challenge and criticize that he's not done that act, that
2 we can't qualify to bring this case. Well, that's not what
3 the law is, that even an unvested interest, a contingent
4 interest, has a right.
5 Slide 12. This is the State of Illinois. Despite the
6 fact that interest is contingent and may not vest in
7 possession, you still have a right to protect what you have.
8 And you have standing to bring a cause of action.
9 The Claimant Trust Agreement, by the way, suggests that we
10 have no vested interest, and they'll likely argue that point.
11 But the point there is the law says that's irrelevant. If
12 it's an inchoate interest, if it's potentially vested in the
13 future, that's what imbues you with standing.
14 And in any event, the Claimant Trust Agreement is subject
15 to Delaware trust law, and they can't get around that. They
16 can say whatever they want to say in the agreement to try to
17 block us from participation, but it's still subject to
18 Delaware trust law, and Delaware trust law does not draw a
19 distinction between vested or unvested.
20 The State of Missouri: There is no dispute in this case
21 that the future -- that future beneficiaries have standing to
22 bring an accounting action, whether they're vested or
23 contingent. The *Bucksbaum* case. Article III standing exists,
24 constitutional standing, including discretionary
25 beneficiaries, have long been permitted to bring suits to

1 redress trustees' breaches of trust. This applies not only to
2 our standing as an individual plaintiff, which we've brought,
3 but also in our standing -- in our capacity seeking to bring a
4 derivative action to benefit the Claimant Trust of the
5 Reorganized Debtor. Both are permitted under this law under
6 these cases.
7 An interest -- in the *Mayfield* case, an interest is any
8 interest, whether legal or equitable or both, vested,
9 contingent, defeasible, or indefeasible. So the unilateral
10 self-serving wording of the Claimant Trust does not abrogate
11 our right to bring the claim.
12 I'd like to talk briefly about fiduciary duties. We know
13 that Mr. Seery has fiduciary duties to the estate when he was
14 the CEO prior to the effective date. We allege that he
15 breached those fiduciary duties, and that gives us standing to
16 bring the claim that we have brought for breaching fiduciary
17 duties, causing damages that are accruing post-effective date.
18 In the *Xtreme Power* case, again, the directors can either
19 appear on both sides of the transaction or expect to derive
20 any personal financial benefit. We are alleging that Mr.
21 Seery engaged in self-dealing. We allege that he engaged in
22 self-dealing by arriving at an understanding where he could
23 put business allies -- whether you call them friends, business
24 allies, close acquaintances -- on the committee, the Oversight
25 Board that would ultimately oversee his compensation, which,

1 in the context of this case, makes no sense and it is
2 excessive.
3 Muck is a specially -- special-purpose entity of Farallon.
4 Farallon acquired the claims, created Muck to do the job.
5 Muck is now on the Oversight Board.
6 Jessup. Jessup is a special-purpose entity, a shell
7 created by Stonehill. Stonehill bought the claims, funneled
8 the money through Jessup. Jessup is now on the Oversight
9 Board. Jessup and Muck -- and by the way, the principals in
10 Farallon are actually the representatives from Muck on the
11 Oversight Board. So there's no suggestion that there's really
12 a distinct corporate relationship here.
13 Michael Linn, who is a principal at Farallon. You'll hear
14 his name today, throughout today. He actually is a
15 representative of the Oversight Board, dealing with Mr. Seery
16 and negotiating Mr. -- I put negotiation in quotes --
17 negotiating Mr. Seery's compensation.
18 I'd like to talk very briefly about background. We took
19 Mr. Seery's deposition. I was unaware of this. I now know
20 it. Perhaps the Court was already aware of it. This is Mr.
21 Seery's first job as a CEO of any debtor. This is the first
22 time Mr. Seery has ever been a chief restructuring officer.
23 This is the first time Mr. Seery has ever been the CEO of a
24 reorganized debtor. This is the first time that he's served
25 as a trustee post-effective date. However, his compensation

1 is excessive and not market-driven, and there's a reason for
2 that. We believe and we allege that it's a *quid pro quo*
3 because of prior relationships with Farallon and Stonehill.
4 Farallon and Stonehill are hedge funds, Your Honor. They
5 created their special-purpose entities on the eve of this
6 transaction simply to take the title to the claims, but the
7 money is going upstream.
8 Seery has a relationship with Farallon. Do we know the
9 full extent of that relationship? No. We have been deprived
10 of discovery. We attempted to get the discovery in the state
11 court 202 process. We were denied for reasons not articulated
12 in the court's order.
13 We attempted to get the discovery here that the Court
14 refused under the last hearing about these relationships.
15 So what we do have begins to put the pieces of the puzzle
16 together. And sufficient is more than plausible. It is more
17 than colorable.
18 We know that Mr. Seery went on a meet-and-greet trip to
19 Farallon's offices in 2017. Didn't have to. He was trying to
20 cultivate a business relationship. Farallon was important to
21 him.
22 We know that in 2019 he was no longer with Guggenheim
23 Securities. He goes out to Farallon's offices for another
24 meet-and-greet and he specifically meets with the two
25 principals who are reflected in Mr. Dondero's notes, Raj Patel

1 and Michael Linn.

2 We know that in June 2020 Farallon emailed Seery. This is

3 after Mr. Seery becomes the CEO. He says, "Congratulations.

4 We're monitoring what you're doing."

5 Seery's relationship with Stonehill. These are all --

6 this is all before what we believe to be the events that are

7 at issue in this case. We believe that -- represented

8 Stonehill in the *Blockbuster* bankruptcy proceeding. There was

9 an objection to a document. Mr. Seery was involved in the

10 *Blockbuster* proceedings. Stonehill was one of his many

11 clients on the committee that he represented.

12 We know that Stonehill is actively involved in one of Mr.

13 Seery's charities in New York. We know that he sent text

14 messages to Mr. Seery in February of 2021, wanting to know how

15 to get involved in this bankruptcy.

16 Farallon and Stonehill were strangers to this bankruptcy.

17 They weren't creditors. They were encouraged and they came

18 into this process.

19 Farallon and Stonehill have not denied any of our

20 allegations. They are not putting any evidence on today. We

21 allege that these relationships was based and founded upon a

22 *quid pro quo*. I'll scratch your back; you scratch mine. You

23 give me some information; I want to evaluate these claims.

24 And, by the way, we're going to be on the Oversight Board, or

25 you're going to put us on the Oversight Board, or by default

1 we'll be on the Oversight Board, and we'll work out your
2 compensation agreement.
3 Mr. Seery also has an established relationship with
4 Stonehill.
5 I like to have a timeline of certain events. This is not
6 all of the relevant events, but this can give you a quick
7 picture. We know that Mr. Dondero sent an email to Mr. Seery
8 in December of 2020 relating to MGM. It is undisputed that
9 Mr. -- that Farallon emailed Seery, Mr. Seery, in January of
10 2021 if there was a path to get information regarding the
11 claims for sales. Mr. Seery says he never responded to it,
12 but we know that this entity, Farallon, got deeply involved in
13 buying these claims shortly after this email.
14 We have the Claimant Trust Agreement suddenly being
15 amended to not have a base fee, but now we're going to
16 incorporate a success participation fee. As part of a plan,
17 we're not criticizing that, but suddenly the vehicle for post-
18 effective date bonuses is being created.
19 The Debtors' analysis comes out in association with the
20 plan confirmation. It projects a 71.32 percent recovery for
21 Class 8 and Class 9, and those are the principal classes we're
22 talking about. 95 percent -- 98 percent of all of the claims
23 here are in Class 8 and Class 9, until you get to us, Class
24 10.
25 71.32 percent of Class 8 means that Farallon and Stonehill

1 will get less than about a six percent internal rate return on
2 their $163 million investment, which they have never denied.
3 That is not a hedge fund investment goal. Investment -- hedge
4 funds like these companies, they go for 38, 40, 50 percent of
5 returns. Who would ever invest $163 million on a distressed
6 asset that's not collateralized with only an expectation of an
7 internal rate of turn of six percent? But that's going to be
8 the evidence before the Court. That does not make any
9 financial, rational wisdom at all.
10 The plan is confirmed. It's undisputed that Stonehill
11 contacts Seery after the plan is confirmed to want to know how
12 to get involved. They have phone calls after this text
13 message. Muck is created on March 9. We know from Mr.
14 Seery's deposition that Farallon told Seery that six days
15 later they bought the claims. All the claims, by the way,
16 when I say bought the claims, it's everything except UBS. To
17 our knowledge. They may have negotiated the paperwork back
18 then, but the claims transfers did not occur until the summer.
19 All the other claims involved, the claims transfers were filed
20 with this Court in mid-April and at the end of April.
21 Tim Cournoyer removes MGM from the restricted list. Tim
22 Cournoyer is an employee of Highland. Well, it tells us that
23 MGM was on the restricted list and there should be no
24 discussion about MGM, but there was. There was discussions
25 about MGM, and Mr. Dondero is going to testify to that.

1 And we also know that the HarbourVest settlement was
2 consummated during this period of time. If it had been on the
3 restricted list, as it was, that transaction should never have
4 occurred. But it did occur. This Court ordered it. It
5 approved it. And I'm not challenging -- we're not challenging
6 that settlement. It is done. That is done. What we are
7 challenging is the fact that Mr. Seery is actively involved in
8 using inside material nonpublic information.
9 Jessup Holdings is created shortly thereafter, on April
10 8th. We have claims settling on April 30th. The Acis claim
11 is transferred to Muck -- that's Farallon -- on April 16. The
12 Redeemer and Crusader are all transferred on April 30th.
13 Stonehill and Farallon never deny that they did no due --
14 that they failed to do due diligence. We allege that there
15 was no due diligence. And that relies in significant part
16 upon Mr. Dondero. But now, because we have Mr. Seery's
17 deposition, it also relies upon Mr. Seery's admissions in
18 deposition, because he says he never opened up a data room, he
19 doesn't know what due diligence they did. Farallon says the
20 only due diligence they did is they talked to Jim Seery. And
21 how do you invest $163 million, or $10 million or $50 million,
22 whatever the part is, with an internal rate of return six
23 percent, only on the advice of Mr. Seery, who's never been a
24 trustee or a CEO before, unless there's something going on?
25 Your Honor, public announcement of MGM on May 26th. On

1 May 28th, two days later, Mr. Dondero calls Farallon. It took
2 Mr. Dondero or his group a few days, a week or so, to even
3 understand who -- that Farallon was involved, because the
4 registrations for Muck and Jessup did not disclose their
5 principals, did not even disclose addresses. They were shell
6 -- they were companies that came in in the last minute to buy
7 these claims incognito, frankly.
8 They found out that Farallon was involved. They had a
9 call initially with Raj Patel, who is the principal of
10 Farallon. He has three conversations total: One with Mr.
11 Patel and two with Michael Linn. Michael Linn was the one
12 responsible for these claim purchases. Patel admitted that
13 Farallon relied exclusively on Seery and did no due diligence.
14 Linn rejected the premium to sell. The evidence you'll hear
15 today, that Mr. Linn rejected a premium up to 40 percent to
16 sell the claims. He actually said he would not sell at all
17 because he was told by Mr. Seery that the claims were too
18 valuable.
19 That is evidence of insider trading. Specifically, they
20 said they were very optimistic about MGM and they were
21 unwilling to sell because Seery said too valuable.
22 We have -- these are the purchases. This is where the
23 Class 9 claims fall. And keep in mind -- Tim, go back -- that
24 $95 million of this upside potential is being told, at least
25 to the publicly available information, that you're never going

1 to get there. Yet 95 -- $95 million is allocated to this
2 category. So Class 8 is $275 million. Class 9 is 29 -- $95
3 million.
4 Next.
5 So we have the evidence that you'll hear today. Farallon
6 admitted the timing. No due diligence, never denied by the
7 Claim Purchasers. Based upon material nonpublic information.
8 That's our allegation. Purchased over $160 million. This is
9 never denied by the Claims Purchasers. They purchased claims
10 when the return on investment was highly doubtful. Maximum
11 expected annual rate of return, assuming publicly-available
12 information, was approximately six percent, and that is
13 totally atypical of what a hedge fund would seek.
14 Insider information. We're not talking about just MGM.
15 The Respondents want to narrow the Court's inquiry. This is
16 much larger than MGM. MGM is a part of it, it's a big part of
17 it, but it's not the only part of it. It's other assets.
18 Portfolio companies. Other invested assets. There's a lot of
19 money out there, and it was never disclosed during the
20 ordinary course of the bankruptcy, for reasons that the Court
21 already knows, in terms of asset values. How does someone
22 come in and purchase distressed assets, claims, without any
23 understanding of what assets are backing those claims, when
24 there's no publicly-available information there to do it and
25 there's no evidence, no indication, no statement that actually

1 due diligence was done?
2 That right there, without anything else, makes our claims
3 plausible. You don't have to prove insider trading by direct
4 evidence. Nobody's going to admit that they did something
5 wrong. You prove it circumstantially, and we've cited cases
6 and we'll give you cases to that effect.
7 Next.
8 We have material nonpublic information. It is very clear
9 that Mr. Dondero on December 17th sent this email, not just to
10 Mr. Seery but to several other individuals, including lawyers.
11 It states that he'd just gotten off a board call. A pre-board
12 call. The update, he provides the update. Active
13 diligencing. It's probably a first-quarter event. We can
14 scour all of the other media documents that are in evidence,
15 both from us and them, and you're not going to find any
16 indication anywhere that a board member has said, guys, gals,
17 it's going to be a probable first-quarter event. That's
18 material nonpublic information.
19 THE COURT: By the way, you all objected to this
20 exhibit.
21 MR. MCENTIRE: No, this is my exhibit.
22 THE COURT: We spent --
23 MR. MCENTIRE: I did not. They objected to this.
24 MR. MORRIS: Your Honor, we didn't object to it, and
25 that is the one exhibit that they did not object to.

1 THE COURT: Oh, it is?
2 MR. MORRIS: Nobody objected to this exhibit.
3 MR. MCENTIRE: I'm not going to object to this
4 exhibit, Your Honor.
5 THE COURT: Okay. It's a different version.
6 MR. MCENTIRE: Fair enough.
7 THE COURT: Okay. It was a different email around
8 that same time frame.
9 MR. MCENTIRE: So just --
10 THE COURT: Apologies. We stopped the clock.
11 MR. MCENTIRE: This -- my next exhibit is simply a
12 demonstrative, but I just want the Court to understand that
13 MGM is no small matter here and Mr. Seery did testify in
14 deposition that it probably made up $450 million. He was
15 pretty close.
16 MR. MORRIS: Your Honor, I object to this
17 demonstrative. There is no evidence in the record. It's not
18 cited to anything. We're not just going to start putting up
19 stuff on the screen that we like.
20 MR. MCENTIRE: Excuse me. I'm not offering this
21 document into evidence.
22 MR. MORRIS: I don't care. The Court shouldn't be
23 seeing a demonstrative exhibit that contains matters that are
24 never going to be in the record.
25 THE COURT: Okay.

1 MR. MCENTIRE: I disagree. I can put the data in the
2 record.
3 May I proceed?
4 MR. MORRIS: But you didn't.
5 THE COURT: Okay. I'm not considering the truth of
6 this until and unless I get evidence of this.
7 MR. MCENTIRE: Fair enough. But the point is this,
8 Mr. Seery has conceded in deposition that between the
9 institutional funds and the CLOs, there's a lot of MGM
10 securities and stock. We're talking a lot of money. We're
11 not talking about just Highland Capital's investment.
12 You can skip the next slide. Skip.
13 So, rumors versus material nonpublic information. They
14 can talk all day long, and if they want to use their time
15 doing this, they can. There's a difference between rumor and
16 actual material nonpublic information. Rumor from
17 undocumented sources, lack of clarity, lack of timing. There
18 is no -- there's no debate that a lot of people knew that
19 maybe MGM might be for sale. Maybe they wouldn't. Sometimes
20 it falls apart, you know. But the point is a board member is
21 telling someone that there's a probable event in the first
22 quarter of 2021. That is definite, specific, and it comes
23 from the highest authority. That is -- if that's not material
24 and public information, I don't know what could be.
25 Classic indications of insider trading. You have to have

1 a tipper with access to MNPI. Here, we know that Mr. Seery,
2 if he's the tipper, we allege he's the tipper -- and these are
3 words of art out of case law, by the way -- he has access to
4 information about MGM. He has access about asset values,
5 projected values. He has a relationship. We believe he has a
6 very strong relationship. It's more than just social
7 acquaintances. He's giving congratulatory emails. He's
8 getting solicitations. He's solicited. Benefits received.
9 We know what the benefits are. They get the opportunity to
10 invest money with huge upside.
11 There was a point mentioned some time ago that, well, only
12 -- only the sellers really have the grievance. Well, Your
13 Honor, we have a right to start our lawsuit and do some
14 discovery, because, frankly, a lot of sellers have big-boy
15 agreements. They say, you don't sue me if I have MNPI. I
16 don't sue you if you have MNPI. We have mutual releases.
17 Let's go by our way. Everybody's happy. We're not going to
18 come back and see each other ever again.
19 That's one of the things we're being deprived of here.
20 But otherwise, what we have here is a colorable plan. We've
21 asked for the communications with the sellers. We can't get
22 it. We have here an email.
23 Next.
24 We have here an email. This actually -- you'll hear Mr.
25 Dondero say this actually reflects three communications. Raj

1 Patel, Farallon, bought it because of Seery. Mr. Dondero
2 contacted Mr. Patel and says, Raj Patel bought it because of
3 Seery. 50 to 70 percent's not compelling. Class 8. 50
4 percent, 70 percent. Give you a 30 percent to 40 percent
5 premium. Not compelling. I ain't going to sell. Ask what
6 would be compelling. Nothing. No offer. Bought in February/
7 March. We now know the time frame. We know that Stonehill is
8 communicating with them and we know that Farallon has been
9 just communicating with Mr. Seery. Bought assets with claims.
10 It's not just the MGM. It's not just the portfolio companies
11 and other assets. It's also the claims.
12 Well, what are the claims? It's the claims against Mr.
13 Dondero. Well, how would they know about all this if there's
14 no due diligence and there's no evidence of any due diligence
15 before you? 130 percent of costs, not compelling, no counter.
16 Mr. Dondero's angry. Discovery is coming.
17 Atypical behaviors are also circumstantial evidence of
18 insider trading. We have strange behaviors here, Judge. We
19 have a vast majority of the claim value is acquired by only
20 two entities post-confirmation. Most significant claims are
21 only owned by two entities who were strangers to the whole
22 process.
23 The removal of -- and Mr. Morris offered to stipulate.
24 The sudden removal of MGM from the compliance list in April of
25 2021 -- by the way, the removal doesn't cleanse the MNPI. If

1 you have material nonpublic information because you received
2 it from Mr. Dondero, the fact that Mr. Dondero's no longer
3 employed by Highland Capital or no longer directly or formally
4 affiliated doesn't cleanse the MNPI.
5 We have no due diligence, regardless of the significant
6 nine-digit numbers, and we have no rational explanation of why
7 this kind of money would be invested when they're projecting
8 an actual loss, if -- a modest return at best for Class 8 and
9 a loss for Class 9.
10 Insider trading can be proved by circumstantial evidence,
11 Your Honor. No fraudster, no person who's done wrong is going
12 to admit to it, so you look for the classic -- you look for
13 the classic elements. And that's what we had here. And we
14 have alleged all of this in our pleadings. Not in extraneous
15 evidence. Within the four corners of our pleadings. And
16 that's why we have a plausible claim.
17 You know, I believe it's Rule 8, Rule 9 of the Federal --
18 you have to require specificity in a fraud claim. Well, this
19 is not a fraud claim. This is a different claim. But we have
20 provided specificity that passes the smell test of
21 colorability. We have provided specificity that would satisfy
22 even more stringent requirements under 12(b)(6).
23 The plan analysis. This is a, I think, a document
24 admitted by everyone. Mr. Seery has testified that this
25 projection of 71.32 percent for Class 8 came out in February

1 of 2021 and never changed, all the way up to the effective
2 date.
3 So this is what the public believed. This is what the
4 public knew. And if this was all that Farallon and if is all
5 that Stonehill had access to, that means that they were going
6 to lose their entire investment on Class 9. They bought UBS
7 at a loss to begin with. And on the other three investments,
8 they were going to get a very, very modest, minor return, six
9 percent over three years, or even less. That is not what
10 hedge funds do.
11 Seery's excessive post-effective date compensation. We
12 have obtained no discovery from Farallon or Stonehill in this
13 regard, but we know that he had no prior experience. We know
14 that the award that was given him was not market-based, even
15 though the self-serving documents that have been produced and
16 that are attached to their exhibit list suggests a robust
17 negotiation. Well, they were robust without any kind of
18 reality check in the real world about whether it was market-
19 supported. None. Mr. Seery has admitted to that.
20 It was not lowered. He's making $1.8 million a year right
21 now, with most -- a lot of the assets already sold, the
22 reorganization done. All they're doing now is monetizing
23 assets. He's getting $1.8 million. He's got 11 people
24 working for him. And then he has a bonus, a bonus that is --
25 increases significantly with his ability to recover for Muck,

1 Jessup, Farallon, and Stonehill.
2 And in the absence of -- if we were really dealing with
3 uncertainty and risk, then that may be another issue, but here
4 we're dealing with entities that already know that they're
5 going to get a payday and they already have. They've already
6 made about a $170 million return -- 170 percent return, excuse
7 me -- over and above the original investment, when they were
8 projected to actually lose money.
9 Just so you know, we have over $534 million of cash that
10 has been basically monetized, and out of that, $203 million in
11 total expenses -- $277 million to Class 8 and -- and -- 1
12 through 7, and Class 8 distributors. Excuse me, creditors.
13 Even if you take -- if you take out the alleged obligations of
14 Mr. Dondero on the promissory note cases, that still leaves
15 over $100 million available, which puts us in the money. Puts
16 us in the money. And the fact that you have $203 million of
17 expenses in a case of this nature is part of our claim, is
18 that we have delay actions. We have a situation where Mr.
19 Seery is continuing to receive $1.8 million a year on a slow
20 pace to monetize, paying other professionals, when this could
21 have been over a long time ago. That's part of our
22 allegations. It's not part of any valuation motion. It's
23 actually in our allegations.
24 I'm going to reserve the rest. I think that's my opening
25 statement, Your Honor. I'm going to reserve the rest for my

1 closing. And let me see. Yes, that's right. And thank you
2 for your time.
3 THE COURT: All right. Caroline, how much time was
4 that?
5 THE CLERK: Thirty-four minutes and 27 seconds.
6 THE COURT: Thirty-four minutes and 37 seconds.
7 Okay.
8 THE CLERK: Twenty-seven.
9 THE COURT: Oh, 27. Okay.
10 MR. MCENTIRE: Thirty-four minutes?
11 MR. MCCLEARY: Thirty-four minutes.
12 MR. MORRIS: Your Honor, I do have hard copies of my
13 short slide presentation.
14 THE COURT: All right. You may approach.
15 And Mr. McEntire, are you going to give me your PowerPoint
16 later, hard copies later?
17 MR. MCENTIRE: Yes, Your Honor. I found one typo and
18 I'd like to fix one typo and then we'll give it to you.
19 THE COURT: Okay.
20 OPENING STATEMENT ON BEHALF OF THE DEBTORS
21 MR. MORRIS: Good morning, Your Honor. John Morris,
22 Pachulski Stang Ziehl & Jones, for Highland Capital Management
23 and the Claimant Trust.
24 I want to be fairly brief because I really want to focus
25 on the evidence. I look forward to Your Honor hearing from

1 Mr. Seery so that he could clear up a lot of the misleading
2 statements that were just made.
3 The Court is here today on a gatekeeper function, and
4 we're delighted that the gatekeeper exists. We're delighted
5 that the Court will have an opportunity, after considering
6 evidence, to determine whether or not these claims are
7 actually colorable.
8 There's -- there were a lot of conclusory statements I
9 just heard. There were a lot of assumptions that were made.
10 There were a lot of misleading statements that were made. At
11 the end of the day, what the Court is going to be asked to do
12 is to decide whether, in light of the evidence, do these
13 claims stand up on their own? And they do not.
14 And let me begin by saying that I made a mistake a couple
15 of weeks ago. If we can go to Slide 1. I told Your Honor
16 that you were the sixth body to consider these insider trading
17 claims. Based on Hunter Mountain's exhibit list, there is
18 actually one more, and I'll get to that in a moment. So
19 you're actually -- this is the seventh attempt to peddle these
20 claims to one body or another.
21 The first was Mr. Dondero's 202 petition.
22 Everything I have here, Your Honor, is footnoted to
23 evidence. Okay?
24 So, Footnote 1, you can look in the paragraphs of Mr.
25 Dondero's petition, his amended petition, his declaration,

1 where he makes the same allegations. Again, I misspeak. Not
2 the same allegations. Different versions of the allegations
3 that are being presented today concerning insider trading.
4 He did it three times. The Texas state court said no
5 discovery. In October of 2021, Douglas Draper wrote an
6 extensive letter to the U.S. Trustee, setting forth the same
7 allegations. You can find them at our Exhibit 5. It's
8 attachment Exhibit A, Pages 6 through 11. Compare them to the
9 allegations that are being made by Hunter Mountain today. The
10 U.S. Trustee's Office took no action.
11 Mr. Rukavina followed up with the same thing to the same
12 body in November of 2021. You can see where his allegations
13 of insider trading are made and *quid pro quo* and all the rest
14 of it. Again, they took no action.
15 The one that I don't have on this chart because I didn't
16 -- I made the chart last week and then was unavailable. Mr.
17 Rukavina sent a second letter. And you can find that at
18 Plaintiffs' Exhibit 61. And in Plaintiffs' Exhibit 61, you'll
19 see that Mr. Rukavina sent yet another letter to the U.S.
20 Trustee's Office on May 11, 2022.
21 And these are all really important, right? The U.S.
22 Trustee's Office has oversight responsibility for matters
23 including claims trading. That's their job. They took three
24 different swings at this. And these are pages of allegations.
25 6 to 11. 9 to 13. We think it's very important that the

1 Court look at what was told to the U.S. Trustee's Office. And
2 you're going to hear Mr. Seery testify that Highland has never
3 heard from the U.S. Trustee's Office concerning any of these
4 allegations or any of the other allegations that are set forth
5 in Mr. Rukavina and Mr. Draper's letter. Never. Declined to
6 even initiate an investigation.
7 Hunter Mountain filed its own 202 petition. It boggles my
8 mind that they try to create distance with Mr. Dondero,
9 because the whole petition, like this whole complaint, is
10 based on Mr. Dondero. He submitted a declaration alleging the
11 same insider trading case, and a second Texas state court said
12 I'm not even giving you discovery. We know that's the result.
13 But the best is the Texas State Securities Board. I think
14 we're going to hear testimony that Mr. Dondero or somebody
15 under his control is the one who filed the complaint with the
16 Texas State Securities Board. Who would be the better body to
17 assess whether or not there's insider trading than a
18 securities board? I can't imagine there's a better body.
19 They did an investigation. Mr. Dondero could have told them
20 anything he wanted. I'm sure he did. And they wrote in their
21 motion in Paragraph 37 one of the reasons they have colorable
22 claims is the investigation is ongoing.
23 Much to their dismay, I'm sure, two days before our
24 opposition was due, the Texas State Securities Board said,
25 we've looked at the complaint, we've done our investigation,

1 and we're not taking any action. You can find that, Your
2 Honor, Footnoted 5 at Exhibit 33.
3 You are now the seventh body who's being asked -- and
4 you're being asked to do substantially more than any of the
5 other prior bodies were. The Texas state courts were being
6 asked, just let them have discovery. They said no. The U.S.
7 Trustee's Office, charged with the responsibility of looking
8 at claims trading, said, I'm not going to investigate. I know
9 what you've told me. No. The Texas State Securities Board.
10 Insider trading, insider trading. I'm not doing an
11 investigation. I'm not doing anything. And now they want to
12 come here and engage in, you know, in expensive, long
13 litigation over the same claims nobody else would touch.
14 Can we go to the next slide?
15 Mr. Dondero's email. Good golly. "Amazon and Apple are
16 in the data room." There's a hundred articles out there that
17 they're putting into evidence that say that. "Both continue
18 to express material interest." There's a hundred articles out
19 there that say that. "Probably a first-quarter event. Will
20 update as facts change."
21 There will not be any evidence that he ever updated
22 anybody, because that wasn't the purpose of this, as Your
23 Honor will recall. He had an axe to grind.
24 And I direct your -- I don't direct the Court to do
25 anything -- I ask the Court to take a look at our opposition

1 to the motion, in Paragraphs 23 to 25, where we cite to
2 extensive evidence, all of which is now part of the record,
3 showing just what was happening, from the moment he got fired
4 on October 10th until the end of the year, with the
5 interference, with the interference, with the threats, with
6 the TRO. It was nonstop.
7 Was this email sent in good faith by somebody who owed no
8 duty to anybody? Or was it really just another attempt -- and
9 this is why the gatekeeper is so important, because I think
10 that's exactly what this Court is supposed to do: Is this a
11 good-faith claim? Is this a claim that's made in good faith?
12 It can't be. And you know why? You know what's -- you know
13 what's -- I'll just say it now. I won't even save it for
14 cross.
15 Remember the HarbourVest settlement that they're making so
16 much, you know, about? Mr. Dondero is the tipper. According
17 to him, he gave Mr. Seery inside information. According to
18 him, Mr. Seery abused it by engaging in the HarbourVest
19 transaction. But Mr. Dondero filed an extensive objection to
20 the HarbourVest settlement and never said a word about this,
21 because that wasn't on his mind at the time. The email was
22 sent in order to interfere. And when that failed, he's trying
23 to play gotcha now. It's ridiculous.
24 He owed no duty to Highland. It would have been a breach
25 of his own duty to MGM to share that information at that

1 period of time.

2 The shared services agreement. They don't help him. Mr.
3 Dondero has nothing to do with that. Highland is providing
4 services. He's not providing services to Highland. Highland
5 was providing. We had already given notice of termination.
6 We had already had our plan and disclosure -- we had already
7 had our disclosure statement approved. We were weeks away
8 from confirmation. Please.

9 And the *Wall Street Journal* article on December 21st at
10 Exhibit 27, that's not your garden-variety *Wall Street Journal*
11 article, because it specifically says that investment bankers
12 were engaged to start a formal process. The investment
13 bankers are identified by name. Something has changed.
14 Anybody could see that.

15 Yes, there were rumors for a long time. Nobody had ever
16 said there was a formal process. Nobody had ever said
17 investment bankers had ever been hired. Nobody had ever
18 identified those investment bankers. Right? I mean, just the
19 world changed.

20 If you can go to the next slide.

21 You know, before I get to the next slide in too much
22 detail, *quid pro quo*. We look at it as *quid*. Did he -- is
23 there any evidence that he actually gave anybody material
24 nonpublic inside information? The answer is going to be no.
25 The *quo* is the relationship. And I'm not going to spend too

1 much time on that now. But wait until you hear Mr. Seery
2 testify as to the actual facts about his relationship.
3 Because some of what we just heard is mind-boggling, that
4 little -- that little page from the *Blockbuster* case, like, 14
5 years ago, where Farallon was one of a group of people who Jim
6 Seery never met. Like, the stretch, what they're trying to do
7 is beyond the pale. But I'm delighted to have Mr. Seery sit
8 in the box and answer all the questions they want to ask him
9 about his relationship with Farallon and Stonehill.
10 But getting to the point, the *quid pro quo*. The *quo* is
11 they fixed his compensation? Are you kidding me? They
12 rubber-stamped his compensation? Highland and Mr. Seery and
13 the board are alleged to have negotiated? There's nothing
14 alleged. There are facts. There is evidence. It is beyond
15 dispute. If you look, just for example, right, they take
16 issue with his salary? The salary was fixed by this Court in
17 2020. Without objection. He's getting the exact same salary
18 that he ever got.
19 You'll hear that it's a full-time job. Your Honor knows
20 better than anybody in this courtroom, other than me, perhaps,
21 the litigation burden that's been placed on this man. He has
22 no other income. He doesn't do anything else. This is a
23 full-time job. It's the exact same job that he had when Your
24 Honor approved his compensation package three years ago,
25 without a raise. They didn't give him a nickel more. Not one

1 nickel. It's outrageous.
2 The balance of his compensation, of which he has not yet
3 received a nickel, is exactly what this Court would want
4 somebody in Mr. Seery's position to do. It aligns his
5 interests with his constituency. Not with Stonehill. Not
6 with Farallon. With all creditors. The greater the recovery,
7 the greater the bonus. Outrageous, right? Remarkable, isn't
8 it? Only in their world.
9 If Your Honor can go back to Mr. Rukavina's letter,
10 because this is where it all -- that's where it all starts
11 from. Like, excessive compensation. Mr. Rukavina, I don't
12 know how he did this, why he did it, what it was based on. He
13 actually told the U.S. Trustee's Office that they thought Mr.
14 Seery made $50 million. It's in the letter. $50 million,
15 they told the U.S. Trustee's Office he made. It's footnoted,
16 so you can go find it. It's right there, at Page 14. Quote,
17 Seery's success fee could approximate $50 million.
18 $8.8 million is what he's making. They think that's
19 excessive? What do they think he should make? Three? Five?
20 We're not going to hear that. But that's what this case is
21 about. You just heard counsel in his opening statement. He
22 literally said the only thing at issue is his compensation.
23 And that has to be the case, because if there was -- if there
24 was no claims trading, UBS and HarbourVest and Acis, right,
25 the Redeemer Committee, they would all still be holding these

1 claims today.
2 When Stonehill and Farallon acquired the claims, they were
3 all allowed. There was no debate about what the claims were.
4 If they held the claims today, they would be worth the exact
5 same amount of money, only a different person would be
6 benefitting from it.
7 So the case actually is only about Mr. Seery's
8 compensation. And they've moved the goalposts, as often
9 happens in this courtroom, from rubber-stamping -- I'll give
10 you what you want. When I hear rubber-stamp, I hear, you make
11 a demand and I'll give it to you. And now they realize, when
12 they see the negotiation -- because it's in evidence, it's
13 just the documents, you can see the board minutes -- what do
14 we, doctor the board minutes and they should get discovery
15 because we doctored the board minutes? The board minutes show
16 a four-month negotiation with an Independent Board member
17 fully involved. It's mind-boggling. It's actually -- well,
18 I'll just leave it at that.
19 Next slide. Last slide. Let me finish up. Three of the
20 four sellers were former Committee members. Mr. Dondero
21 agreed that Committee members would have access to special
22 nonpublic inside information as part of the protocols, as part
23 of the corporate governance settlement. He agreed to that.
24 These are the people who got abused? These are the people who
25 didn't know what was happening? Committee members and

1 HarbourVest, probably one of the biggest and most
2 sophisticated funds in the world, didn't know what was
3 happening? They got abused? Stonehill and Farallon took
4 advantage of them?
5 If you read their pleadings closely, they actually allege,
6 and I don't -- I don't know if there'll ever be any evidence
7 of this -- but they actually allege that -- I forget which --
8 oh, somebody is an investor in Stonehill and Farallon, and so
9 the theory is one of the sellers is an investor in Farallon.
10 So not only did they abuse, they abused one of their own
11 investors. Like, this is not a colorable claim. This is
12 ridiculous.
13 None of the claims sellers are here. Sophisticated people
14 who -- who -- right? Mr. Dondero could pick up the phone and
15 say, hey, guys, you got ripped off. You sold your claims when
16 you shouldn't have. They had an unfair advantage.
17 Nobody's here. Where is anybody complaining? They're not
18 going to because they cut a deal that they thought was good
19 for them at the time. In hindsight, maybe they have regrets.
20 Right? We all have regrets sometimes in hindsight. But that
21 doesn't create a claim.
22 We've heard so much about what hedge funds would get and
23 how much and is this rational? The fact of the matter is, at
24 the time Mr. Dondero had his phone call on May 28th, UBS had
25 not been purchased, although MGM had already been announced.

1 So when they talk about MGM, maybe it's the fact -- and this
2 is in evidence -- maybe it's the fact that, two days before,
3 the MGM-Amazon deal actually was publicly announced. It
4 actually was. So maybe when they say, hey, yeah, we like MGM,
5 because, you know, that just -- that just got announced.
6 Maybe that happened.
7 But at the end of the day, the claims that they bought, if
8 you just look at the claims that were purchased at the time he
9 had the conversation, all Mr. Seery had to do was meet
10 projections and they were going to get $33 million in two
11 years. A 30 percent return in two years. I don't know. That
12 doesn't -- that doesn't sound crazy to me. Doesn't sound
13 crazy to me. It certainly doesn't create a colorable claim,
14 just because they think that Farallon or Stonehill -- there's
15 not going to be any evidence of Farallon or Stonehill's risk
16 profile. There's not going to be any evidence of Farallon or
17 Stonehill's, you know, expected returns. There's not going to
18 be any evidence at all about what due diligence they did or
19 didn't do, other than what comes out of Mr. Dondero's mouth,
20 as usual.
21 Mr. Dondero -- and let's look at what's going to come out
22 of Mr. Dondero's mouth. He has multiple sworn statements.
23 I'm going to take his notes and they're going to become mine.
24 I'll put him on notice right now. Because those notes bear no
25 relationship to the evolution of his sworn statements over

1 time.

2 The first time he mentions MGM in a sworn statement is two

3 years after the fact in Version #5. That's a colorable claim?

4 You want -- you want to oversee a litigation, or maybe it gets

5 removed to the district court, maybe I get lucky to be in

6 front of a jury, and I'll have Mr. Dondero explain how it took

7 him five tries before he could write down the letters MGM.

8 Not a colorable claim. No evidence against Stonehill

9 whatsoever. Zero. Zero. Never spoke to them. There's no

10 colorable claim here, Your Honor.

11 I'm going to turn the podium over to Mr. Stancil to talk

12 about the law.

13 THE COURT: Okay.

14 OPENING STATEMENT ON BEHALF OF JAMES P. SEERY, JR.

15 MR. STANCIL: Thank you, Your Honor. Mark Stancil,

16 counsel for Mr. Seery. But I'm going to just very briefly

17 address a few legal points. And I actually mean briefly.

18 THE COURT: Okay.

19 MR. STANCIL: I'll come back to a good bit of this in

20 closing as time permits.

21 I heard Mr. McEntire say *Barton* doesn't apply. I would

22 encourage him to start with what the gatekeeping order

23 actually says. Here it is. This is in -- it's in the plan.

24 Your Honor has confirmed it. The question we have in terms of

25 what standard applies is, what does this order mean? Well, we

1 think that's going to be clear. It's not what they think the
2 word "colorable" would mean in other contexts. It's not what
3 they think they should have to satisfy now that they have a
4 theory. It's, what does this mean?
5 And we'll get into some of the additional evidence from
6 Your Honor's order at the time, later in closing.
7 Next slide, please.
8 But let me just start to say I'm awfully surprised to hear
9 him say that he doesn't believe *Barton* applies, because the
10 order says that it does. This is Paragraph 80 of the
11 confirmation order. It says that the Court has statutory
12 authority to approve the gatekeeper provision under these
13 sections of the Bankruptcy Code. The gatekeeper provision is
14 also within the spirit of the Supreme Court's *Barton* Doctrine.
15 The gatekeeper provision is also consistent with the notion of
16 a pre-filing injunction to deter vexatious litigants that has
17 been approved by the Fifth Circuit in such cases as *Baum v.*
18 *Blue Moon Ventures*.
19 So I think it is impossible, and respectfully, Your Honor,
20 it's law of the case. This is what the order is based on.
21 The day for objecting to what's in the confirmation order is
22 long gone.
23 So let me come back, then -- first slide, please -- and
24 I'll just very briefly give you a little legal framework for
25 what we're going to be arguing to you later in closing.

1 So, *Barton* does require a *prima facie* showing. That is
2 *Vistacare* and plenty of other cases. That is more than a
3 12(b)(6) standard, Your Honor. Numerous courts agree. And in
4 fact, as you'll hear us discuss later, Judge Houser's opinion
5 is not to the contrary, because she said explicitly, I'm not
6 applying *Barton*. So anything that they're relying on for what
7 *Barton* requires from that opinion is *dicta*. But we can show
8 you case after case after case, and we will, to show that
9 *Barton* requires evidentiary hearings.
10 Here's a point, this third bullet here is something I have
11 not heard a single word in all of the briefing and ink that
12 has been spilled and in as long as we've been here this
13 morning, is what is a gatekeeping order doing if all it does
14 is reproduce a 12(b)(6) standard? That's what they say. In
15 fact, they're actually saying it's even lower. Now I think I
16 heard them say it's even lower than a 12(b)(6) standard.
17 That makes no sense whatsoever. We've just shown you that
18 this gatekeeping order was imposed consistent with *Barton* and
19 vexatious litigant principles. Later I will walk Your Honor
20 through factual findings that you made detailing the vexatious
21 litigation, detailing the abuses. The notion that the gate is
22 the same gate that every other litigant who hasn't
23 demonstrated that record of bad faith is absurd, and it serves
24 no purpose.
25 And as Mr. Morris described, Hunter Mountain woefully,

1 woefully violates any *prima facie* showing. And we'll get into
2 a little bit more exactly how that works.
3 We are going to ask this Court, in addition to ruling that
4 *Barton* applies and that they've failed it, we're going to ask
5 this Court, respectfully, to please consider ruling on
6 multiple independent grounds as well. We know there's a
7 penchant for appeals and appeals upon appeals. So we will
8 argue to Your Honor, although we will largely spare you
9 another rehash of our briefs, but we will explain to Your
10 Honor why they do lack standing to bring this claim as a
11 matter of Delaware law. And there was a lot of fuzzing up
12 about constitutional standing and Delaware law. Not
13 necessary.
14 If -- we will be happy to rely on our pleadings here, but
15 on Page 27 of the Claimant Trust Agreement, that's what
16 defines their rights under Delaware law, and they were talking
17 about how beneficial owners under Delaware law have standing.
18 Well, are they beneficial owners? They are not. Equity
19 holders -- this is in Paragraph C, Page 27 of the Claimant
20 Trust Agreement -- Equity holders will only be deemed
21 beneficiaries under this agreement upon the filing of a
22 payment certification with the bankruptcy court, at which time
23 the contingent trust interests will vest and be deemed equity
24 trust interests.
25 They are not beneficial owners of squat. That has not

1 happened.
2 And last, Your Honor, we will -- and I will organize this
3 for Your Honor in closing as well -- we would ask you to rule
4 on a straight-up 12(b)(6) standard as an alternative, because
5 we know what's coming on appeal and we think their complaint
6 collapses under its own weight. You heard Mr. Morris
7 detailing their own math shows significant returns. You'll
8 also hear us describe how they have nothing but mere
9 conclusions and naked assertions upon information and belief
10 but unsupported.
11 *Iqbal* and *Twombly* would still apply under their 12(b)(6)
12 standard, especially, and perhaps even more with a heightened
13 standard under Rule 9(b), because they're essentially alleging
14 some version of fraud, it sounds like.
15 They're never going to get there, Your Honor. All we
16 would ask is for a full record to take inevitably,
17 unfortunately, to the Court of Appeals.
18 And I think Mr. -- I'm not sure which of my colleagues
19 will be speaking briefly for Holland & Knight, but I'll just
20 turn it over to them.
21 THE COURT: All right. Mr. McIlwain?
22 OPENING STATEMENT ON BEHALF OF THE CLAIM PURCHASERS
23 MR. MCILWAIN: Thank you, Your Honor. I'll be even
24 briefer. Brent McIlwain here for the Claim Purchasers.
25 Your Honor, Mr. McEntire stated to this Court that my

1 clients have never denied any of this. In fact, in his reply,
2 he says, The Claim Purchasers do not deny that they invested
3 over $163 million. We do not deny that we did not due
4 diligence, we do not deny that we refused to sell our claims
5 at any price, and we do not deny that we invested the claims
6 at what is, at best, a low ROI.
7 We had no duty to answer to HMIT or Mr. McEntire. We had
8 no duty when we bought these claims to -- we had no duties to
9 any creditor. We had -- it was a bilateral agreement with a
10 third party. And frankly, Your Honor, it's not Mr. Dondero's
11 or HMIT's business what due diligence we did and what
12 information that we obtained.
13 But I will tell you right now, Your Honor, we were very
14 careful in our pleadings to not bring issues of fact, because
15 this -- HMIT has been chasing my clients, obviously, based on
16 the notes that were presented in the initial PowerPoint, it
17 was a -- it's retribution. It's retribution for not agreeing
18 to sell the claims to Mr. Dondero when he offered to purchase
19 at a 40 percent premium.
20 And Your Honor, when I look at that note, it's
21 interesting, because I hadn't seen the note, obviously, until
22 it showed up on the exhibit list. When you look at that note,
23 I think it's -- I think it's very interesting. To the extent
24 it was contemporaneous, I don't know. But what it shows, it
25 shows that if you're a hammer, everything's a nail. And Mr.

1 Dondero is a vexatious litigator. And what did he write down?
2 Discovery to follow.
3 But my question is this. Who was trying to trade on
4 inside information? Mr. Dondero was offering a 40 percent
5 premium, allegedly, on the cost. What information did he
6 have? Certainly, he had inside information.
7 My client owed no duty to Mr. Dondero. My client owed no
8 duty to anybody in this estate at the time of these claims
9 purchase.
10 And Your Honor, we talk a lot about -- or, it's been
11 talked a lot of insider trading. These are claims trades. I
12 think the Court honed in on this from the very get-go. The
13 Court does not have a role in claims trades. There's a 3001
14 notice that's filed post-claims trade, but there's no
15 requirement that there's Court approval.
16 And these aren't securities. It's not as if we're trading
17 claims and it could benefit or hurt you based on some equity
18 position that you're going to obtain. We obtained claims that
19 had been settled, they were litigated heavily, and the most
20 that we can obtain is the amount of the claim. And that is,
21 as Mr. Morris stated, all that changed was the name of the
22 claimant. That's all. Because the claims didn't increase in
23 value based on the trade.
24 Your Honor, our pleadings, I think, speak for themselves
25 in terms of you really -- you really don't have to consider

1 evidence, from our perspective, to determine that this
2 proposed complaint has no merit and is not plausible and
3 presents no colorable claims.
4 The gatekeeper provision, and we're going to talk a lot
5 about that today, obviously, right, requires that Mr. Dondero
6 establish a *prima facie* case that the claims have some
7 plausibility. If you can simply write down allegations, file
8 a motion for leave and attach those allegations and say, Your
9 Honor, you have to take all these as true, the gatekeeper has
10 no meaning. There's no point in having a gatekeeper
11 provision.
12 And in summary, Your Honor, what -- and I think Mr. Morris
13 honed in on this specifically -- this really comes down to
14 compensation. Right? Because this -- the allegation is that
15 my clients purchased claims, presumably at a discount, right,
16 based on some inside information, which we obviously deny, but
17 we don't have to put that at issue today. For what purpose?
18 For what purpose? So we got inside information from Mr. Seery
19 so that we could then scratch his back on compensation on the
20 back-end?
21 Your Honor, there is no reason that my clients need to be
22 involved in this litigation. If HMIT thinks that this -- that
23 they have a claim against Mr. Seery for excessive
24 compensation, they can -- they could have brought such a
25 gatekeeper motion, or a motion for leave under the gatekeeper

1 provision, without including my clients. Why did they include
2 my clients? They included my clients because my clients did
3 not sell to Mr. Dondero when he called, unsolicited, to try to
4 get information. It's retribution. And that's what a
5 vexatious litigator does, and that's why the gatekeeper
6 provision is in place.
7 I'll reserve the rest for closing, Your Honor.
8 THE COURT: All right. Caroline, what was the
9 collective time of the Respondents?
10 THE CLERK: Twenty-eight minutes and 37 seconds.
11 THE COURT: Twenty-eight minutes, 37 seconds.
12 All right. Well, let's talk about should we take a lunch
13 break now? I'm thinking we should, because any witness is
14 going to be, I'm sure, more than an hour. So can you all get
15 by with 30 minutes, or do you need 45 minutes? I'll go with
16 the majority vote on this.
17 (Counsel confer.)
18 MR. MCENTIRE: 1:00 o'clock. 45 minutes.
19 MR. MORRIS: 40 minutes, whatever. 1:00 o'clock?
20 THE COURT: We'll come back at 1:00 o'clock.
21 MR. MORRIS: Thank you, Your Honor.
22 THE COURT: Okay. Thank you.
23 THE CLERK: All rise.
24 (A luncheon recess ensued from 12:19 p.m. until 1:05 p.m.)
25 THE CLERK: All rise.

1 THE COURT: All right. Please be seated. We're
2 going back on the record in the Highland matter, the Hunter
3 Mountain motion for leave to file lawsuit.
4 I'll just let you know that at 1:30 we're going to take
5 probably what will be a five-minute break, maybe ten minutes
6 at the most, because I have a 1:30 motion to lift stay docket.
7 Just looking at the pleadings, I really think maybe one is
8 going to be resolved and it won't be more than five or ten
9 minutes. So whoever is on witness stand can either just stay
10 there, because I think we won't be finished, or you can take a
11 bathroom break or whatever. All right? So, it's video, the
12 1:30 docket.
13 All right. So, Mr. McEntire, are you ready to call your
14 first witness?
15 MR. MCENTIRE: I am, Your Honor.
16 THE COURT: Okay.
17 MR. MCENTIRE: May I proceed?
18 THE COURT: You may.
19 MR. MCENTIRE: At this time, Hunter Mountain calls
20 Mr. James Dondero.
21 THE COURT: All right. Mr. Dondero, welcome. If you
22 could find your way to the witness box, I will swear you in
23 once you're there. It looks like you've got lots of notebooks
24 there. Please raise your right hand.
25 (The witness is sworn.)

1 THE COURT: All right. Thank you. You may be
2 seated.
3 MR. MCENTIRE: I'm not familiar with your procedure.
4 Should I approach the -- here to --
5 THE COURT: If you would, unless you're having --
6 MR. MCENTIRE: That's fine.
7 THE COURT: -- any kind of --
8 MR. MCENTIRE: That's fine. I'm not.
9 THE COURT: -- knee issues or, you know, sometimes
10 people want to stay seated for that reason.
11 MR. MCENTIRE: Your Honor, again, my tender of Mr.
12 Dondero as a witness is subject to our running objection on
13 the evidentiary format.
14 THE COURT: Understood.
15 JAMES DAVID DONDERO, HUNTER MOUNTAIN INVESTMENT TRUST'S
16 WITNESS, SWORN
17 DIRECT EXAMINATION
18 BY MR. MCENTIRE:
19 Q Mr. Dondero, would you state your full name for the
20 record, please?
21 A James David Dondero.
22 Q With whom are you currently -- what company are you
23 currently affiliated with?
24 A Founder and president of NexPoint.
25 Q All right. And I think the Court is well aware, but would

1 you just briefly describe your prior affiliation with -- was
2 it Highland Capital?
3 A Yes.
4 Q What was that affiliation?
5 A President and founder for 30 years, and then to facilitate
6 an expeditious resolution of the estate I handed the reins to
7 three Independent Board members and I became a portfolio
8 manager until October of -- I was an unpaid portfolio manager
9 until October of '20.
10 Q Thank you, sir. Do you have any current official position
11 with Hunter Mountain Investment Trust?
12 A No.
13 Q Can you describe for us, sir, any actual or control you
14 attempt to exercise on the business affairs of Hunter Mountain
15 Investment Trust?
16 A None.
17 Q Are you -- do you have any official legal relationship
18 with Hunter Mountain Investment Trust where you can attempt to
19 exercise either direct or indirect control over Hunter
20 Mountain Investment Trust?
21 A I do not.
22 Q Did you participate -- personally participate in the
23 decision of whether or not to file the proceedings that are
24 currently pending before Judge Jernigan?
25 A I did not.

1 Q As the former CEO of Highland Capital, are you familiar
2 with the types of assets that Highland Capital owned? On the
3 petition date?
4 A Yes.
5 Q And have you been monitoring these proceedings and the
6 disclosures in these proceedings since the petition date?
7 A Yes.
8 Q Okay. Can you describe generally for me the types of
9 assets on the petition date that Highland Capital owned? The
10 types of assets? Describe the types of assets -- companies,
11 stocks, securities, whatever, whatever you -- however you
12 would describe it.
13 A There were some securities, but it was primarily
14 investments in private equity companies and interests in
15 funds.
16 Q Okay. I've heard the term portfolio company. What is a
17 portfolio company?
18 A A portfolio company would be a private equity company that
19 we controlled a majority of the equity and appointed and held
20 accountable the management teams.
21 Q Would there be separate management, separate boards, for
22 those portfolio companies?
23 A Yes.
24 Q All right. How many portfolio companies were there on the
25 petition date, if you're aware? If you recall?

1 A Half a dozen, of different sizes.
2 Q Can you identify the names, if you recall?
3 A Yes.
4 Q What are those names?
5 A Trussway, Cornerstone, some small -- Carey International,
6 CFA, SSP Holdings. Yeah, to a lesser extent, OmniCare.
7 Q All right.
8 A Or, um, --
9 Q In addition to the portfolio --
10 A Sorry.
11 Q -- of companies in which Highland Capital would own
12 interests, did Highland also have interests in various funds?
13 A Yes. I said OmniCare. I meant OmniMax, I think was the
14 name.
15 Q What type of funds?
16 A I'm sorry. The funds were usually funds that we were
17 invested in or seeded or managed. So they're things like
18 Multistrat, Restoration, a Korea fund, PetroCap.
19 Q Are these managed funds by Highland Capital? Or were
20 they?
21 A Yes. Pretty much, with the exception of PetroCap. We
22 were a minority -- a minority -- a large -- a large minority
23 investor with a sub-advisor.
24 Q Did Highland Capital Management on the petition date own
25 an interest, a direct security interest in MGM?

1 A Yes. And I -- yes.
2 Q Did the various portfolio companies that you've
3 identified, did one or more of those portfolio companies also
4 own MGM stock?
5 A Yes.
6 Q Did the various funds that you've identified, did one or
7 more of those funds also own MGM stock?
8 A Yes. Between -- yes. Between the CLOs, the funds,
9 Highland directly, it was about $500 million that eventually
10 got taken out for about a billion dollars.
11 Q Okay. $500 million is what you said?
12 A Approximately. Depending on what mark, what time frame.
13 But ultimately they got taken out for about a billion dollars.
14 Q Okay. And as a consequence of these investments,
15 significant investment -- first of all, how would you describe
16 that magnitude of investments? Is that a significant
17 investment from the perspective of MGM?
18 A Yes.
19 Q As a consequence, what role, if any, did you play in terms
20 of MGM's governance? Were you -- did you become a member of
21 the board of directors?
22 A Yes. I was a board member for approximately ten years,
23 and myself and the president of Anchorage, between our two
24 entities, we had a majority of the equity in MGM.
25 Q Okay. If there was a third party, not familiar with the

1 management of Highland Capital, who had been monitoring these
2 bankruptcy proceedings as you have, was there any way that a
3 third-party stranger to this bankruptcy proceeding could, from
4 your perspective, actually appreciate or identify the -- all
5 the details of the investments that Highland Capital had?
6 MR. MORRIS: Objection to the form of the question.
7 It calls for speculation. He's not here as an expert today.
8 He shouldn't be allowed to testify what a third party would or
9 wouldn't have thought or known.
10 MR. MCENTIRE: Well, I'll --
11 THE COURT: I'll overrule.
12 BY MR. MCENTIRE:
13 Q Mr. Dondero?
14 A The disclosures in the Highland bankruptcy were scant. I
15 think there was six or eight line items listed, the
16 descriptions of which were limited. But it didn't include --
17 it didn't include a broad listing of all the funds, and it
18 didn't include subsidiaries or any net value or any offsetting
19 liabilities or risks of any of the underlying companies or
20 investments, either.
21 MR. MCENTIRE: Would you put up Exhibit 3, please?
22 BY MR. MCENTIRE:
23 Q Mr. Dondero, we're going to -- do you have a screen in
24 front of you as well?
25 A Yes.

1 Q We're going to put up Exhibit 3, and I'm going to ask you
2 some questions about it. First of all, would you identify
3 Exhibit 3?
4 A It didn't come up on my screen yet.
5 Q Still not up there?
6 A Yes. Now it is.
7 Q Can you identify Exhibit 3, please?
8 (Discussion.)
9 Q There we go. Mr. Dondero, would you identify Exhibit 3,
10 please?
11 A This was an email I sent to Compliance and relevant people
12 to put -- to put MGM on the restricted list.
13 Q It indicates it was on December 17, 2020. Did you
14 personally author this email?
15 A Yes.
16 Q You sent it to multiple individuals, including Mr.
17 Surgent. Was Mr. Surgent an attorney at Highland Capital at
18 the time?
19 A He was head of compliance for both organizations.
20 Q Scott Ellington? Is he an attorney? Was he an attorney
21 at the time?
22 A He's the general counsel of Highland.
23 Q You also sent it to someone at NexPoint Advisors, Jason
24 Post. Who is Mr. Post?
25 A Mr. Post was head of compliance at NexPoint Advisors and a

1 subordinate of Thomas Surgent's.
2 Q Jim Seery. Mr. Seery, of course. You also addressed it
3 to Mr. Seery?
4 A Yes.
5 Q It says, Trading Restrictions Re: MGM Material Nonpublic
6 Information. What did you mean by the term "material
7 nonpublic information"?
8 A Material nonpublic information is when you have material
9 nonpublic information that the public does not have, and it
10 essentially makes you an insider and restricts you from
11 trading.
12 Q All right. It says, Just got off a pre-board call.
13 First of all, you generated this in the ordinary course of
14 your business, did you not?
15 A Um, --
16 Q This email.
17 A Yes.
18 Q Okay.
19 A Yes.
20 Q And --
21 A Any restricted list. Restricted list items happen all the
22 time in the normal course of business.
23 Q And you've maintained a copy of this email as well, have
24 you not?
25 A I'm sure we have one. I don't have it personally.

1 Q Fair enough. But you're -- you have -- you have access
2 and custody over emails, correct?
3 A Not any of my Highland emails.
4 Q But those were left. Right?
5 A Yes. Yes.
6 MR. MORRIS: Your Honor, I mean, he's leading the
7 witness at this point, so I'm just --
8 MR. MCENTIRE: That's fine.
9 MR. MORRIS: I'm just --
10 THE COURT: Okay. Sustained.
11 MR. MORRIS: -- going to be sensitive to it.
12 THE COURT: Sustained.
13 BY MR. MCENTIRE:
14 Q Mr. -- this is a true and accurate copy of the email that
15 you sent, is it not?
16 A It appears to be.
17 MR. MCENTIRE: At this time, I would offer Exhibit 3
18 into evidence, Your Honor.
19 THE COURT: Okay. I'm looking through what we
20 admitted earlier. Did we not --
21 MR. MCENTIRE: This already may be in evidence.
22 THE COURT: Yes. I'm --
23 MR. MCENTIRE: I don't --
24 THE COURT: Was there any objection?
25 MR. MORRIS: There wasn't. I mean, --

1 THE COURT: I think there was an objection that I
2 overruled.
3 MR. MORRIS: No. There wasn't. I mean,
4 unfortunately, we've gotten the short end of the stick here,
5 because all of their documents are in evidence, and I got
6 caught short because I'm going to have to do it the old-
7 fashioned way. But yes, this is in evidence.
8 MR. MCENTIRE: Okay. Fair enough.
9 MR. MORRIS: Because -- actually got through all of
10 their documents.
11 MR. MCENTIRE: Fair enough.
12 THE COURT: Okay. All right.
13 BY MR. MCENTIRE:
14 Q So, Mr. --
15 THE COURT: So it's in evidence.
16 BY MR. MCENTIRE:
17 Q -- Dondero, going back to Exhibit 3, it says, Just got off
18 a pre-board call.
19 Is that the MGM board, a pre-board call?
20 A Yes.
21 Q What is a pre-board call?
22 A It's a pre-board call that usually sets the agenda. And,
23 again, myself and the Anchorage guys, we would move in
24 locksteps, in a coordinated fashion, generally, in terms of
25 agenda and company policy.

1 Q It says, Update is as follows. Amazon and Apple actively
2 diligencing in the data room.
3 What was your understanding of -- of -- what was your
4 intent in conveying that information to the recipients?
5 A The intent was really in the last sentence, or second-to-
6 last sentence, that the transaction was likely to close.
7 Amazon had come back. We had turned Amazon away earlier in
8 the year at $120 a share, and they said they wouldn't be
9 willing to pay more. And --
10 THE COURT: Is there an objection?
11 MR. MORRIS: There is an objection. None of this was
12 shared with Mr. Seery, all of this background that we're --
13 that we're doing. He -- I would request that we stick with
14 the -- only the information that was given to Mr. Seery, like
15 -- like he's talking about his intent. Like, who cares at
16 this point?
17 MR. MCENTIRE: Well, --
18 MR. MORRIS: This is what Mr. Seery got.
19 THE COURT: Okay. What is your response to that?
20 MR. MCENTIRE: I have a response to -- well, they've
21 -- they've questioned his intent in sending this in his
22 opening statement.
23 MR. MORRIS: Ah.
24 MR. MCENTIRE: And I'm trying to make it clear what
25 his intent was.

1 MR. MORRIS: So, you know what, Your Honor? *Quid pro*
2 *quo*. Now we're going to do a real *quid pro quo*. He can ask
3 him about his intent, and then he can't object to all of the
4 other documents and exhibits that I say prove that this was
5 here only to interfere with Mr. Seery's trading activity.
6 I'll do that *quid pro quo*.
7 MR. MCENTIRE: May I proceed, Your Honor?
8 THE COURT: You may. Objection is overruled.
9 BY MR. MCENTIRE:
10 Q Mr. Dondero, what was your intent in communicating --
11 A Okay.
12 Q -- that probably a first-quarter event? What was your
13 understanding?
14 A After 30 years of compliance education: Taint one, taint
15 all. We were all sitting together. I -- the trading desk was
16 right outside my desk. All the employees of Highland that
17 would eventually move to NexPoint, all the ones that would
18 eventually move to Skyview, all the ones that eventually moved
19 to Jim Seery, were all within 30 feet of my desk.
20 Q What do you mean by "Taint one, taint all"?
21 A That's a compliance concept that, as a professional, you
22 have a responsibility, when you are in possession of material
23 nonpublic information, to put something on the restricted list
24 so that it's not traded. Okay? And you can't -- one person
25 can't sit in their cube and say they know something and not

1 tell anybody else, such that the rest of the organization
2 trades. That's not the way compliance works.
3 Q It says also no -- also, any sales are subject to a
4 shareholder agreement.
5 What was the meaning of that or the intent of that?
6 A There was a stringent shareholder agreement, particularly
7 among the board members, that no shares could be bought or
8 sold without approval of the company.
9 Q The company here being MGM?
10 A MGM, yes.
11 Q What is a restricted list?
12 A A restricted list is when you believe as an investment
13 professional that you have material nonpublic information, you
14 notify Compliance, and then Compliance notifies the entire
15 organization and prevents any trading in that security.
16 Q You mentioned the doctrine taint one, taint all. If an
17 individual or -- if an individual within a company setting is
18 found to have traded on material nonpublic information, what
19 is the potential consequence or sanction?
20 MR. MORRIS: Objection, Your Honor. This is like a
21 legal conclusion. He's not a law enforcement officer. He's
22 not a securities officer. What are we doing?
23 MR. MCENTIRE: I can rephrase.
24 THE COURT: Okay. He's going to rephrase.
25 BY MR. MCENTIRE:

1 Q Based upon your years -- based upon your years of
2 experience as a board member of MGM, based upon your years of
3 experience as a CEO of Highland Capital and an executive that
4 trades in securities and has sold securities, what is your
5 understanding, from a non-legal perspective, of what the risks
6 are associated with trading on material nonpublic information?
7 A You could be -- you would be fired from the organization
8 if you did. You could be banned from the securities industry.
9 The industry can shut down the -- or, the SEC can shut down
10 the advisor or they can fine the advisor.
11 Q Do you know what a compliance log is?
12 A Yes.
13 Q Should MGM have been placed on a compliance log at
14 NexPoint?
15 A Throughout the organization -- throughout the
16 organization, it should -- it should and it was on all -- at
17 all organizations, yes.
18 Q Should it have been placed on a -- on a compliance log to
19 Highland Capital, from your perspective?
20 A Yes.
21 Q Can you give us any explanation of why, to your knowledge,
22 why MGM would be taken off the restricted list in April of
23 2021 at Highland Capital?
24 A When an investment professional puts something on the
25 restricted list, in order for it to come off the restricted

1 list, the material nonpublic information has to be public. So
2 there has to be a cleansing that occurs by the company.
3 Q To the extent that you were no longer affiliated with
4 Highland Capital in the early portion, the first quarter of
5 2021, does that somehow cleanse the material nonpublic
6 information that you identified?
7 A It does not.
8 Q Why not?
9 A Because the -- it -- the company hasn't -- the company
10 didn't come out and make public the information that we knew
11 from a private perspective that the transaction was about to
12 go through.
13 Q You sat here during opening statements when Mr. Morris
14 referred to the various news coverage and media coverage
15 concerning MGM and the fact that people had expressed interest
16 in buying in the past?
17 A Yes. And at the board level, we had entertained numerous
18 ones. There were rumors that had no basis in fact, and there
19 were negotiations we had with people that were never in the
20 news. But none of them got to this degree of certainty where
21 it was going to close within a couple months.
22 Q From your perspective as an investment professional, with
23 the years of experience that you described for the Court, what
24 is the difference between receiving an email from a board
25 member such as yourself and rumors or suggestions of possible

1 sale in the media?
2 A I knew with certainty from the board level that Amazon had
3 hit our price, agreed to hit our price, and it was going to
4 close in the next couple months.
5 Q That's not rumor or innuendo; that's hard information from
6 a member of the MGM board?
7 A Correct.
8 MR. MCENTIRE: All right. You can take that down,
9 please, Tim.
10 BY MR. MCENTIRE:
11 Q I want to talk a little bit about due diligence. When you
12 were the chief executive officer of Highland Capital, --
13 A Yes.
14 Q -- can you tell us whether Highland Capital ever involved
15 itself in the acquisition of distressed assets?
16 A Yes. We did a fair amount of investing in distressed
17 assets.
18 Q What is a distressed asset?
19 A It's something that trades at a discount, where the
20 certainty and the timing of realizations or contractual
21 obligations is uncertain.
22 Q Is a -- well, let me back up. Has Highland -- did
23 Highland Capital ever invest in unsecured claims in connection
24 with bankruptcy proceedings?
25 A Yes.

1 Q And in terms of the -- on the spectrum of risk, where does
2 an unsecured creditor claim in a bankruptcy proceeding kind of
3 rank in terms of the uncertainties or risk, from your
4 perspective?
5 A It's high risk. It's a -- yeah, it would be highly-
6 distressed, generally.
7 Q Explain to us -- I know the Court is very familiar with
8 claims trading. Explain to us from your perspective as an
9 investment -- a seasoned investment expert or executive what
10 those risks are. What types of risk are associated with such
11 an investment?
12 A You have to evaluate the assets tied to the claim
13 specifically. Or if it's an unsecured in general, the assets
14 in general in the estate.
15 You have to handicap the realization that a distressed
16 seller might not get full value for something. You have to
17 handicap the likelihood around that. And then you have to
18 handicap the timing, and then you have to handicap the
19 expenses and the other obligations of the estate, and then
20 handicap risk items that aren't known or that are difficult if
21 not impossible to underwrite, like unknown litigation or last-
22 minute litigation or claims or something.
23 Q And all these handicapping, this handicapping process, how
24 does that impact the price or the investment that you're
25 willing to make? Generally?

1 A Generally, you put a much higher discount rate. You know,
2 like if you would do debt at 10 percent and a normal public
3 equity at a 15 percent return, you would do distressed or
4 private equity investing at a 20, 25 percent return
5 expectation to offset the risk and the unknowns.
6 Q In order to handicap an investment in an unsecured
7 creditor's claim appropriately to reach an informed decision,
8 what type of data would you need to have access to?
9 MR. MORRIS: Objection to the form of the question.
10 He's not here as an expert. He's here as a fact witness. He
11 should -- he should limit himself to that instead of talking
12 about what investors should be doing.
13 MR. MCENTIRE: Well, Your Honor, with all due
14 respect, he's here as the former CEO of Highland Capital. He
15 has experience, firsthand knowledge experience, and he also
16 has expertise because of his education, his career, and
17 training.
18 And again, there's no limitation here under the Rules
19 about what type of information I can elicit from him in this
20 proceeding. This is, whether you call it expert testimony, I
21 call it personal knowledge, but it has some expert aspects to
22 it, but I think that's fair and appropriate.
23 THE COURT: Well, I think you can ask what kind of
24 data would you rely on, would Highland Capital or entities
25 he's been in charge of rely on, --

1 MR. MCENTIRE: I understand.
2 THE COURT: -- but not what would people rely on. So
3 I sustain the objection partially.
4 MR. MCENTIRE: All right.
5 BY MR. MCENTIRE:
6 Q Mr. Dondero, I'll rephrase the question. When you were
7 the chief executive officer of Highland Capital before Mr.
8 Seery took the reins, and you, your company, Highland Capital,
9 was investing in an unsecured creditor's claims, what due
10 diligence, what type of information would you expect your team
11 to explore and investigate?
12 A Sure. Distressed investment in a trade claim would be
13 among our thickest folders, it would be among our most
14 diligenced items, because you have those three buckets, the
15 value of the assets, again, and the ability and timing of
16 monetization of those as a not strong -- as a weak seller, and
17 then you would have the litigation or claims against those,
18 and then you would have to also have a third section of
19 analysis for the litigation risk of the estate overall.
20 Q What type of legal analysis or legal due diligence would
21 you have required as the CEO of Highland Capital?
22 A At Highland, we would have had third-party law firms, in
23 addition to our own legal staff, in addition to our own
24 business professionals, reviewing all the analysis and the
25 assumptions.

1 Q With regard to a financial analysis, what types of
2 financial due diligence would you have required?
3 A It would have been a detailed -- a detailed analysis of
4 all the cash flows on the particular underlying investments,
5 and an evaluation and valuation of what those companies or
6 investments were worth.
7 Q Why is it important to look at the underlying value of the
8 asset?
9 A Because that -- those are what will be monetized in order
10 to give you a return on the claims or securities that you buy
11 in a distressed situation.
12 MR. MCENTIRE: Tim, would you please put up Exhibit
13 4?
14 MR. MORRIS: Your Honor, I don't mean to be
15 monitoring your time, but we're at the 1:30 --
16 THE COURT: I was just checking the clock here.
17 Let's do take a break. So, --
18 MR. MCENTIRE: All right.
19 MR. MORRIS: Your Honor, can we have an instruction
20 to the witness not to --
21 THE COURT: Yes.
22 MR. MORRIS: -- look at his phone and not to confer
23 with anybody? Because we had that incident once before.
24 THE COURT: Okay. Well, I don't --
25 THE WITNESS: I don't have my phone.

1 THE COURT: Okay.
2 THE WITNESS: My phone's at the front desk.
3 THE COURT: So, no discussions with your lawyers or
4 -- I guess he doesn't have his phone -- during this break.
5 MR. MORRIS: Thank you, Your Honor.
6 THE COURT: All right. So, I really think this will
7 take five minutes, so don't go far.
8 (Off the record, 1:33 p.m. to 1:47 p.m.)
9 THE COURT: Okay. We will go back on the record,
10 then, in the Highland matter.
11 MR. MCENTIRE: I'm just going to grab him right now.
12 THE COURT: Okay. We are, for the record, waiting on
13 Mr. Dondero to take his place again on the witness stand.
14 (Pause.)
15 THE COURT: All right, Mr. Dondero. We're ready for
16 you to resume your testimony.
17 All right. Mr. McEntire, you may proceed.
18 MR. MCENTIRE: Thank you, Your Honor.
19 DIRECT EXAMINATION, RESUMED
20 BY MR. MCENTIRE:
21 Q Mr. Dondero, when we left off, I was just putting up what
22 I requested as Exhibit 4.
23 MR. MCENTIRE: And Tim, if you can put that back up,
24 please.
25 BY MR. MCENTIRE:

1 Q Mr. Dondero, can you identify Exhibit #4, please?
2 A Yes. These are notes I took contemporaneous with three
3 conversations with guys at Farallon.
4 Q I didn't quite hear you. Did you say contemporaneous?
5 A Yes.
6 Q So, you say with three conversations. Who were the
7 conversations with?
8 A One was with Raj Patel that was fairly short, and he
9 deflected me to Mike Linn, who was the portfolio manager in
10 charge and had done the transactions.
11 Q Which transactions?
12 A The buying of the claim, the Highland claims.
13 Q All right. And what was your purpose in making these
14 notes?
15 A We'd been trying nonstop to settle the case for two-plus
16 years. We'd been counseled that it was a Kabuki dance that
17 would just, you know, all settle at the end, and it never
18 quite happened that way. And when we heard the claims traded,
19 we realized there were new parties to potentially negotiate to
20 resolve the case.
21 The ownership was initially hidden, but we were able to
22 find out pretty quickly that Farallon was Muck. So I reached
23 out the Farallon guys.
24 Q All right. And were you ever able at that time to
25 determine who was affiliated with Jessup, the other special-

1 purpose entity?
2 A We -- initially, we thought Farallon was all of the
3 entities. We didn't find out about Stonehill -- it was more
4 difficult and they had taken more efforts to hide the
5 ownership in Stonehill. We didn't find out for two more
6 months.
7 Q So your first conversation was with Mr. Patel?
8 A Yes.
9 Q And did you call him?
10 A Yes.
11 Q Your first entry, there's a 28 on the left-hand side.
12 What does that 28 refer to, if you recall?
13 A That was the date, I believe.
14 Q Do you believe it was May 28th?
15 A Yes.
16 Q What makes you believe that?
17 A That's what it says.
18 Q Okay. Raj Patel --
19 THE COURT: Is there a way you can show the words
20 that are cut off?
21 MR. MCENTIRE: On this particular one, I can't, Your
22 Honor. We tried, but we can't. No.
23 THE COURT: If I look in the notebook, can I see it?
24 MR. MCENTIRE: I don't think so. I think this is --
25 what you see is exactly what's in the notebook. It's the same

1 document. This is how -- how we -- this is how we have it.
2 BY MR. MCENTIRE:
3 Q Mr. Patel. Who is Mr. Patel?
4 A He's Mike Linn's boss. He's head of -- I believe head of
5 credit at Farallon.
6 Q Okay. And Farallon is based where, if you know?
7 A San Francisco.
8 Q And what kind of company is Farallon, if you know?
9 A They -- they look a lot like Highland. Well, they do real
10 estate. They do hedge funds. They do -- they don't do as
11 many 40 Act or retail funds, but they're -- they're an
12 investor.
13 Q Mr. Patel. What did he tell you during this phone call?
14 A That he bought it because Seery told him to buy it and
15 they had made money with Seery before.
16 Q All right. And how long did the call last?
17 A Not long.
18 Q Okay. You said he referred you to Mr. -- who was the
19 person?
20 A To Mike Linn.
21 Q Who is Mike Linn?
22 A Mike Linn is a portfolio manager that works for Mr. Patel.
23 Q And did you call Mr. Linn?
24 A Yes.
25 Q All right. The notes here, do these reflect several

1 conversations?
2 A The first one reflects a conversation with Raj Patel, and
3 then the rest of it reflects two conversations with Mike Linn.
4 Q All right. Where does the first conversation with Mike
5 Linn start and where does it end?
6 A It ends -- it begins at the 50, 70 cents. We knew that
7 they had -- that the claims had traded around 50 cents. And I
8 said we'd be willing to pay 70 cents. We'd like to prevent
9 the $5 million-a-month burn. We'd like to buy your claims.
10 Q Why 70 cents? What was -- what was that all about?
11 A I was trying to give them a compelling premium that was
12 still less than I had offered the UCC three months earlier.
13 Q And so you have: Not compelling, Class 8. What does that
14 mean?
15 A He said that was -- he just said 70 cents wasn't
16 compelling.
17 Q There's a reference to: Asked what would be compelling.
18 Was that a question you asked him?
19 A Yes.
20 Q And what was his response?
21 A He said he had no offer. And he -- we had heard he paid
22 50 cents and I offered him 70 cents and then -- but he was
23 clear to me that he wouldn't tell me what he paid. And so the
24 next time I called him I -- I -- instead of just making it
25 cents on the dollar, I said I'd pay 130 percent of whatever he

1 did pay. You don't have to tell me what you paid, but I'll
2 pay you 30 percent more than you paid, you know, a couple
3 months ago. And -- or we thought they notified the Court when
4 they just bought it, but they had actually negotiated buying
5 it back in February. January or February. So --
6 Q Who told you that they bought it in February or March time
7 frame?
8 A He did.
9 Q Okay. Was this during the first or the second phone --
10 MR. MORRIS: I apologize for interrupting. Who's the
11 "he"?
12 MR. MCENTIRE: Mike Linn.
13 THE WITNESS: Mike Linn.
14 MR. MORRIS: Thank you so much.
15 MR. MCENTIRE: I'll make sure the record --
16 BY MR. MCENTIRE:
17 Q Mike Linn --
18 A Yes.
19 Q -- told you that Farallon had bought their interest in the
20 claims back in the February or March time frame?
21 A Yes.
22 Q All right. Bought assets with claims. What does that
23 refer to?
24 A He said it wasn't compelling because he said Seery told
25 him it would be worth a lot more. He -- he confirmed what Raj

1 said, that -- I said, do you realize the estate is spending $5
2 million a month on legal fees? That, you know, you should
3 want to sell this thing. And he said Seery told him it was
4 worth a lot more and there were claims and litigation beyond
5 the asset value.
6 Q You offered him 40 to 50 percent premium. What is that?
7 A That's what the 70 cents on the 50 cents represents. And
8 then I changed the dialogue to I'll pay you 130 percent of
9 whatever your cost was. And he said, not compelling. And
10 then I, both -- both calls, I pressed him, what price would he
11 offer at? And he said he had no offer, he wasn't willing to
12 sell.
13 Q The 130 percent of cost, not compelling, was that in the
14 second or the third call with Mr. Linn?
15 A It was at my third and final call with Farallon. My
16 second call with Mike Linn was the 130 percent of cost.
17 Q And he said not compelling? You put it in quotation
18 marks?
19 A Yep.
20 Q And then you said, no counter. What does that mean?
21 A He wouldn't -- he wouldn't give an offer, he wouldn't give
22 a price at which he would sell.
23 Q What did Mike Linn tell you, in effect, with regard to his
24 due diligence that Farallon had undertaken?
25 A When I -- when I told him about the risks and the

1 litigation and the burn, he said he wasn't following the case,
2 he wasn't aware of it, he was depending on Jim Seery.
3 Q What, if anything, did Michael Linn tell you about MGM?
4 A That was more the initial Raj Patel call, where he said we
5 bought it because he was very optimistic regarding MGM.
6 Q Okay. Did you have any understanding when he first got
7 his optimism about MGM?
8 A No. He just said that's why they had bought it initially,
9 they were very optimistic about MGM.
10 Q That's why they had bought it initially?
11 A Yes.
12 Q And they had bought it initially in the February-March
13 time frame?
14 A Yes.
15 Q And that -- would you -- does that predate the public
16 disclosure of the MGM sale to Amazon?
17 A Yes.
18 Q Substantially by a couple of months?
19 A Yes.
20 Q I'd like to turn your attention now to a different topic.
21 MR. MCENTIRE: And Tim, if you could pull up Exhibit
22 8, please.
23 I believe this document is already in evidence, Your
24 Honor.
25 THE COURT: 8 is?

1 MR. MCENTIRE: Oh, by the way, I offer Exhibit 4 into
2 evidence.
3 BY MR. MCENTIRE:
4 Q Let me ask you a couple quick questions.
5 THE COURT: Is there an objection?
6 MR. MORRIS: Nope.
7 THE COURT: Okay. 4 is admitted.
8 (Hunter Mountain Investment Trust's Exhibit 4 is received
9 into evidence.)
10 BY MR. MCENTIRE:
11 Q Exhibit 8.
12 MR. MORRIS: I apologize, Your Honor. Just one
13 caveat. It's not for the truth of the matter asserted; it's
14 for what his impressions were at the time.
15 MR. MCENTIRE: Well, --
16 MR. MORRIS: This is what he wrote down. I don't --
17 MR. MCENTIRE: I'm offering it for the truth of the
18 matter asserted.
19 MR. MORRIS: Okay. And I object to that extent.
20 This --
21 MR. MCENTIRE: Let me --
22 MR. MORRIS: Can I *voir dire*? Can I *voir dire*? May
23 I do --
24 MR. MCENTIRE: May I finish my statement that I was
25 --

1 THE COURT: Let him finish, and then --
2 MR. MCENTIRE: Thank you.
3 THE COURT: -- you can.
4 MR. MCENTIRE: I am offering it for the truth of the
5 matter asserted because these are documents that were prepared
6 contemporaneously, it's an exception to the hearsay rule and
7 reflects admissions of a -- of an adverse party. Admissions
8 that are adverse to their interests. Declarations of interest
9 adverse to their interest and admissions of an adverse party
10 contemporaneously recorded. And so that's why I'm offering
11 it.
12 MR. MORRIS: For all purposes?
13 THE COURT: Okay. Let me have you point me to the
14 exact hearsay exception. I understand this hearsay exception
15 you're arguing for the hearsay within the hearsay, the party
16 opponent exception. But it's technically hearsay of Mr.
17 Dondero, even though he's here on the stand.
18 MR. MCENTIRE: Well, I could lay a foundation, then.
19 BY MR. MCENTIRE:
20 Q Mr. Dondero, --
21 THE COURT: Well, no. I'm asking for what your --
22 MR. MCENTIRE: It's --
23 THE COURT: -- rule reference is.
24 MR. MCENTIRE: I don't have the Rules with me right
25 this second. It's 803(1) --

1 (Discussion.)
2 MR. MCENTIRE: All right. Well, it's -- it's
3 admissible under several categories. It's not hearsay because
4 it's an admission of a party opponent. It's also an admission
5 under 803(1), present sense impression. It's also admissible
6 --
7 THE COURT: So you say it's Mr. Dondero's statement
8 describing or explaining an event --
9 MR. MCENTIRE: Yes.
10 THE COURT: -- or admission made while or immediately
11 after the declarant perceived it?
12 MR. MCENTIRE: Yes. It's also a record of a
13 regularly-conducted activity, which is 803(6). And I think
14 it's also not technically hearsay because it's also an
15 admission of a party. So, this --
16 THE COURT: Well, that's the hearsay within the
17 hearsay.
18 MR. MORRIS: Yeah.
19 THE COURT: But I'm -- I'm --
20 MR. MORRIS: That can't possibly be right. I can't
21 go back to my hotel right now and write down that he told me
22 that he did a bad thing and come in here tomorrow and say he
23 admitted he did a bad thing because it's in my notes.
24 MR. MCENTIRE: Well, --
25 MR. MORRIS: That's can't possibly be the law.

1 MR. MCENTIRE: Well, --
2 MR. MORRIS: That's not the law.
3 MR. MCENTIRE: There are two hearsay issues here.
4 One is whether this is a business record or otherwise
5 qualifies as an exception to the hearsay rule, and then
6 there's an internal hearsay issue of whether or not what Mr.
7 Patel and Mr. --
8 THE COURT: You haven't established the business
9 record exception. Okay?
10 MR. MCENTIRE: I'm prepared to lay the foundation
11 right this second. At this moment.
12 THE COURT: You may proceed.
13 BY MR. MCENTIRE:
14 Q Mr. Dondero, is this a document that was generated by you
15 in the ordinary course of your business?
16 A Yes.
17 Q Did you have personal knowledge when you recorded this
18 document?
19 A Yes.
20 Q You personally recorded this document, correct?
21 A Yes.
22 Q And you have had custody of this document. Correct?
23 A Yes.
24 Q And this is --
25 MR. MCENTIRE: That's a -- that's a business record,

1 Your Honor.
2 MR. MORRIS: May I, Your Honor?
3 THE COURT: You may.
4 MR. MORRIS: Okay.
5 VOIR DIRE EXAMINATION
6 BY MR. MORRIS:
7 Q Where's the document now? How come it's -- how come it's
8 cut off?
9 A I don't know.
10 Q Do you have the document today? How come we're looking at
11 a document that's cut off?
12 A I'm sure we have it somewhere. I don't have it.
13 MR. MORRIS: So, number one, Your Honor, we don't
14 have the actual document. We have a partial document.
15 Number two, let's talk about it for a second.
16 BY MR. MORRIS:
17 Q You say that you do this in the ordinary course of
18 business. What's the purpose of taking these notes?
19 A When I'm starting negotiation with somebody new on
20 something complicated and I don't know what their concerns or
21 rationale is going to be, I take little notes like this.
22 Q And is it -- is it the purpose of it to capture the
23 important things that are going on in the conversation?
24 A So I know next time how to address it differently, you
25 know.

1 Q That's not my question. My question is, is the purpose of
2 taking notes so that you have a written record of the
3 important points that you discussed?
4 A Yes, so I know how to address it the next time.
5 Q Okay. And among the important points that you never put
6 down on these notes was the letters MGM. Is that correct?
7 A Correct.
8 Q Okay. And you never put down here that Michael Linn told
9 you he wasn't following the case, correct?
10 A No, I did not.
11 Q Okay.
12 A But it was --
13 Q And --
14 A Yeah. But I --
15 Q That --
16 MR. MORRIS: Your Honor, if this is --
17 MR. MCENTIRE: (faintly) This is *voir dire* of the
18 witness for a business record exception.
19 MR. MORRIS: No, because --
20 THE COURT: Overruled.
21 MR. MORRIS: Thank you.
22 BY MR. MORRIS:
23 Q Mr. Patel wouldn't tell you how much he paid and that's
24 why you didn't write it down, right?
25 A Mr. Patel told me he bought it because of Seery. My

1 conversation was very short with him. That was one of the few
2 things he said. Linn said he wouldn't sell it because he
3 didn't find it compelling.
4 Q Okay.
5 A And Linn was the one who wouldn't tell me --
6 Q Okay.
7 A -- the price.
8 Q But -- but even though you took these notes to write down
9 things that you thought were important, you didn't write down
10 MGM. Correct?
11 A Yes.
12 Q And you didn't write down that anybody was very optimistic
13 about MGM. Correct?
14 A No, I did not.
15 Q And you didn't write down that Mr. Linn told you he wasn't
16 following the case. Correct?
17 A Well, he said the same thing Patel said about he bought it
18 because of Seery. He did confirm that. I didn't see any
19 reason to write that again.
20 Q You didn't -- you never wrote it down. Not once. Not --
21 there's nothing about again, right. You never wrote down that
22 --
23 A No, I did write --
24 Q -- anybody ever told you they weren't following the case.
25 Correct?

1 A Correct.
2 Q Okay.
3 A But I wrote down that he bought it because of Seery.
4 Q Okay.
5 MR. MORRIS: Your Honor, no objection. It can go in.
6 MR. MCENTIRE: Okay.
7 THE COURT: Wait. Did you just say no objections?
8 MR. MORRIS: Except -- except for the hearsay on
9 hearsay. It can't possibly be an admission. It's his -- it's
10 his notes. This is what he wrote. It can come in for that
11 purpose. It's -- it's a -- that's what he's testified to, and
12 I can't object to that. But it can't possibly come in as an
13 admission against Farallon.
14 MR. MCENTIRE: Well, I disagree.
15 MR. MORRIS: That's the point.
16 MR. MCENTIRE: Well, first of all, I disagree. This
17 is otherwise admissible, and it can come. I think that's
18 really, Your Honor, that's really the weight it's going to be
19 given. It comes in. He's not making an objection to its
20 admissibility. And if he wants to argue the weight of the
21 document, that's a different issue.
22 MR. STANCIL: Your Honor, if I may.
23 THE COURT: You may.
24 MR. STANCIL: The second layer of hearsay goes to
25 whether this is a statement by Farallon. It is a statement by

1 Mr. Dondero of what he heard, what he says he heard Farallon
2 say. 801(d) refers to, when they're talking about an opposing
3 party statement, made by the party, not made by a listener who
4 says he heard the party. This is classic hearsay within
5 hearsay. It's not admissible for that purpose.
6 THE COURT: Okay. I sustain the objection, and --
7 but I'm still struggling to understand what the Respondents
8 have agreed to. Because --
9 MR. MORRIS: That -- that this is what he claims to
10 have written down. I mean, right? So, so --
11 THE COURT: Okay.
12 MR. MORRIS: -- a present sense impression.
13 THE COURT: So, it is admitted as Mr. Dondero's
14 present sense impression, but it's not admitted as to the
15 truth of anything that Claims Purchasers may have said.
16 MR. MORRIS: And -- and the --
17 THE COURT: That's what you're saying?
18 MR. MORRIS: Yes. And the most important thing is
19 that he's testified that the purpose of the notes was to
20 capture the things that were important that he was told. And
21 we've established what he wasn't told.
22 MR. MCENTIRE: Okay. I believe the document is in
23 evidence, Your Honor.
24 THE COURT: Exhibit 4 is in evidence. But, again,
25 there's no admission in here as to what Claims Purchasers

1 testified as to.
2 MR. MCENTIRE: Well, they haven't testified yet
3 because --
4 THE COURT: This is what he --
5 THE DEFENDANT: I understand. I understand.
6 THE COURT: -- he says he remembers.
7 MR. MCENTIRE: Okay. So, --
8 THE COURT: It's sort of an --
9 MR. STANCIL: Your Honor, just so we're clear for our
10 record, this is not admitted for the truth of what Farallon is
11 purported to have said.
12 MR. MCENTIRE: Correct.
13 THE COURT: Correct.
14 MR. MCENTIRE: This --
15 MR. STANCIL: Thank you.
16 MR. MCENTIRE: This is offered for the truth of what
17 Mr. -- Mr. Dondero recalls them saying.
18 THE COURT: Okay.
19 MR. MCENTIRE: In part.
20 THE COURT: I think -- I think we're on the same page
21 now. I think. I think.
22 (Hunter Mountain Investment Trust's Exhibit 4 is received
23 into evidence.)
24 MR. MCENTIRE: All right. May I proceed, Your Honor?
25 THE COURT: You may.

1 MR. MCENTIRE: Can you please put up Exhibit 8,
2 please? And I believe this document has been put into
3 evidence --
4 THE COURT: It is.
5 MR. MCENTIRE: Thank you.
6 BY MR. MCENTIRE:
7 Q Mr. Dondero, this document is a -- part of a -- the
8 Court's docket. It was filed on February 1, 2021, if you
9 could go to the top upper banner. It's Debtors' Notice of
10 Filing of Plan Supplement of the Fifth Amended Plan of
11 Reorganization of Highland Capital Management, as Modified.
12 Do you see that?
13 A Yes.
14 Q I'll direct your attention, --
15 MR. MCENTIRE: If you could go to Page 4, please, for
16 me, Tim.
17 BY MR. MCENTIRE:
18 Q Page 4 has a schedule, a plan analysis and a liquidation
19 analysis. Do you see that?
20 A Yes.
21 Q All right. For Class 8, what does it identify that is
22 being projected for distributions to the general unsecured
23 claims for Class 8?
24 A 71.3 percent.
25 Q What percentage is being identified that will be

1 distributed to Class 9?
2 A 9, no distribution.
3 Q No distribution? All right. Mr. Dondero, in Paragraph --
4 I'm going to give you a piece of paper.
5 MR. MCENTIRE: Can you just give me a piece of paper
6 real quick?
7 BY MR. MCENTIRE:
8 Q I'm handing you a piece of paper and I'm --
9 A Okay. Thank you.
10 Q Mr. Dondero, in our complaint in this case, the proposed
11 complaint in this case, we allege that Class 8 had a total of
12 $270 million, the claims that were purchased by Farallon and
13 Stonehill had a face value in Class 8 of $270 million. Would
14 you write that number down?
15 And assuming that this was public information that was
16 available in February of 2021 at 71.32 percent, --
17 MR. MORRIS: Objection, Your Honor. That's an
18 assumption not in evidence. He hasn't laid a foundation for
19 what was available in February in 2021.
20 BY MR. MCENTIRE:
21 Q Mr. Dondero, according to --
22 THE COURT: Wait. Are you going to respond, or are
23 you just going to --
24 MR. MCENTIRE: I'll rephrase the question.
25 THE COURT: -- rephrase? Okay.

1 BY MR. MCENTIRE:
2 Q According to the document that is identified as Exhibit #8
3 that says that 71.32 percent is the anticipated projected
4 payout on Class 8 claims, what is 71.32 percent of the face
5 value of the claims that were purchased?
6 A About $192 million.
7 Q $192 million? And assuming for a moment that, as alleged
8 by Hunter Mountain in this case, that $163 million was
9 actually used to purchase the Class 8 claims, what is the
10 difference?
11 A About $30 million.
12 Q A little less than that, isn't it? Or is the number --
13 A Yeah. $28 million or whatever.
14 Q $28 million? And based upon your years of experience in
15 running Highland Capital, being involved in the purchase of
16 unsecured claims, being involved in investigating and
17 acquiring distressed assets, that return over a two-year
18 period, is that the kind of return that a hedge fund would
19 typically -- you would expect to receive?
20 MR. MORRIS: I just want to make sure that -- because
21 the question changed a little bit in the middle. If he wants
22 to ask him if he would have made the investment, that's fine.
23 But he should not be permitted to testify as to what any other
24 investor, including the ones who purchased these claims, would
25 have done. Every -- there's different risk profiles. He can

1 testify to whatever he wants about himself.
2 THE COURT: Sustained.
3 BY MR. MCENTIRE:
4 Q Go ahead. Based upon your experience at Highland Capital,
5 would Highland Capital have ever acquired those claims based
6 upon that kind of return over two years? For a distressed
7 asset such as this?
8 A No.
9 Q Why not?
10 A It's below a debt level return that you could get on high-
11 rated assets with certainty. It's --
12 Q What do you mean by it's below -- below a debt return that
13 you could get on collateralized assets? What do you mean by
14 that?
15 A I think in this case the debt that the Debtor put in place
16 paid 12, 13 percent and was triple secured or whatever. So no
17 one would buy the residual claims for an 8 percent compounded,
18 whatever that $28 million works out to.
19 MR. MORRIS: I move to strike, Your Honor. He
20 shouldn't be talking about or testifying to what other people
21 might do.
22 THE WITNESS: Well, we --
23 THE COURT: This is --
24 THE WITNESS: We would never have done that.
25 THE COURT: This is --

1 MR. MCENTIRE: He would not have.
2 THE COURT: -- Highland, not nobody. Okay.
3 BY MR. MCENTIRE:
4 Q Mr. Dondero, and what is it about the fact that these
5 claims are not collateralized that impacts the decision-
6 makers, from your perspective?
7 A You have all the risk that the $205 million of expenses
8 this estate has currently paid grows to $300 or $400 million.
9 You know, you have the risk that other litigation regarding
10 Seery violating the Advisers Act --
11 MR. MORRIS: I move to strike, Your Honor.
12 THE WITNESS: -- results in --
13 THE COURT: Sustained.
14 THE WITNESS: -- expenses.
15 BY MR. MCENTIRE:
16 Q Just respond to my question, sir. What does the fact
17 about not being collateralized, how does that impact the
18 decision-maker's --
19 A Well, I was trying to answer it. You just have all kinds
20 of residual risk of bad acts that have happened at the estate
21 or expenses increasing or whatever.
22 MR. MORRIS: I move to strike the phrase "bad acts,"
23 Your Honor.
24 THE COURT: Overruled.
25 BY MR. MCENTIRE:

1 Q What did you mean by that? What did you mean by "bad
2 acts"?
3 A We've highlighted it in a lot of complaints. There's been
4 several violations of the Advisers Act.
5 MR. MORRIS: Move to strike, Your Honor. It's a
6 legal conclusion.
7 THE COURT: Sustained.
8 BY MR. MCENTIRE:
9 Q Mr. Dondero, are you familiar with an entity known as NHF?
10 A Yes.
11 Q What is NHF?
12 A A NexPoint hedge fund. It was a closed-in fund that we
13 manage still to this day at NexPoint. The name has changed to
14 NXDT.
15 Q Was NHF publicly traded?
16 A It -- yeah, it's a publicly-traded equity. It's a closed-
17 in fund, technically, but it's a publicly-traded security.
18 Q What -- what is your affiliation with NHF?
19 A I'm the portfolio manager.
20 Q And, again, what are your responsibilities as the
21 portfolio manager?
22 A To optimize the portfolio and hopefully exceed investor
23 expectations.
24 Q Have you become aware that Stonehill was purchasing MGM
25 stock in the first quarter of 2021? And NHF?

1 A Yes. We believe -- we're able to demonstrate from
2 Bloomberg records, on the Bloomberg terminal, they show up as
3 holders and purchasers in the -- in the first few months of
4 2021.
5 Q What magnitude?
6 A I think it was one of their top equity positions. It was
7 about six million bucks.
8 MR. MCENTIRE: Can you put up the chart? This is for
9 demonstrative purposes only.
10 I'm not offering this chart into evidence, Your Honor.
11 It's simply a demonstration. Or a demonstrative.
12 MR. MORRIS: Your Honor, there's no such thing.
13 MR. MCENTIRE: There is.
14 MR. MORRIS: A demonstrative has to be based on
15 evidence. A demonstrative is supposed to summarize evidence.
16 You don't put up a demonstrative until --
17 THE COURT: All right. What's your response to that?
18 MR. MCENTIRE: That I'm about to walk through some
19 points where he can establish as a point of evidence, and then
20 we can talk about it. Demonstratives, demonstratives are used
21 all the time, Your Honor.
22 MR. MORRIS: It's to --
23 THE COURT: Well, they summarize evidence.
24 MR. MORRIS: It's to summarize evidence.
25 THE COURT: Yes. So, --

1 MR. MCENTIRE: Well, this is --
2 THE COURT: -- you can elicit the evidence, and then
3 if this chart seems to summarize whatever he testifies as to,
4 then --
5 MR. MCENTIRE: All right.
6 THE COURT: -- then I think maybe you can put it up.
7 MR. MCENTIRE: Mr. -- you can take it down, Tim.
8 BY MR. MCENTIRE:
9 Q Mr. Dondero, do you have an understanding of how much
10 total distributions have been paid to date in the Highland
11 bankruptcy?
12 A I believe the Class 8 -- the 1 through 7 was only about
13 $10 million. I believe Class 8 got $260 or $270 million so
14 far.
15 Q All right. And do you have an understanding of what the
16 total amount of expenses are?
17 A Total expenses paid to date was $203 million. $205
18 million.
19 Q So the -- the -- there's a rough approximation between the
20 professional expenses and the actual all proofs of claim; is
21 that correct?
22 A There is, yeah, a ratio, and -- yes.
23 Q The total cash flow, if you add those two together, what
24 are they? What are they approximately?
25 A $470 million.

1 Q $470 million? And do you understand that the -- that the
2 Reorganized Debtor and the Claimant Trust would have more than
3 sufficient assets to reach Class 10 where Hunter Mountain is
4 currently located, even setting aside the claims against you?
5 A Correct. There's $57 million of cash on the balance
6 sheet, net of a couple million today, I guess. And then
7 there's $100 million of other assets.
8 MR. MCENTIRE: Reserve the rest of my questions.
9 Reserve the rest of my questions, Your Honor.
10 THE COURT: Okay. Pass the witness.
11 MR. MCENTIRE: Could I have my time estimate?
12 THE COURT: Yes. Caroline?
13 THE CLERK: (faintly) As of right now, we are at 81
14 minutes, so --
15 MR. MCENTIRE: Thank you.
16 THE COURT: That was 81 minutes total?
17 THE CLERK: Yes.
18 THE COURT: Okay.
19 MR. MORRIS: May I proceed, Your Honor?
20 THE COURT: You may.
21 CROSS-EXAMINATION
22 BY MR. MORRIS:
23 Q Good afternoon, Mr. Dondero.
24 A Good to see you.
25 Q My pleasure. Do you know an attorney named Ronak

1 (phonetic) Patel?
2 A Is that Rakhee that they call --
3 Q Could be. Do you know an attorney named Rakhee Patel?
4 A There was a Rakhee Patel, I believe, early in the *Acis*
5 case.
6 Q Let me try --
7 A I'm not -- I've never met her.
8 Q Let me try this differently.
9 A Okay.
10 Q Did you ever meet with the Texas State Securities Board?
11 A No.
12 Q Did anybody acting on your behalf ever file a complaint
13 with the Texas State Securities Board?
14 A No.
15 Q Do you know if anybody's filed a complaint with the Texas
16 State Securities Board? About Highland?
17 A I believe you covered it earlier. Mark Patrick.
18 Q Mark Patrick what?
19 A I guess he did, or Hunter Mountain did, or the DAF did. I
20 don't -- I don't know.
21 Q Did you ever speak with Mark Patrick about a TSSB
22 investigation of Highland?
23 A No.
24 Q Okay. Why do you think Mark Patrick knows about the TSSB
25 investigation of Highland?

1 MR. MCENTIRE: Objection to form. Calls for
2 speculation. He's just established that he's never --
3 THE WITNESS: I don't know.
4 MR. MCENTIRE: -- talked to Mark Patrick.
5 MR. MORRIS: Okay.
6 THE COURT: Okay. Sustained.
7 MR. MORRIS: Okay.
8 BY MR. MORRIS:
9 Q Have you ever seen the draft Hunter Mountain complaint in
10 this case?
11 A No.
12 Q Okay. I think you testified a moment ago that Amazon had
13 hit MGM's price by December 17th. Do I have that right?
14 A Yes.
15 Q Okay. Then how come you didn't say that in your email to
16 Mr. Seery?
17 A Your best practices and typical practices, when you put it
18 on the restricted list, is to just give as little information
19 as possible so that the inside information isn't promulgated
20 specifically throughout the organization and leaked --
21 Q So, --
22 A -- throughout the organization.
23 Q So, even though your intent was to convey information to
24 Mr. Seery, you didn't actually tell him the truth, right? You
25 didn't tell him that Amazon had actually hit the stock price.

1 Right?
2 A I wouldn't characterize it that way.
3 Q Okay. In fact, all you told him was that they were
4 interested. Isn't that right?
5 A I wasn't telling him anything. I was telling Compliance,
6 as an investment professional, that it needed to be on the
7 restricted list because we were in possession of material
8 nonpublic information regarding a merger that was going to go
9 through shortly. Or in the next few months.
10 Q Is it your testimony that, as of December 17th, Amazon had
11 made an offer that was acceptable to MGM?
12 A Yeah, we were going into -- that's what the board meeting
13 was. We were going into exclusive negotiations to culminate
14 the merger with them.
15 Q Okay. I think you have a binder there of our exhibits.
16 If you can go to #11.
17 A Which one?
18 MR. MORRIS: May I approach?
19 THE WITNESS: Sure.
20 (Pause.)
21 BY MR. MORRIS:
22 Q That's your email, sir, right?
23 A Yes.
24 Q Okay. It doesn't say anything about Amazon hitting the
25 price, right?

1 A It doesn't need to.
2 Q In fact, it still mentions Apple, doesn't it? Why did you
3 feel the need to mention Apple if Amazon had already hit the
4 price?
5 A The only way you generally get something done at
6 attractive levels in business is if two people are interested.
7 Q But why weren't you -- why were you creating a story for
8 the Compliance Department when the whole idea was to be
9 transparent so they would understand what was happening? Why
10 would you create a story that differed from the facts?
11 A It didn't differ from the facts, and it's not a story.
12 It's a, we have material nonpublic information. Please put
13 this on the restricted list. And --
14 Q But that -- but you said Amazon and Apple are actively
15 diligencing and they're in the data room. Do you see that?
16 A That's true.
17 Q So, even though -- you know what, I'll move on. But this
18 -- this doesn't say what you testified to earlier, that Apple
19 hit the -- that Amazon hit the price. Right? Can we just
20 agree on that?
21 A Well, agree that it doesn't have to and it's not supposed
22 to.
23 MR. MORRIS: I move to strike. I just want --
24 THE COURT: Sustained.
25 BY MR. MORRIS:

1 Q -- you to -- I want you to just work with me here. You
2 did not tell the Compliance Department that Apple -- that
3 Amazon had hit the strike price. Right? Isn't that correct?
4 That's not what this email says?
5 A The -- you can pull up a hundred of these type emails.
6 They're not specific.
7 MR. MORRIS: I'm going to move to strike and I'm just
8 going to ask you, --
9 THE COURT: Sustained.
10 BY MR. MORRIS:
11 Q -- because you testified to one thing, and I just want to
12 make clear that you told the Compliance Department something
13 different. Can we just agree on that?
14 MR. MCENTIRE: Well, Your Honor, may I respond to his
15 motions to strike? I think he's becoming argumentative.
16 THE COURT: Could you speak into the mic, --
17 MR. MCENTIRE: I can.
18 THE COURT: -- please.
19 THE COURT: He's becoming argumentative. And I think
20 it's very clear that, if he asks a question, the witness has a
21 right to respond. I think his answers are totally responsive.
22 And I don't think anything should be struck.
23 THE COURT: Okay. Your question was you didn't put
24 in there anything about it hit the strike price --
25 MR. MORRIS: He didn't --

1 THE COURT: -- or whatever?
2 MR. MORRIS: He didn't -- he didn't tell the
3 Compliance Department what he just testified to. In fact, he
4 told the Compliance Department something very different.
5 That's all I'm asking.
6 THE COURT: And I think that's just a yes or no.
7 MR. MORRIS: Okay.
8 BY MR. MORRIS:
9 Q Yes or no? You told the Compliance Department something
10 different than what was actually happening?
11 A That's not true.
12 Q Oh.
13 A Exactly what was here, what was happening. I didn't give
14 more detail, which is more hearsay.
15 Q Okay. If somebody was filing -- following the Highland
16 bankruptcy, they would have known that MGM was very important,
17 right?
18 A You'd have to show me where. I don't -- I don't see it in
19 any of the bankruptcy --
20 Q You don't think that that's true?
21 A I didn't see it in any of the public filings.
22 Q Do you remember we were here two years ago on this very
23 day, June 8, 2021, for the second contempt hearing? You sat
24 in that very witness box during the second contempt hearing?
25 Remember that? That was two years ago.

1 A I remember sitting in the box. What are you asking?
2 Q And do you remember that that was just a few days after
3 MGM had announced its deal with Amazon?
4 A I -- I don't remember -- I -- was that the day the judge
5 was hopeful that would lead to a resolution of the case?
6 Q Exactly. So, --
7 A Okay.
8 Q -- Judge Jernigan certainly knew that MGM was important.
9 Right?
10 A Yes.
11 Q And she's a bankruptcy judge, right?
12 A Yes.
13 Q And she was overseeing the bankruptcy case, right?
14 Correct?
15 A Yes.
16 Q And the very first thing when she walked in the door two
17 years ago on this day was, oh my goodness, MGM, they have a
18 deal, maybe we can finally get to a settlement. Right?
19 A And I wish she had pushed on that.
20 Q Do you --
21 A And I remember you guys dismissing it.
22 Q Do you think she had material nonpublic inside
23 information?
24 A No, I don't think so.
25 Q She probably learned it in the bankruptcy case, right?

1 A Yeah.
2 Q Okay. Do you believe Mr. Seery sold any MGM securities
3 between the day you sent your email and the day the Amazon
4 deal was announced on May 26th?
5 A I don't know.
6 Q Do you -- so you have no knowledge? Let's do this a
7 different way. You have no basis to say that Mr. Seery sold
8 any MGM securities between the moment you sent this email on
9 December 17th and the day the Amazon deal was announced on May
10 26th. Correct?
11 A I'm sorry. Just to clarify, you're saying sold, not
12 bought, right? You're not asking me if --
13 Q I'll do either way.
14 A Okay.
15 Q Fair point.
16 A Sure.
17 Q Very fair point.
18 A Okay.
19 Q Do you believe that Mr. Seery engaged in any transactions
20 of MGM securities between those two relevant data points?
21 A Yes.
22 Q Okay. What do you think he did?
23 A The HarbourVest transaction.
24 Q Okay. So, you learned about the HarbourVest transaction
25 when?

1 A When it was filed.
2 Q And that was on December 23rd. Do you remember that?
3 A Yes.
4 Q It was just less than a week after you sent your email,
5 right?
6 A Yes.
7 Q And do you remember that you filed an objection to the
8 HarbourVest settlement?
9 A Yes.
10 Q And you're the one who gave Mr. Seery this material
11 nonpublic inside information, right?
12 A Yes.
13 Q Did you object to the HarbourVest settlement on the basis
14 that Mr. Seery was engaging in insider trading?
15 A Not then, I don't think. I believe --
16 Q You didn't, right? Even though it was happening at the
17 exact same moment, the very -- within a week of you giving him
18 this information. He's announcing that he's doing this
19 settlement and you don't say a word. Isn't that right?
20 A Because I delegated the responsibility to Compliance by
21 notifying them of material nonpublic information, and
22 Compliance should hold the organization accountable.
23 Compliance is separate and discrete from management.
24 Compliance reports to the SEC.
25 Q You filed a 15-page objection to the settlement, didn't

1 you?
2 A I don't -- I don't know.
3 Q Did you tell Judge Jernigan that Mr. Seery was doing bad?
4 A Not then. I think a month later, two months later.
5 Q Even though you knew what was happening, you didn't say
6 anything, right?
7 A I -- I'm not responsible for all the filings. I --
8 Q Even though it's under your name?
9 A Correct.
10 Q How about -- how about CLO Holdco? Did CLO Holdco file an
11 objection to the HarbourVest settlement?
12 A I -- I don't know which entities did, but it -- whatever
13 entities that were in control that could did, eventually, when
14 they found out, you know, and -- but did -- did they, within a
15 week or contemporaneously? No. It was right around the
16 holidays. A lot of people weren't paying attention. You guys
17 were trying to rush the HarbourVest thing through.
18 Q Sir, CLO Holdco filed an objection, claiming that it was
19 entitled to purchase the HarbourVest interests in HCLOF
20 because it had a right of first refusal, right? Isn't that
21 right?
22 A Okay. I -- what ultimately governs the --
23 Q Isn't that right?
24 A I don't -- okay.
25 Q It's really just yes or no.

1 A I don't know.
2 Q If you don't remember, that's fine.
3 A I don't remember, yeah.
4 MR. MCENTIRE: Your Honor, would he please give the
5 witness an opportunity to answer? He's interrupted three
6 times in less than five seconds. Give the witness an
7 opportunity to respond.
8 MR. MORRIS: This is real easy stuff.
9 THE COURT: Okay.
10 MR. MORRIS: I'm trying to cross him here.
11 MR. MCENTIRE: Your Honor, with all due respect, he's
12 making it very difficult because he's being very aggressive --
13 MR. MORRIS: Nah.
14 MR. MCENTIRE: -- and he's interrupting the witness.
15 MR. MORRIS: I would never.
16 THE COURT: Okay. I don't feel the need to do that
17 right now, but I will -- I will consider your request.
18 THE WITNESS: Can I give a complete answer to his
19 last question, or one that I'd like to be my answer on the
20 record?
21 THE COURT: Go ahead.
22 THE WITNESS: The governing responsibility as a
23 registered investment advisor is you're not allowed to buy
24 back from investors fund interests or investments unless you
25 offer it to everybody else, in writing, in that fund first.

1 That's the Investment Advisers Act as I understand it, and
2 that is what was improper in the HarbourVest transaction. I
3 mean, besides the fact that the pricing was wrong, they misled
4 HarbourVest. And I know HarbourVest hasn't complained, but
5 just because your investors don't complain doesn't mean you
6 can rip them off.
7 MR. MORRIS: I'd really move to strike the entirety
8 of the answer, Your Honor.
9 THE COURT: Granted.
10 BY MR. MORRIS:
11 Q Mr. Dondero, HC --
12 A I'm not going to -- I'm not answering any more questions
13 unless I can answer that question with that answer, --
14 Q Mr. Dondero, do you --
15 A -- because I believe it's responsive.
16 Q Do you remember that CLO Holdco withdrew their objection?
17 A I --
18 Q To the HarbourVest settlement?
19 A I don't remember.
20 Q Do you remember that's really when Grant Scott left the
21 scene?
22 A I don't --
23 Q He thought it was inappropriate for them to withdraw,
24 right?
25 A I don't remember all the details. I know they made some

1 mistakes, and there's a tolling agreement against Kane's
2 (phonetic) firm for making mistakes, and, you know, whatever.
3 But I -- I don't remember all the details.
4 Q And a couple of months later, you conspired with Mr.
5 Patrick to try to sue Mr. Seery in order to try to get that
6 very same interest in HCLOF, right?
7 MR. MCENTIRE: Your Honor, I have to object. There's
8 no foundation and it's also highly argumentative and I move to
9 object. That's a -- that's a question asked in bad faith.
10 THE WITNESS: I deny any conspiring.
11 MR. MORRIS: Okay.
12 THE COURT: Sustained.
13 BY MR. MORRIS:
14 Q In April, Mr. Patrick filed a lawsuit on behalf of CLO
15 Holdco a couple of weeks after getting appointed as the head
16 of CLO Holdco and the DAF about the HarbourVest settlement.
17 Isn't that right?
18 A I believe so.
19 Q Okay. And you worked with him on that, right?
20 A I -- I did not work with him on that. I was very just
21 tangentially aware.
22 Q Okay.
23 MR. MORRIS: I'm just going to refer the Court -- I'm
24 going to move for the admission into evidence of the second
25 contempt order.

1 THE COURT: Exhibit what?
2 MR. MORRIS: Just one moment, Your Honor.
3 (Pause.)
4 MR. MORRIS: You know what, I don't know that I have
5 it on the list. I'm just going to ask the Court to take
6 judicial notice. We had a hearing two years ago to this day,
7 and the Court found in the order that it entered at the
8 conclusion of that hearing that Mr. Patrick had abdicated his
9 responsibility to Mr. Seery. It's one of the reasons why Mr.
10 Seery wasn't held in contempt of Court. And I'd like -- I'd
11 like Counsel to address it now.
12 MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't
13 you?
14 MR. MORRIS: Oh, sorry. I said Seery. I meant
15 Dondero.
16 MR. MCENTIRE: (faintly) Also, I believe it's
17 entirely irrelevant. Judicial -- taking judicial --
18 THE COURT: Would you speak in the microphone,
19 please?
20 MR. MCENTIRE: I'm sorry. Taking judicial notice of
21 something that is utterly irrelevant is not necessary, not
22 appropriate. What this Court did two years ago roughly to the
23 day -- and I assume he's correct -- has no bearing on anything
24 before the Court today. Nothing. This has zero connection,
25 nexus, under any analysis, any fair scrutiny, dealing with the

1 colorability of the claim that Hunter Mountain, who was not
2 involved in those proceedings, is trying to advance here. And
3 it would be -- it would be improper for this Court to even
4 take it under judicial notice.
5 THE COURT: Okay. Response?
6 MR. MORRIS: Can I respond?
7 THE COURT: Uh-huh.
8 MR. MORRIS: Okay. So, Your Honor, I'm going to move
9 for the introduction into evidence of Exhibit 45. It is the
10 Charitable DAF complaint that was filed in the federal
11 district court on April 12, 2021, under the direction of Mark
12 Patrick, who today stands here as the representative of Hunter
13 Mountain.
14 This was the complaint, if Your Honor will recall, that
15 they tried to amend and we had a hearing here about the
16 circumstances, because that amendment was going to name Mr.
17 Seery personally, in violation of the gatekeeper order.
18 Right?
19 THE COURT: Uh-huh.
20 MR. MORRIS: And so it is all tied together. If you
21 go to Paragraph 77 of this exhibit, it says, HCLOF holds
22 equity in MGM Studio. This is the exact same transaction,
23 right? So, so Mr. Dondero says, I gave Mr. Seery inside
24 information, he violated all of these things in the
25 HarbourVest transaction, even though he didn't say a word

1 then, and here, while it's still on the restricted list,
2 before the Amazon deal is announced, they're actually in court
3 saying that they should be entitled to acquire that same asset
4 that Mr. Seery supposedly acquired improperly. He wants it
5 for himself.
6 I mean, are you kidding me? It's not relevant?
7 THE COURT: I overrule the relevance objection. It's
8 admitted.
9 MR. MORRIS: Thank you. And 45 is admitted, Your
10 Honor?
11 THE COURT: 45 is admitted.
12 MR. MORRIS: Okay.
13 (Debtors' Exhibit 45 is received into evidence.)
14 MR. MCENTIRE: Just, Your Honor, I was identifying my
15 objection in connection with his original request that you
16 take something under --
17 THE COURT: Would you speak in the microphone?
18 Again, we --
19 MR. MCENTIRE: Yes. My original objection was
20 addressing his request of you, Your Honor, to take something
21 under judicial notice. I want to make sure my objection is
22 also lodged with regard to Exhibit 45, which I understand
23 you've overruled.
24 THE COURT: Correct.
25 MR. MCENTIRE: Okay.

1 THE COURT: It is so noted.
2 MR. MORRIS: Okay.
3 THE COURT: You've objected and I've admitted it.
4 MR. MORRIS: And I think I've said this already, but
5 the reason that we're requesting the Court take judicial
6 notice of its order on the second contempt proceeding is
7 because it shows that Mr. Dondero and Mr. Patrick worked
8 together, in violation of the gatekeeper, to try to suit Mr.
9 Seery to obtain the interest in HCLOF that he is sitting here
10 today saying somehow that Mr. Seery wrongfully acquired, even
11 though he didn't say a word at the time.
12 THE COURT: Okay. So now we're talking about not
13 Exhibit 45 --
14 MR. MORRIS: Yes.
15 THE COURT: -- but the order that was entered --
16 MR. MORRIS: Correct.
17 THE COURT: -- regarding the filing of Exhibit 45?
18 MR. MORRIS: Exactly.
19 THE COURT: Someone is going to need to give me a
20 docket entry number before we're done here.
21 MR. MORRIS: Okay.
22 THE COURT: I can and will take judicial notice of
23 that, but I need to have it --
24 MR. MCENTIRE: So I assume, for the record, my
25 objection is overruled?

1 THE COURT: Your objection is overruled.
2 MR. MCENTIRE: Thank you.
3 MR. MORRIS: All right.
4 BY MR. MORRIS:
5 Q You mentioned something about, I think, was it NXDT or
6 NHF?
7 A Yes.
8 Q And just let me see if I can do it this way. Right? So
9 there used to be a fund known as the NexPoint Strategic
10 Opportunities Fund, right?
11 A Yes.
12 Q Okay. And in 2020 that was a closed-in fund. Correct?
13 A Yes.
14 Q And it traded under the ticker symbol NHF, correct?
15 A Yes.
16 Q And then late in 2021 the name of the fund was changed to
17 NexPoint Diversified Real Estate Trust, correct?
18 A Yes.
19 Q And the ticker symbol changed from NHF to NXDT, correct?
20 A Yes.
21 Q And then it became a REIT the following year, right?
22 A Yes.
23 Q And I'm just going to refer to these letters as the Fund;
24 is that fair?
25 A That's fine.

1 Q For purposes of these questions. And you were the Fund's
2 portfolio manager, the president, the principal executive
3 officer, correct?
4 A Yes.
5 Q And another entity that you controlled, NexPoint Advisors,
6 provided advisory services to the Fund, correct?
7 A Yes.
8 Q And you controlled NexPoint Advisors at all times,
9 correct?
10 A Yes.
11 Q Okay. And the Fund was publicly traded, right?
12 A Yes.
13 Q And the Fund owned shares of MGM at the end of 19 -- at
14 the end of 2020, correct?
15 A Yes.
16 Q In fact, as of December 2020, MGM was one of the Fund's
17 ten largest holdings, with -- valued at over $25 million.
18 Isn't that right?
19 A Yes.
20 Q And by the end of 2021, MGM was the Fund's fifth largest
21 holding, with assets -- with a value of over $40 million.
22 Correct?
23 A Yes.
24 Q And the Fund also held MGM common stock indirectly; isn't
25 that right?

1 A Yes.
2 Q In fact, when the Amazon deal closed at the -- in March of
3 2022, the Fund issued a press release disclosing that it stood
4 to receive over $125 million on the MGM shares that it held
5 directly and indirectly. Correct?
6 A We issued several press releases. I don't remember --
7 Q Okay. Do you remember that, that as a result of the MGM
8 sale, the Fund was expected to receive approximately $126
9 million?
10 A Yes.
11 Q Okay.
12 A Roughly.
13 Q All right. In October 2020, just a few weeks before you
14 sent your email, the Fund announced the commencement of a
15 tender offer to acquire outstanding shares at a certain price.
16 Correct?
17 A Yeah, I believe so.
18 Q And you authorized that, right?
19 A Yes.
20 Q And when a fund acquires shares and then retires them, the
21 shareholders who did not tender consequently own a larger
22 percentage of the fund than they did before the tender,
23 correct?
24 A Yes.
25 Q Okay. And the tender was completed in January, in the

1 first week of January 2001 [sic], correct?
2 A I don't remember when it was complete.
3 Q It started at the end of October 2020, and it ended
4 sometime in January '21. Is that fair?
5 A Okay. I don't remember. Okay.
6 Q Do you want me to refresh your recollection?
7 A I'm just saying I don't remember.
8 Q Yeah, okay.
9 A I'm not dis...
10 Q Okay.
11 A -- denying it. I just don't remember the exact dates.
12 (Discussion.)
13 MR. MORRIS: Your Honor, can I mark for
14 identification purposes Plaintiffs' Exhibit -- I'm just going
15 to call it 100, to see if it refreshes the witness's
16 recollection?
17 THE COURT: You may mark it.
18 MR. MORRIS: Okay.
19 THE COURT: We'll see where it goes from there.
20 (Debtors' Exhibit 100 is marked for identification.)
21 BY MR. MORRIS:
22 Q So, I've put --
23 MR. MCENTIRE: Hold it. Your Honor, I think we're
24 now marking exhibits that we haven't put on an exhibit list.
25 MR. MORRIS: I'm trying to refresh his recollection.

1 MR. MCENTIRE: Okay.
2 MR. MORRIS: Yeah.
3 MR. MCENTIRE: Well, --
4 THE COURT: Yes.
5 MR. MORRIS: Okay? I haven't offered it in -- I
6 haven't offered it --
7 THE COURT: I've not admitted -- I don't know what it
8 is. I haven't admitted it yet. I'm waiting.
9 MR. MORRIS: I haven't offered it into evidence. He
10 said he doesn't remember, --
11 THE COURT: Okay.
12 MR. MORRIS: -- I've got an SEC document here, and
13 I'm going to try and refresh his recollection.
14 THE COURT: Okay.
15 BY MR. MORRIS:
16 Q You're familiar with these forms, right?
17 A Generally.
18 Q In fact, in fact, you sign them in your capacity as the
19 fund portfolio manager, right? Your signature is put on it,
20 anyway?
21 A Generally.
22 Q Yeah. And do you see that this is the Form N-CSR that was
23 filed with the SEC at the end of 2001 [sic] on behalf of
24 NexPoint Diversified Real Estate Trust?
25 A Yes.

1 Q Okay. So if you just turn to Page 16. And the numbers
2 are kind of at the bottom in the middle of the page. You'll
3 see the notes to the consolidated financial statements.
4 A Yes.
5 Q Okay. And Note 1 discusses the organization. Do you see
6 that?
7 A Yes.
8 Q And at the bottom of the left-hand column, it says, On
9 January 8, 2021, the company announced the final result of its
10 exchange offer pursuant to which the company purchased the
11 company's outstanding -- the company's common shares in
12 exchange for certain consideration.
13 Do you see that?
14 A Yes.
15 Q That's a reference to the tender offer that you authorized
16 at the end of October, correct?
17 A Yes.
18 Q And then at the bottom it says, The company share --
19 company -- excuse me. I strike that. It says, quote, The
20 common shares at a price of $12 per common share, for an
21 aggregate purchase price of approximately $125 -- $105
22 million. Upon retirement of the repurchased shares, the net
23 asset value was $152 million, or $17.41 million.
24 Do you see that?
25 A Yes.

1 Q Does that refresh your recollection that the tender offer
2 was completed at the beginning of January?
3 A Yes.
4 Q And that's with all of the MGM stock that the Fund still
5 owned at that time, right?
6 A Yeah. We -- we didn't -- we didn't violate --
7 Q You didn't --
8 A We didn't -- we didn't violate like Seery did. We didn't
9 sell any shares or buy shares.
10 Q Okay.
11 MR. MORRIS: I'm going to move to strike that, Your
12 Honor.
13 THE COURT: So granted.
14 MR. MCENTIRE: Well, Your Honor, I've actually got a
15 response to his motion to strike. This entire inquiry is
16 irrelevant.
17 MR. MORRIS: Not --
18 MR. MCENTIRE: This has no relevance at all in
19 connection with the allegations that we're making in this
20 case.
21 THE COURT: Your response?
22 MR. MORRIS: My response, Your Honor, if you ask me
23 -- let me just get a few more questions. He personally owned
24 shares in the Fund. The Fund owned shares in MGM. And
25 notwithstanding the restricted material, this is the insider,

1 and he is benefiting from himself through the Fund's
2 repurchase of these shares in the tender offer, and he went
3 and he had substantial holdings. I'll get to that in a
4 minute.
5 So he is actually doing something worse than what Mr.
6 Seery -- what he accuses Mr. Seery of, because he's buying
7 shares for his own personal benefit. Right? He's the
8 insider. Right? And the Fund owns the shares directly.
9 There's never going to be an allegation that HCLOF ever owned
10 any MGM stock. Never.
11 THE COURT: Okay. I'm going to allow this.
12 Obviously, on redirect, you can further question on this --
13 MR. MCENTIRE: Well, --
14 THE COURT: -- to --
15 MR. MCENTIRE: Well, first of all, his suggestions
16 and his accusations are purely argumentative.
17 THE COURT: Would you please speak in the microphone?
18 We --
19 MR. MCENTIRE: Well, he's standing in the way, Your
20 Honor.
21 THE COURT: Well, --
22 MR. MCENTIRE: It's irrelevant.
23 THE COURT: There are two. There's room for both of
24 you.
25 Continue. Go ahead.

1 MR. MCENTIRE: It's entirely irrelevant, and it's
2 argumentative.
3 THE COURT: Okay. Overruled. You can continue.
4 BY MR. MORRIS:
5 Q You did own an awful lot of the Fund's shares, didn't you?
6 A I owned some.
7 Q You owned some? You owned millions, right?
8 A Yes.
9 Q Okay. And as a result of the tender, you owned a greater
10 interest of the Fund, right?
11 A Yes.
12 Q And therefore you owned a greater number -- a greater
13 portion of the MGM stock, the $125 million of MGM stock that
14 was owned directly and indirectly by the Fund, correct?
15 A You do know insiders weren't permitted to participate in
16 the tender, which would have kept my percentage the same.
17 Q Sir, you benefitted -- you didn't stop the tender, right?
18 You didn't say, now I know what's going to happen, I should
19 stop it? You benefitted from the tender. Can we just agree
20 on that?
21 A I did everything I was supposed to do, notifying
22 Compliance. If they thought it was material, they would have
23 -- it was in their hands once I notified Compliance of the
24 material --
25 Q Okay.

1 A -- nonpublic information.
2 Q I appreciate that. I just want --
3 A It wasn't my responsibility to do Compliance's job to call
4 you or call --
5 Q Okay.
6 A -- the SEC or call anybody else.
7 Q But you will agree that, even though you had material
8 nonpublic inside information, you didn't take any steps to
9 stop the tender, correct?
10 A The tender was for a relatively small amount of the stock.
11 But I did -- I would -- it would not be my responsibility to
12 change or adjust the tender --
13 Q Okay.
14 A -- or what was happening.
15 Q Okay. And then the last question is, you benefitted from
16 the tender because the Fund repurchased shares, which
17 increased your percentage ownership of the Fund, and therefore
18 your percentage ownership of the MGM shares that were held
19 directly and indirectly. Is that fair?
20 A Marginally, I guess. Yes.
21 Q Okay. From the -- from the millions of shares, you would
22 describe it as marginal? Okay.
23 Let me move on. You've testified now that you spoke with
24 representatives of Farallon in the late spring, I guess
25 beginning on May 28th. Right?

1 A Yes.
2 Q And that was two days after the MGM deal was publicly
3 announced, correct?
4 A Yes.
5 Q Okay. And had you ever communicated with Mr. Patel before
6 that phone call?
7 A I don't believe so.
8 Q And then you spoke with Mr. Linn shortly after?
9 A Yes.
10 Q Had you ever spoken with Mr. Linn before that phone call
11 with Mr. Linn?
12 A I don't believe so.
13 Q So these phone calls were the very first time that you
14 ever spoke to either one of these gentlemen. Is that right?
15 A That I can remember.
16 Q Okay.
17 A If I ran into them at --
18 Q Uh-huh.
19 A -- a conference a decade ago, I don't know, but --
20 Q And they told you that they bought the shares in the
21 February-March time frame, right?
22 A Yes.
23 Q And you have no reason to dispute that, correct?
24 A Correct.
25 Q Okay. And you didn't know how much they had paid for the

1 claims as a result of these conversations, correct?
2 A They did not admit a price.
3 Q Okay. And it's your testimony that there wasn't
4 sufficient information in the public for them to buy -- this
5 is your view -- that there wasn't sufficient information in
6 the public to justify their purchases. Is that your view?
7 A Correct.
8 Q And even though you didn't think there was sufficient
9 information in the public, you were prepared to pay 30 percent
10 more than they did, right?
11 A Yes.
12 Q And is that because you were 30 percent more irrational
13 than them or because you had material nonpublic inside
14 information?
15 MR. MCENTIRE: Objection. Argumentative, Your Honor.
16 THE COURT: Overruled.
17 THE WITNESS: Even at a 30 percent premium, it was
18 less than I offered the UCC several months earlier, number
19 one.
20 Number two, I was still under the illusion there was a
21 desire to resolve the place, not burn it down. You know,
22 there was -- all the original members were happy to sell at
23 $150 million. It was a $500 or $600 million estate. There
24 should be $400 or $500 million of residual value. It
25 shouldn't all be going out the door to lawyers and others.

1 BY MR. MORRIS:
2 Q You were willing to pay 30 percent more for an unknown
3 purchase price, 30 percent more of an unknown purchase price,
4 at a moment that you didn't believe there was sufficient
5 information to buy the claims, correct?
6 A You have a couple misstatements in there. The Grosvenor
7 piece was public. The Grosvenor piece traded at $67 million.
8 So we knew that piece trade at around 50 cents. We knew from
9 people in the marketplace the other pieces were trading right
10 around that level.
11 So I wasn't just offering 30 percent on any willy-nilly
12 number, 130 percent of any willy-nilly number. I knew they
13 had paid around 50, 60 cents. And so I was offering 30
14 percent more than that. Thirty percent more than $150
15 million, call it $200 million. I had offered $230 or $240
16 million to resolve the whole estate before the plan went
17 effective, and I got no response from the original UCC
18 members.
19 Q So why didn't you just try to settle the case with them?
20 Why did you try to buy the claim? Why, if you had these new
21 people, and your good intentions were to finally get to a
22 settlement of the case, why didn't you say, hey, guys, how do
23 we resolve the case? Why did you want to buy the claims at a
24 30 percent premium over what they paid with no knowledge and
25 no diligence, according to you? Can you explain that to Judge

1 Jernigan?
2 A Because Seery told them to hold on, don't worry, they were
3 going to make $270 million.
4 Q That doesn't answer my question. Why didn't you try --
5 you had new owners. Why didn't you try to settle with them?
6 A When someone owns an asset, buying their asset is settling
7 with them. What claim does Farallon have against us? At that
8 point, they had no claims against us.
9 Q It doesn't settle the case, does it?
10 A But if we owned all the claims, it would settle the case.
11 Just like if Seery had objected to the claims trading that
12 they were supposed to give written notice to the Court, he had
13 enough cash on the balance sheet to buy and retire all the
14 claims.
15 Q All right. Let's go back, I apologize, to that Exhibit
16 11. No, it's not Exhibit 11. I think it's their Exhibit 4,
17 your notes.
18 MR. MORRIS: Your Honor, may I have -- just have one
19 moment?
20 THE COURT: You may.
21 MR. MORRIS: Can you tell me how long I've been
22 going? That's really my question.
23 THE CLERK: So, on cross, --
24 MR. MORRIS: Yeah.
25 THE CLERK: -- you've been going for 32 minutes.

1 MR. MORRIS: Okay. Trying to speed this up.
2 BY MR. MORRIS:
3 Q All right. So, do we have your handwritten notes, which
4 are Exhibit 4, in this binder? Oh.
5 THE COURT: Do you want to put it up again on the
6 screen?
7 MR. MORRIS: Ms. Canty, if you're listening and you
8 can do that, that would be great. If not, --
9 (Discussion.)
10 MS. CANTY: One second, John.
11 MR. MORRIS: All right. He -- he's got it.
12 THE COURT: Okay.
13 BY MR. MORRIS:
14 Q Okay. So, I just -- I just want to make -- you know,
15 follow up on a few questions I asked you earlier on *voir dire*.
16 So, these are your notes, right, and you said you write down
17 the important stuff. Correct?
18 A I write down, yeah, the stuff I thought I would need for
19 the next call.
20 Q Okay. And, you know, again, just so we have it all in one
21 spot, it doesn't say anything about MGM. Correct?
22 A It does not.
23 Q It doesn't say anything about a *quid pro quo*, correct?
24 A *Quid pro*? Uh, no, it does not.
25 Q It doesn't say anything at all about Mr. Seery's

1 compensation, correct?
2 A It does not.
3 Q It doesn't say anything about the sharing of material
4 nonpublic inside information, correct?
5 A When I told them discovery was coming, that was my
6 response to I knew they had traded on material nonpublic
7 information.
8 Q Okay. That -- you told them that?
9 A Yes.
10 Q Is that what you're saying now?
11 A Yes.
12 Q Oh, so that's what you told them? They didn't tell you
13 that; that's what you told them?
14 A Yes.
15 Q And that's why you wanted discovery, right?
16 A I thought it would be a lot easier to get discovery on a
17 situation like this than it has been for the last two years,
18 yes.
19 Q Okay. Um, --
20 A In fact, I told them that it would be coming in the next
21 few weeks. And this has been a couple years.
22 Q And that's exactly what you did, right?
23 A Well, we've been trying for two years to get --
24 Q Right.
25 A -- discovery in this.

1 Q Okay. So you filed your Texas 202, right?
2 A I don't know who filed what.
3 Q That was the one by Mr. Sbaiti that was filed under your
4 name? Do you remember that?
5 A Generally.
6 Q Okay. Let's take a quick look at that document. It's #3
7 in our binder.
8 A Binder #3?
9 (Discussion.)
10 MR. MORRIS: Okay. I think #3 is in evidence, Your
11 Honor.
12 THE WITNESS: Number 3 is in evidence.
13 THE COURT: Yes.
14 MR. MORRIS: Okay.
15 THE COURT: It is.
16 BY MR. MORRIS:
17 Q And if you can turn to the last page, Mr. Dondero. Page
18 8.
19 A Yes.
20 Q Okay. And that's your signature, right?
21 A Yes.
22 Q And you verified that this document was true and correct
23 within the best of your personal knowledge, correct?
24 A Yes.
25 Q Did you read it before you signed it?

1 A Probably.
2 Q You don't recall doing that?
3 A Not at this moment.
4 Q And you may not have. Is that fair?
5 A No, I probably did. Do you have a question?
6 Q I'm just wondering if you signed it or not.
7 A I did sign it.
8 Q Okay. Good. So, can you go to Paragraph 21? Well, let's
9 start at Paragraph 20. It says that Mr. Seery, quote, has an
10 age-old connection to Farallon, and upon information and
11 belief, advised Farallon to purchase the claims.
12 Do you see that?
13 A Yes.
14 Q And then the next paragraph you refer to the telephone
15 call that you had with Michael Linn, right?
16 A Yes.
17 Q It doesn't refer to any phone call with Mr. Patel,
18 correct?
19 A It does not.
20 Q And the only reason that you swore under oath you were
21 told that Farallon purchased the claims was because of
22 Farallon's, quote, prior dealings with Mr. Seery. Correct?
23 In Paragraph 21, it says, Relying entirely on Mr. Seery's
24 advice solely because of their prior dealings?
25 A Yes.

1 Q Okay. You didn't -- you didn't swear under oath at that
2 time that you were told that they bought the claims because of
3 MGM. Right?
4 A If you're asking if this is -- it seems like it's not
5 complete, if that's what you're asking me.
6 Q I'm not asking you that. I'm asking you what -- I'm
7 asking you to confirm that you swore under oath to the Texas
8 state court, just weeks after you had these conversations,
9 about what you were told concerning Farallon's purchase of the
10 claims.
11 I'm focused on Paragraph 21. The only reason that you
12 gave, that you told the Texas state court under oath, was that
13 Farallon told you they bought their claims because of their
14 prior dealings with Seery. Right?
15 A Yeah. And that's true. And that's consistent with what
16 I've said.
17 Q Okay. You didn't say anything about MGM, correct?
18 A Correct.
19 Q You didn't say anything about a *quid pro quo*, correct?
20 A Correct.
21 Q You didn't say anything about Mr. Seery's compensation.
22 Correct?
23 A I did not.
24 Q You didn't say anything about the sharing of material
25 nonpublic inside information, correct?

1 A Different document, different purposes.
2 Q Well, but that's now two documents. You have your notes
3 and you had this document, neither one of which say any of
4 those things. Fair?
5 A Different documents, different purposes. I don't know if
6 that's --
7 Q Is it fair that neither one of those documents say any of
8 those things?
9 A It's fair that they don't all match.
10 Q Okay. Okay. Well, that's a fair statement. Let's go to
11 the next one. Do you remember the next year you filed an
12 amended petition?
13 A What tab?
14 Q That's -- I appreciate that. It's Tab 4. Do you see at
15 the last page you've again signed a verification?
16 A Yep.
17 Q And do you see this one's filed with the Texas state court
18 on May 2, 2022?
19 A Yes.
20 Q And you swore under oath that this statement was complete,
21 true, and accurate to the best of your knowledge, correct?
22 A Yes.
23 Q Okay. Can you go to Page 5, please?
24 A Yes.
25 Q Directing your attention to Paragraph 23, do you see where

1 you say now that Farallon was relying, quote, on Mr. Seery's
2 say-so because they had made so much money in the past when
3 Mr. Seery told them to purchase claims.
4 Do you see that?
5 A Yes.
6 Q Again, you don't say anything about MGM, correct?
7 A Correct.
8 Q Again, you don't say anything about material nonpublic
9 inside information, correct?
10 A Well, on 24 it does. Right? Mr. Seery had inside
11 information on the price and value of claims. So, you've got
12 to look at all of the bullet points.
13 Q But that's not the paragraph where you're talking --
14 that's -- it says, in other words. That's not the paragraph
15 where you're describing your conversation with Farallon.
16 That's your interpretation of it, correct, just as you just
17 said?
18 A (no immediate response)
19 Q You told -- I'm sorry. I should let you finish the
20 answer. That's your interpretation of it, correct?
21 A Well, I'm reading all the bullets in aggregate, and it's
22 -- it's a picture of material information shared by Seery, not
23 just MGM or one particular investment, but on all the other
24 assets that aren't detailed in any of the public filings,
25 also.

1 Q The only -- the only point I want to make, I think we can
2 agree on this --
3 A Okay.
4 Q -- is that you believed that Mr. Seery gave them material
5 nonpublic inside information. Farallon never told you that.
6 Isn't that true? That's why you wanted discovery?
7 A They said they relied on him and did no diligence of their
8 own. They were very express -- explicit about that.
9 Q Okay. Can you answer my question now?
10 A Which -- I thought -- that does, --
11 Q You concluded --
12 A -- yes.
13 Q -- that Mr. Seery gave them material nonpublic inside
14 information. They never told you that. Fair?
15 A They said they relied on -- solely on Seery, didn't buy it
16 for any other reason, and they did no due diligence of their
17 own.
18 Q Okay. Let's go to the next one. Now, the no-due-
19 diligence part, that's not in any version we've seen, right?
20 That's something that you just --
21 A No, no, --
22 Q -- that you're just testifying to now? That's not in your
23 notes, it's not in Version 1, and it's not in this version,
24 correct?
25 A Well, let's go back to the Linn one, because when I was

1 going back and forth and he wouldn't give a price, he kept
2 saying, Seery told us it's worth a lot more. And I kept
3 saying, you've got to look at the burn, you've got to look at
4 the professionals. And --
5 Q Okay.
6 A -- that's --
7 Q Shortly after this, you filed yet another declaration,
8 right?
9 A Yes.
10 Q Uh-huh. Can you turn to #5? And this is another version
11 of your recollection of what you were told, correct? In
12 Paragraph 2?
13 A These are all -- I don't know why you're saying they're
14 different. They're all the same. They're just slightly
15 different verbiage. What's the major difference between any
16 of them?
17 Q I'll ask, I'll ask you the question. The question is, you
18 had never written in any of the prior versions that they
19 didn't do any due diligence; isn't that right? You never --
20 you never talked about their due diligence in any prior
21 version, correct?
22 A It's all -- it's all the same version. I don't -- some
23 versions --
24 Q Can you answer my question?
25 A I don't know. I don't know --

1 Q Which --
2 A -- which ones included which -- I don't --
3 Q We've just looked at them. Do you want to look at them
4 again?
5 A I just looked at one page in the other one and it was five
6 pages. I just looked at the one page and I found two or three
7 things --
8 Q Your notes --
9 A -- it didn't include, but --
10 MR. MORRIS: You know what. I don't want to argue.
11 They say what they say, Your Honor, and I would ask the Court
12 to look carefully at our objection to the motion because we
13 lay all of this out.
14 Your Honor can -- here's the point, because I do want to
15 finish up right now. There are five different versions of
16 this conversation. They're laid out in the brief. And the
17 question that you have to ask yourself, Your Honor, is, if you
18 allow this case to go forward, how do they make a colorable
19 claim when the story keeps changing?
20 And I'll just leave it at that, because, you know, the
21 last version says MGM for the first time. Like, it comes out
22 of nowhere. This -- his notes don't say it, he hasn't
23 testified that that's what he was told, but somehow that's in
24 his sworn statement.
25 So I'm just going to rest on the papers, because this is

1 -- I don't want to be argumentative.
2 THE COURT: Okay.
3 MR. MCENTIRE: Well, I'll object to the argument of
4 counsel. He's just doing another opening statement here, and
5 it's inappropriate and not proper.
6 THE COURT: Okay. I agree. This is Q and A.
7 MR. MORRIS: Okay.
8 THE COURT: So, --
9 BY MR. MORRIS:
10 Q Do you know -- do you have any knowledge or information as
11 to how Mr. Seery's compensation was established?
12 A Uh, --
13 Q Withdrawn. I'm talking now not in his capacity as an
14 independent director or the CEO of the Debtor. I'm only
15 talking about in his capacity as the CEO of the Reorganized
16 Debtor and the Claimant Trustee. Do you have any personal
17 knowledge as to how his compensation was established?
18 A The knowledge I have is that the Claimant Trust gives full
19 latitude to change it at almost any time they want. Add more
20 to it, add more than that we've seen, double it in the future
21 if reserves are reversed. It can do anything it wants. And I
22 guess we've seen some redacted partial statements of his
23 compensation, but that's all I know.
24 Q Okay. You have no knowledge about how Mr. Seery's
25 compensation package was determined, correct?

1 A I was not involved.
2 Q Okay. You've never -- I'll just leave it at that.
3 MR. MORRIS: I have nothing further, Your Honor.
4 THE COURT: Okay. Pass the witness. I'm sorry, I
5 guess I should ask, do any of the other responding parties
6 have examination?
7 MR. STANCIL: No, Your Honor.
8 THE COURT: No? Okay. Redirect?
9 MR. MCENTIRE: Just very briefly, Your Honor.
10 THE COURT: Okay.
11 MR. MCENTIRE: Thank you, Your Honor.
12 REDIRECT EXAMINATION
13 BY MR. MCENTIRE:
14 Q Mr. Dondero, you remember the questions about Judge
15 Jernigan walking into the courtroom on June 8 two years ago
16 saying, MGM is sold, maybe we can settle this case? Do you
17 recall those questions?
18 A Yes.
19 Q And do you remember Mr. Morris's dramatic suggestion that,
20 well, how did Judge Jernigan know, or to that effect?
21 A Yes.
22 Q Well, that had already been announced, had it not,
23 publicly?
24 A Yes.
25 Q Several weeks before?

1 A Yes.
2 Q I'd like to direct your attention -- do you still have
3 Exhibit 4 that he handed you? Do you have Exhibit 4 there?
4 A Uh, --
5 Q His exhibit?
6 A Is that the notes?
7 Q No, it's -- Exhibit 4 is the verified amended petition to
8 take deposition before suit -- take -- in the state court. To
9 -- deposition.
10 A You've got to give me more of a clue. I'm sorry. There's
11 like six binders.
12 MR. MCENTIRE: Mr. Morris, can you show us where the
13 exhibit --
14 MR. MORRIS: Sure. Which one is it?
15 MR. MCENTIRE: It's Exhibit 4. I'm going to talk to
16 him about Exhibit 4 (inaudible) that you've have used with
17 this witness.
18 BY MR. MCENTIRE:
19 Q I assume -- Mr. Dondero, were you assuming from the tone
20 and the substantive content of his questions that Mr. Morris
21 is suggesting that your notes are not reliable?
22 A He was trying to make it seem like the versions were
23 different. They were all 90 percent the same. Different --
24 it seemed like different emphasis for different purposes. And
25 then you have to remember we learned more about Farallon and

1 Stonehill over time. Like, in the beginning, when I had --
2 when I -- we didn't even know Stonehill was involved when I --
3 Q Sure.
4 A -- first talked to -- when --
5 Q Well, he made the big suggestion about you never talked
6 about due diligence before. Turn to Exhibit 4, Paragraph 23,
7 which he did not address with you. Can you turn to Paragraph
8 23 of Exhibit 4? Mr. Morris omitted to refer you to this
9 particular paragraph.
10 A 23? Go ahead.
11 Q Would you read it into the record?
12 A (reading) On a telephone call between Petitioner and
13 Michael Linn, a representative of Farallon, Michael Linn
14 informed the Petitioner Farallon had purchased the claim
15 sight-unseen and with no due diligence, a hundred percent
16 relying on Mr. Seery's say-so, because they had made so much
17 in the past with Mr. -- when Mr. Seery had (overspoken).
18 Q Now, since you've an opportunity to see other paragraphs
19 and other -- that he was otherwise not selecting, you did
20 refer to the -- to what Mr. Linn had told you about in May of
21 2021?
22 A Yes. I've been very consistent. Listen, I believe
23 Farallon tapes all their conversations. So, eventually, as
24 this goes further, I purposefully --
25 Q Well, let's --

1 MR. MORRIS: I move to strike, Your Honor.
2 THE WITNESS: Okay.
3 THE COURT: Sustained.
4 BY MR. MCENTIRE:
5 Q He also did not direct your attention or the Court's
6 attention to Paragraph 27 of Exhibit 4, selecting --
7 presumably strategically selecting not to refer to that
8 paragraph. Do you see Paragraph 27?
9 A Yes.
10 Q Could you read that into the record, please?
11 A (reading) However, Mr. Seery is privy to material
12 nonpublic information, inside information of many of the
13 securities that Highland deals in, as well as the funds that
14 Mr. Seery manages through Highland. One of these assets was a
15 publicly-traded security that Highland was an insider of, and
16 therefore should not have traded, whether directly or
17 indirectly, given its possession of insider information.
18 Q Isn't that paragraph just basically addressing MGM?
19 A Yeah, that's the only major position we had that that
20 would apply to.
21 Q So the suggestion that you're just making this MGM stuff
22 up is not true. It's consistent with what you've (inaudible)
23 in other courts as well, correct?
24 A Yes. I believe it's disingenuous to say that there's
25 different versions of my story.

1 Q Well, let's continue with Mr. Morris's strategy. Go to
2 Exhibit 3, please. Mr. Morris suggested that there's no
3 reference at all in any of these prior pleadings about Mr.
4 Seery's excess conversation. Do you recall that series of
5 questions?
6 A Yes. Or his statements, yes.
7 Q Yes. And he did not direct your --
8 MR. MORRIS: I move to strike. I asked him if he had
9 any knowledge of the man's compensation package. That's what
10 I asked him.
11 MR. MCENTIRE: No, sir. Your Honor, that's not what
12 he asked him. That was one of the questions he asked. The
13 other question was, there's nothing in here about
14 compensation. That's what I'd like to address now.
15 MR. MORRIS: Oh, go right ahead.
16 THE COURT: Okay.
17 BY MR. MCENTIRE:
18 Q Directing your attention --
19 THE COURT: You can ask. I'd have to go back and
20 check the record whether you had that second question you
21 mentioned. I remember questions about does he have knowledge
22 of Seery's compensation. I just can't remember if he asked,
23 --
24 MR. MCENTIRE: Fair enough.
25 THE COURT: -- were there references to it in the --

1 MR. MCENTIRE: Well, --
2 THE COURT: -- prior pleadings.
3 MR. MCENTIRE: -- for the record, we'll make it clear
4 that there is a reference.
5 BY MR. MCENTIRE:
6 Q If I could direct your attention to Paragraph 23, Exhibit
7 -- as to --
8 MR. MORRIS: What exhibit is it?
9 MR. MCENTIRE: It's Exhibit 3.
10 MR. MORRIS: Hold on one second.
11 MS. MUSGRAVE: Your exhibit.
12 THE COURT: Highland's Exhibit 3.
13 MR. MORRIS: Give me a moment.
14 THE COURT: Page what?
15 MR. MCENTIRE: It's Paragraph 22 on Page 5.
16 THE WITNESS: I'm sorry. My Exhibit 3?
17 BY MR. MCENTIRE:
18 Q Could you read for me, please, Mr. --
19 MR. MORRIS: Hold on one second. It's my Exhibit 3
20 or your exhibit?
21 MR. MCENTIRE: It's your exhibit. This is Hunter
22 Mountain's binder.
23 MR. MORRIS: Ah, I apologize.
24 MR. MCENTIRE: You were just using it.
25 MR. MORRIS: Okay. All right. Go ahead. What

1 paragraph were you?
2 BY MR. MCENTIRE:
3 Q I'd direct your attention, Mr. Dondero, to Paragraph 22.
4 MR. MORRIS: Yeah.
5 BY MR. MCENTIRE:
6 Q Would you read -- would you read Paragraph 22 into the
7 record, please?
8 A (reading) Mr. Seery had much to gain by brokering a sale
9 of the claim suggested to Muck, mainly his knowledge that
10 Farallon as a friendly investor would allow him to remain as
11 Highland's CEO with virtually unfettered discretion to
12 administer Highland. In addition, Mr. Seery's written
13 compensation package incentivized him to continue the
14 bankruptcy for as long as possible.
15 Q There was also a series of questions to you about a
16 transaction involving NexPoint -- NexPoint Diversified Real
17 Estate Trust. Do you recall those questions?
18 A Yeah. Let's talk about that.
19 Q All right. Tell me what the transaction was.
20 A I'm sorry. The tender that he was asking about or --
21 Q Yes, the tender.
22 A There was -- investors wanted some shares retired, and we
23 didn't have enough cash on the balance sheets. So we tendered
24 in the form of giving them Preferred, which was like equity
25 but a better dividend or a more secured dividend, and 20

1 percent cash. And then insiders weren't allowed to
2 participate. But the whole tender was only for eight or ten
3 percent of the nominal amount outstanding. And again, you've
4 got a package of securities, so you didn't get any -- you
5 didn't cash. And although it reduced the share count, it also
6 increased the Preferred or the claims against the company. So
7 it was marginally accretive, I guess.
8 Q All right.
9 A But, again, as far as inside information is concerned,
10 Compliance is a separate party organization that reports up to
11 the SEC. Has a dotted line to me. Reports to the SEC. They
12 make sure everything we do is compliant.
13 Q Mr. Dondero, --
14 A Yeah. Can --
15 Q -- you didn't participate in the transaction, did you?
16 A No. Insiders weren't allowed to participate in the
17 transaction.
18 MR. MCENTIRE: Reserve the rest of my questions, Your
19 Honor.
20 THE COURT: Any recross?
21 RECROSS-EXAMINATION
22 BY MR. MORRIS:
23 Q The reference to the compensation that we just looked at,
24 that was your own personal view, not something that anybody
25 from Farallon ever told you, correct? You can go back and

1 look.
2 A Yeah, that --
3 Q I mean, it's not a trick question.
4 A Yeah, that was my pleading.
5 Q Okay. And that was your own speculation, if you will? It
6 had nothing to do with anything Farallon ever told you,
7 correct?
8 A I never discussed Seery's compensation with Farallon.
9 Q Okay. Thank you, sir, very much. Just one last question.
10 The price of the tender --
11 A Yes.
12 Q -- was based in part on the value of the MGM stock,
13 correct?
14 A The tender was based on market price --
15 Q And --
16 A -- of where the closed-in fund was trading. It was
17 trading at a discount. And the discount to NAV, the NAV
18 included MGM accurately marked at whatever time.
19 Q I appreciate that.
20 MR. MORRIS: No further questions, Your Honor.
21 THE COURT: All right. Mr. Dondero, that concludes
22 your testimony.
23 THE WITNESS: Thank you.
24 THE COURT: You are excused from the witness box.
25 (The witness steps down.)

1 THE COURT: We probably should take a break, right?
2 MR. MORRIS: Okay.
3 THE COURT: Caroline, do you want to give them the
4 aggregate time used?
5 THE CLERK: Yes. The Defendants used 91 minutes
6 right now. And the Respondents together, 86 minutes.
7 THE COURT: Okay. I thought it was going to be
8 higher than that.
9 (Laughter.)
10 MR. MCENTIRE: That's what it feels like.
11 MR. MORRIS: You were wishing.
12 THE COURT: I was wishing. Okay. A ten-minute
13 break.
14 THE CLERK: All rise.
15 (A recess ensued from 3:17 p.m. until 3:28 p.m.)
16 THE CLERK: All rise.
17 THE COURT: All right. Please be seated. We're back
18 on the record in the Highland matter. Mr. McEntire, you may
19 call your next witness.
20 MR. MCENTIRE: Your Honor, Hunter Mountain would call
21 Mr. Seery adversely.
22 MR. STANCIL: Your Honor, we're waiting for Mr.
23 Morris for just 60 more seconds. I think he's on his way back
24 to the courtroom.
25 THE COURT: Okay. I just noticed.

1 Did I hear you say you're going to call him virtually?
2 MR. MCENTIRE: Adversely.
3 THE COURT: Oh, adversely? Okay. I'm so used to
4 hearing the word "virtually" the past few years.
5 Oh, and there he is. Okay.
6 MR. SEERY: I'm sorry, Your Honor.
7 THE COURT: Mr. Seery, welcome.
8 MR. SEERY: Good afternoon, Your Honor.
9 THE COURT: Please raise your right hand.
10 (The witness is sworn.)
11 THE WITNESS: I do.
12 THE COURT: All right. You may be seated.
13 JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S
14 ADVERSE WITNESS, SWORN
15 DIRECT EXAMINATION
16 BY MR. MCENTIRE:
17 Q Mr. Seery, would you please state your full name for the
18 record?
19 A James P. Seery, Jr.
20 Q And you and I met for the first time I believe it was last
21 Friday in your deposition; is that correct?
22 A You were by video.
23 Q I mean, --
24 A We didn't actually meet.
25 Q Correct. You are currently the CEO of the Reorganized

1 Debtor?
2 A That's correct.
3 Q Prior to your appointment as the CEO of the Reorganized
4 Debtor, you've never served as a CEO of a reorganized debtor
5 in the past, have you?
6 A I have not.
7 Q You previously served as the chief executive officer of
8 Highland Capital as a Debtor-In-Possession. Is that correct?
9 A That's correct.
10 Q And that was the first time you'd ever served in a
11 position such as that; is that correct?
12 A As the CEO of a debtor, yes.
13 Q Right. You also now currently serve as a Trustee for the
14 Highland Claimant Trust, which was put into effect after the
15 effective date of the plan, correct?
16 A Yes, I'm the Claimant Trustee.
17 Q All right. That's the first time --
18 THE COURT: Mr. McEntire, we usually require standing
19 at the podium. I mean, do you need --
20 MR. MCENTIRE: That's fine. I'm totally fine.
21 THE COURT: Okay. That's --
22 MR. MCENTIRE: I forgot.
23 THE COURT: Okay. Thank you.
24 BY MR. MCENTIRE:
25 Q That was -- and your capacity as the Trustee for the

1 Claimant Trust, that's a first experience as well, correct?
2 A As the Claimant Trustee, yes.
3 Q All right. And in these various capacities as a CEO of
4 the Reorganized Debtor, do you consider yourself to be subject
5 to the Investment Advisers Act?
6 A No, I don't I'm subject to the Investment Advisers Act. I
7 think Highland in certain capacities could be.
8 Q All right. But do you have any duties that -- that you
9 are required to fulfill under the Investment Advisers Act
10 accordingly?
11 A Do I?
12 Q Yes.
13 A I believe Highland does. I don't know that I have any
14 personal duties.
15 Q All right, sir. Let me now talk a little bit about your
16 duties that you did have at Highland. You agree that when you
17 were at Highland you had fiduciary duties that you owed to the
18 estate?
19 A Yes.
20 Q What were those duties?
21 A To generally treat the estate on an honest and fair
22 matter.
23 Q Avoid conflicts of interest?
24 A Yes.
25 Q Not self-deal?

1 A Yes.
2 Q Do you agree with me that you would have a duty not to
3 trade on material inside -- material nonpublic information?
4 A Generally, I would have a duty to not trade on material
5 nonpublic information, yes.
6 Q Can you think of an exception?
7 A There may be. I just don't think of any one off the top
8 of my head.
9 Q So, today, you would agree, for purposes of these
10 proceedings, that you would have an obligation as the CEO of
11 the Debtor-In-Possession not to participate in a transaction
12 involving material nonpublic information? Agreed?
13 A It would depend. So, for example, if I was trading with
14 someone else who had material nonpublic information, that
15 might be a permissible transaction.
16 Q The HarbourVest transaction, you were involved in
17 negotiating the HarbourVest settlement?
18 A Yes, I was.
19 Q Did that involve any component related to MGM stock?
20 A No, it did not.
21 Q There was no involvement at all concerning the transfer of
22 MGM stock to any entity as a result of that transaction?
23 A None whatsoever.
24 Q Okay. And does HCLOF not have a participation at this
25 time in MGM stock?

1 A We call it H-C-L-O-F.
2 Q Yes.
3 A It does not own MGM stock, and as I far as I know, never
4 owned MGM stock.
5 Q Okay. You agree you received an email from Mr. Dondero in
6 December of 2020. We've had it here before. You've seen it
7 in the courtroom, correct?
8 A Yes.
9 Q Okay. Did you ever send -- forward that email to anyone
10 else?
11 A I'm sorry. Could you repeat that?
12 Q Did you forward that email on to anyone else?
13 A I believe I did, yes.
14 Q To whom?
15 A I certainly discussed it with counsel. I believe I
16 forwarded it to counsel, both the Pachulski firm and the
17 WilmerHale firm. Thomas Surgent had gotten it. He was on the
18 email. And I also forwarded it, I believe -- certainly,
19 discussed it -- with the other independent directors.
20 Q Okay. I'm not going to talk about your conversations with
21 other lawyers in-house, okay, or your outside counsel. Did
22 you take any steps yourself personally to make sure that MGM
23 stock was placed on a restricted list at Highland Capital
24 after you received that email?
25 A No. MGM was already on the restricted list at Highland

1 Capital.
2 Q Okay. And is that because of Mr. Dondero's position on
3 the board of MGM?
4 A It -- I believe that's the reason. It was on before I got
5 to Highland.
6 Q Okay. And you agree, do you not, sir, that the email that
7 you received from Mr. Dondero also contained material
8 nonpublic information?
9 A I don't think so, no.
10 MR. MCENTIRE: Would you put up Exhibit -- our
11 Exhibit 4, please?
12 MR. MORRIS: 4?
13 MR. MCENTIRE: 4.
14 BY MR. MCENTIRE:
15 Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to
16 it as H-C-L-O-F -- did that -- did HCLOF own any funds that
17 owned MGM stock?
18 A HCLOF had interest in certain Highland-managed CLOs that
19 did own some.
20 Q As a result of the Highland settlement -- excuse me, the
21 HarbourVest settlement, was there any impact on who owned some
22 of those CLO funds?
23 A No.
24 Q Okay. How was the CLOs, the funds, handled, if at all, in
25 the -- in the HarbourVest settlement?

1 A They didn't have any impact whatsoever on the HarbourVest
2 settlement.
3 Q Looking at Exhibit 4 for a moment, please, did the
4 interests, did the interests in -- HarbourVest's interests in
5 any of those CLOs transfer?
6 A No, they did not.
7 Q Okay. And did HCLOF acquire any interest in any of those
8 CLO's as a consequence of the HarbourVest settlement?
9 A No, it did not.
10 Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I
11 meant to say. Exhibit 3.
12 THE COURT: Hunter Mountain Exhibit 3?
13 MR. MCENTIRE: Yes, ma'am.
14 THE COURT: Okay.
15 MR. MCENTIRE: Yes, Your Honor. Excuse me.
16 BY MR. MCENTIRE:
17 Q This is the email that we were just referring to that you
18 received, correct?
19 A Yes.
20 Q And you don't think -- you knew that Mr. Dondero was on
21 the board of directors of MGM?
22 A Yes.
23 Q And he -- as a member of the board of directors, when you
24 received this, you see where he indicated that it was probably
25 a first-quarter event? Do you see that?

1 A I see what it says, yes.
2 Q Okay. And you did not think that that was material
3 nonpublic information?
4 A No, I did not.
5 Q When he indicated that Amazon and Apple were actively
6 diligencing -- are diligencing in the data room, both continue
7 to express material interest, coming from a member of the
8 board of directors of MGM, you did not think that was material
9 nonpublic information?
10 A I did not, no.
11 Q You know the difference between a newspaper article or a
12 media article that discusses rumors of a possible sale and the
13 difference between that and a member of the board of directors
14 saying that a sale is going to occur? You understand the
15 difference between the two?
16 A Between the two things you just outlined?
17 Q Yes.
18 A Yes. One you said a sale is going to occur, and the other
19 you said a media report. But it would depend on what's in the
20 media report. Some media reports are pure speculation.
21 Others have a lot of detail, and they clearly came from an
22 inside source, and that's why the market moves on them.
23 Q Okay. So what you're suggesting to me, that there was
24 some indication in the media press before you received this
25 email suggesting that there was actually going to be a sale in

1 the first quarter of 2021?
2 A I don't know if it had a first-quarter event in it, but
3 certainly it was clear from the media reports and the actual
4 quotes from Kevin Ulrich of Anchorage, who was the chairman at
5 MGM, that a transaction had to take place very quickly. And
6 in fact, the transaction did not take place in the first
7 quarter.
8 Q Okay. So you -- when you received this particular email,
9 you did not think that it was requiring any additional
10 protection at -- in any way? Is that what you're suggesting
11 to this Court?
12 A That the email required additional protection?
13 Q That you didn't take additional steps to make sure that it
14 was maintained on the restricted list.
15 A It was already on the restricted list, so there was no
16 change.
17 Q Was it --
18 A I --
19 MR. MORRIS: Hold on. Let him finish.
20 BY MR. MCENTIRE:
21 A I was suspicious when I got the email, but I didn't think
22 I had to do anything else than the steps I told you I just
23 took.
24 Q Yeah, I'm not asking whether you were suspicious or not.
25 My question's a little bit different. You understand that MGM

1 was taken off your restricted list in April of 2021?
2 A I understand that that's what you've recently shown me. I
3 wasn't aware of that fact or I didn't have a recollection of
4 that fact, but certainly April of 2021 would be beyond the
5 first quarter. Mr. Dondero was not an employee, an affiliate,
6 subject to a contractual relationship. He had no duty to
7 Highland and Highland had no duty to him. And in fact, it was
8 quite antagonistic by that time. So it would be appropriate
9 to take MGM off the restricted list at the end of that time.
10 Q Well, hopefully you won't take this as argumentative, but
11 I object as nonresponsive. That really wasn't my question.
12 Okay? My question --
13 THE COURT: Sustained.
14 BY MR. MCENTIRE:
15 Q -- is a little bit different. As far as you were
16 concerned, MGM was on the restricted list and stayed on the
17 restricted list all the way until the public announcement in
18 May of 2021?
19 A That's not true.
20 Q When did you first become aware it was taken off the
21 restricted list?
22 A I didn't -- I wasn't aware that it had come off the
23 restricted list. I would have assumed it would have been off
24 the restricted list once Mr. Dondero had been severed from
25 Highland.

1 Q I see. Now, Mr. Dondero has relayed a conversation that
2 he had with Mr. Patel and Mr. Linn, suggesting that they were
3 particularly optimistic about MGM based upon what you told
4 them.
5 A I --
6 Q Let me finish. If that occurred, are you suggesting that
7 that is a lie?
8 A Two things. One is I don't think he actually testified to
9 that. I think he said he had a conversation with Mr. Patel.
10 Then he had a different conversation with Mr. Linn, and a
11 subsequent conversation with Mr. Linn. So the way he laid it
12 out were multiple conversations.
13 Q Agreed.
14 A I don't -- I don't know which one you're talking about.
15 Q Mr. Dondero testified that Mr. Patel was particularly
16 optimistic about the investment because of what he had learned
17 from Mr. -- from you about MGM.
18 MR. MORRIS: I dispute that characterization. Why
19 can't he just ask the question?
20 MR. MCENTIRE: That is my question. If that --
21 THE COURT: What is the question? I'm not sure I
22 hear the question.
23 MR. MCENTIRE: I'm getting lost because I'm getting
24 interrupted. I'll try to rephrase it again.
25 MR. MORRIS: It's my first objection.

1 MR. MCENTIRE: And I --
2 THE COURT: Go ahead.
3 MR. MCENTIRE: I'm just going to rephrase, Your
4 Honor.
5 THE COURT: Just rephrase your question.
6 MR. MCENTIRE: Thank you.
7 BY MR. MCENTIRE:
8 Q Mr. Dondero has testified that Farallon advised him in May
9 of 2021 that they were optimistic about MGM based upon what
10 you told them. Assuming that to be the case, do you deny that
11 happened?
12 A I do deny that happened. Because I can't -- I don't know
13 what Farallon told him, but I never told Farallon anything.
14 And a conversation on May 28th, after the May 26th
15 announcement that MGM was going through, might make people
16 optimistic that it could go through, but there was a very
17 difficult FTC process that MGM would have to go through.
18 Q And I'm referring to that. If Farallon stated that they
19 were optimistic about MGM based upon what you had told them,
20 --
21 A That would not be true.
22 Q -- that would be false?
23 A That would not be true.
24 Q And is Mr. Dondero says that's what Farallon told them,
25 that would also be false?

1 A That's correct.
2 Q So we have your statement, we have what may be Farallon's
3 statement, and we have what Mr. Dondero believes may have been
4 Farallon's statement, and you're saying the latter two are
5 just not true?
6 A I didn't have a conversation with Farallon about MGM that
7 -- that I recall --
8 Q Well, you're on the witness stand.
9 A -- virtually at any time.
10 Q You're on the witness stand.
11 A Oh, I'm aware of where I am sitting.
12 Q Yeah. Good. We've got that cleared up. Now, are you
13 suggesting that -- that you may not specifically recall this
14 conversation?
15 A No, I am not saying that at all. After May 26th, when the
16 MGM announcement was made and it was public, I may have had
17 conversations with a number of people about MGM.
18 Q Well, let's make sure the record is clear. Did you call
19 Farallon on May 26th and say, hey, did you know that MGM just
20 sold?
21 A No, I don't recall any such conversation, and I wouldn't
22 have had to, since it was in the paper.
23 Q I'm not talking about what's in the paper. I'm talking
24 about conversations between you and Farallon.
25 A Yeah. I don't recall having a conversation with Farallon

1 on May 26th.
2 Q How about May 27th?
3 A Not that I recall, no.
4 Q How about May 28th?
5 A Not that I recall off the top of my head.
6 Q And we understand that that's the day that Mr. Dondero
7 actually had his conversation that he's reported, at least,
8 with Farallon. Do you recall that?
9 A That's what he claims, yes.
10 Q You were with a company called River -- you're a lawyer,
11 correct?
12 A I am. I'm in retired status.
13 Q Okay. I wish I was.
14 A It's simply retiring your license and not having to take
15 the CLE.
16 Q Understood. Now, you were with a company called River
17 Birch?
18 A Yes.
19 Q And from River Birch, you went to Guggenheim Securities?
20 A That's correct.
21 Q At Guggenheim Securities, did you go to Farallon and meet
22 with Mr. Patel in their offices in San Francisco?
23 A I believe we did, yes.
24 Q You call it a meet-and-greet?
25 A I do, yes.

1 Q That was in 2017?
2 A 2017, 2018. I'm not exactly sure when it was.
3 Q And one of the purposes of meet-and-greet is to solicit
4 business or to see if a business opportunity -- see if it
5 exists?
6 A That's not correct, no.
7 Q What is a meet-and-greet for, then?
8 A It's to meet the people at the fund and to greet the
9 people at the fund. Introduce them to other people in your
10 firm.
11 Q Just because it's going to be fun, or does it have a
12 business angle to it?
13 A Oh, it hopefully will be fun, yes, but it's done in order
14 to build a relationship over time. You're not in there
15 soliciting business. If you do that, you won't do very well.
16 Q Okay. Fair enough. So you're there trying to develop a
17 relationship with Farallon?
18 A Guggenheim was, yes.
19 Q And you were part of it?
20 A That's correct.
21 Q And what was your job at Guggenheim?
22 A I was co-head of credit.
23 Q Is that a fairly significant position at Guggenheim?
24 A Not really, no.
25 Q It's not significant at all?

1 A No.
2 Q All right.
3 A Which is why --
4 Q Well, you left --
5 A Which is why they don't have that business.
6 Q Okay. So is that why you left Guggenheim?
7 A It -- I did, yeah. It wasn't a good fit for either
8 Guggenheim or for me, because it really wasn't something --
9 Q When did you --
10 A -- that they were set up to do.
11 Q -- leave Guggenheim?
12 A In 2019.
13 Q And then you went back to Farallon to meet with them
14 again, did you not?
15 A I met with Farallon while I was in San Francisco with my
16 wife.
17 Q Okay. Did you call ahead to arrange the meeting, or was
18 it just a --
19 A I --
20 Q -- a blind call?
21 A I did call ahead, yes.
22 Q A cold call, I guess, is the word -- the phrase that they
23 use. Okay. So -- and was that a meet-and-greet?
24 A That was again, yes.
25 Q Again, what were you trying to do? Develop a relationship

1 with Farallon?
2 A I was trying to catch up with them after having met them
3 previously. And that was just Raj Patel. And this one I also
4 met Michael Linn.
5 Q Okay. What kind of business were you in when you met with
6 them the second time?
7 A I wasn't doing anything.
8 Q What were you hoping to do?
9 A I was hoping to get back into the investing side of the
10 business, from running a credit-type lending business at
11 Guggenheim, which is what they tried to do and it didn't work
12 out. And I wanted to get back to what I was doing more at
13 River Birch, but I was looking at other opportunities,
14 whatever came along.
15 Q Well, what were the different options that you were
16 looking at?
17 A I was looking at potentially getting back into investing,
18 joining potentially a restructuring firm, any options like
19 that. I was not looking to become a lawyer again.
20 Q And why would meeting and greeting with Farallon fit in
21 within that scenario, the strategic scenarios that you've just
22 discussed?
23 A They're a giant hedge fund.
24 Q A giant hedge fund?
25 A Yes.

1 Q And so it would be good to have a relationship with a
2 giant hedge fund, wouldn't it?
3 A And to know what their thinking of the markets, where the
4 opportunity set might be, who they are dealing with and
5 interacting with. Those are -- those are valuable things to
6 know over time.
7 Q And --
8 A And you need to maintain those relationships in order to
9 be --
10 Q Sure.
11 A -- part of any business.
12 Q Sure. These meet-and-greets can actually evolve and
13 provide relationship benefits, correct?
14 A I don't -- I'm not sure what you mean by relationship
15 benefits.
16 Q Sloppy words for -- on my part. They can evolve into
17 something that is a meaningful relationship?
18 A They could over time, yes.
19 Q And we know that after you became the CEO of Highland
20 Capital that you received a call from, was it Farallon, to
21 congratulate you on your appointment?
22 A It was an email.
23 Q And that was in the summer of 2020, shortly after your
24 meet-and-greet out in San Francisco?
25 A Your calendar's a bit off, but it was in June of 2020, so

1 that would have been more than shortly after, but yes.
2 Q Okay. And who contacted you to congratulate you on your
3 appointment?
4 A This was my appointment as an independent director. I had
5 not yet been appointed as CEO or CRO. This was in June of
6 2020, and it was Michael Linn.
7 Q Michael Linn? Was it a telephone call?
8 A I think 30 seconds ago I said it was an email.
9 Q Fair enough. Do you still have that email?
10 A I do, yes.
11 Q Okay. He contacted you again, "he" being Michael Linn, he
12 contacted you again in January of 2021, did he not?
13 A That's correct, yes.
14 Q He wanted to see if he could get involved somehow in the
15 Highland bankruptcy?
16 A Well, he congratulated -- he didn't congratulate -- he
17 wished me a happy new year, and he basically said it looks
18 like you're -- again, he's following the case -- it looks like
19 you're doing good work. Is there any way for us to get
20 involved? We're interested in claims or buying assets.
21 Q Okay. And Stonehill. Now, you know the founder of
22 Stonehill, do you not?
23 A No, I don't know him. I've met him several times.
24 Q Doesn't he come by and stop in and talk with you when
25 you're in Stonehill's offices? And that's happened recently?

1 A Your use of the plural is incorrect, and you know that
2 from the deposition. I was in Stonehill's office one time,
3 and I was in a meeting with Mr. Stern. We ended up having a
4 board meeting from Stonehill's office with the other
5 participants on video, and Mr. Motulsky came in and said
6 hello.
7 Q All right. And who's Mr. Motulsky?
8 A He's the founder of Stonehill.
9 Q I see. And did you know Mr. Motulsky before that?
10 A I'd interacted with Mr. Motulsky over the years at --
11 mostly at industry-type functions.
12 Q Okay. Now, Stonehill is also a hedge fund?
13 A Yes.
14 Q Are they different than Farallon in that regard, or
15 similar?
16 A I don't know as much about what their business is. They
17 certainly do a direct lending component, so I know that they
18 -- they will do some direct lending, which I don't think is
19 something Farallon really does. Farallon is much bigger, as I
20 understand it, but I don't really know the size of Stonehill.
21 Q Okay.
22 A I know they're not a $50 billion fund like Farallon.
23 Q And do you know Mr. Stern at Farallon?
24 A I now know him, yes, because he was -- he's really the
25 representative on the -- no, he's not the representative on

1 the board, but he is the one who manages the Stonehill and
2 Jessup positions for Stonehill.
3 Q Well, we know that after you were CEO of Highland, you
4 also got a text message, correct, a text message from someone
5 at Stonehill, correct?
6 A Mr. Stern sent me a text message reintroducing himself --
7 I don't know if it was re- or just introducing -- and sent me
8 his email and asked me to contact him about the case. This
9 was at the end of February/beginning of March 2021, after the
10 confirmation order.
11 Q Okay. After the -- after the confirmation order?
12 A Yes.
13 Q I believe the confirmation order -- I may be wrong -- I
14 thought it was like the 21st, 22nd, somewhere in there. Does
15 that sound right to you?
16 A Yes.
17 Q Okay. So, shortly after confirmation, then, Farallon
18 calls you to congratulate you and wants to see how they can
19 get involved?
20 A No. There was no congratulations there. Shortly after
21 the confirmation order, which I believe was at least a week to
22 ten days after confirmation, I got the communication from Mr.
23 Stern to try to connect about the case.
24 Q All right.
25 A He's at Stonehill, not Farallon.

1 Q Correct. Now, --
2 A You said Farallon.
3 Q I misspoke, then. Thank you for correcting me. Let's
4 talk about -- you live in New York?
5 A I do.
6 Q You're involved with a charity called Team Rubicon?
7 A Yes.
8 Q And Team Rubicon is a -- is that a veterans-type charity?
9 A Yeah. It's a veteran-led organization, and what it does
10 is connects veterans to disasters. And mostly in the U.S.,
11 but also all over. So if there's a flood, if there's a
12 hurricane, if there's an earthquake, veterans who have been
13 trained in -- by the military in ready response and really
14 being able to handle themselves when things are bad are
15 deployed to help the communities that are hit. So I think
16 that Team Rubicon likes to think, you know, on your worst day
17 they're your best friend.
18 Q So you're -- are you on the board?
19 A No, I'm not.
20 Q You're on the Host Committee?
21 A I was on the Host Committee last year, and I'll be on the
22 Host Committee this year.
23 Q Okay. And you have charity events?
24 A We have a charity event, yes.
25 Q Okay. And the purpose of the charity event is to raise a

1 bunch of money?
2 A That's correct.
3 Q Okay. Have you been successful in the past?
4 A I do my best. Team Rubicon is a big organization. It's
5 done very well raising money. It doesn't have an endowment.
6 The founder's theory was that if people give us money, we're
7 supposed to spend it on helping other people. And so each
8 year it has to raise more money.
9 Q And Stonehill has been -- has contributed to your charity?
10 A I believe Stonehill, one or two years, and I should know
11 this, and I didn't look it up after our deposition, gave
12 $10,000.
13 Q Okay. Maybe once, maybe twice?
14 A Maybe twice.
15 Q Okay.
16 A I hope more.
17 Q Okay. And they also attend your -- your actual charity
18 events, do they not?
19 A No.
20 Q All right. They just give money?
21 A That's right. And the Mike Stern who's on the board of
22 Team Rubicon is not the Mike Stern who is at Stonehill. It's
23 an older gentleman who's in Texas who just happens to give a
24 lot of money to --
25 Q All right.

1 A -- Team Rubicon.
2 Q You also represented Blockbuster. Take that back. Were
3 you the lawyer or the attorney representing the Creditors
4 Committee, the UCC, in the *Blockbuster* bankruptcy?
5 A No, I was not.
6 Q Tell me what your capacity was.
7 A I represented a group of bondholders, secured bondholders.
8 So I represented the group.
9 Q And was Stonehill a member of that group?
10 A Not that I recall, but your pleadings seem to indicate
11 that they were. So if they were, they were a small
12 participant. The largest participant was Carl Icahn, who
13 owned about 30 percent of it. Then the others who were big
14 were DK, Davidson Kempner, Monarch, Owl Creek. Those were the
15 big players.
16 Q Well, --
17 A When Carl Icahn is in your group, you remember that.
18 Q Yeah, well, Carl Icahn is not here. We're talking about
19 Stonehill right now.
20 A And I said I don't remember them actually being a part of
21 it. If they were, --
22 Q Okay. Well, let me -- let me give you what I'm going to
23 mark as Exhibit 80. That's your name at the top, right?
24 (Hunter Mountain Investment Trust's Exhibit 80 is marked
25 for identification.)

1 A That's correct, yes.
2 Q You were at the time with Sidley & Austin?
3 A That's correct, yes.
4 Q This is *In re Blockbuster*.
5 MR. MCENTIRE: Scroll down, please.
6 BY MR. MCENTIRE:
7 Q And steering group of senior -- involves -- well, let's
8 count them. Let's see. One, two, three, four, five. Five
9 entities comprising the backstop lenders. Is that correct?
10 A I think that's the steering group. So, in order to
11 represent the group, you need to try to assemble a large-
12 enough group that it's material to the company. And then the
13 company, if you're -- particularly if you're over 50 percent,
14 will pay the fees of the group. And you don't represent any
15 individual member of the group. I've never represented Carl
16 Icahn. I represent the group. And if folks want to stay in
17 the group, they can stay. If they want to trade out of the
18 group, they do. And the company will generally continue to
19 pay the fees, and you represent the group so long as you have
20 a controlling interest in the -- whatever the issue is.
21 Q Well, that's interesting, because now what you're telling
22 me is that this group right here, this is kind of like the
23 executive committee of the group.
24 A No, it's called the steering group, and it doesn't
25 necessarily --

1 Q That's fine.
2 A Well, it's not an executive committee. It doesn't
3 necessarily include just the largest. Some large holders
4 won't be on it. The largest holders here by a long shot were
5 Icahn, who --
6 Q I'm not talking about --
7 A -- unloaded, as I say, over 30 percent. Monarch, Owl
8 Creek, and I just don't recall Stonehill being a part of it.
9 Q I'm not really interested in Carl Icahn. I just want to
10 establish this is a steering group in which you were the lead
11 counsel and Blockbuster was on it. Is that correct?
12 A Yes.
13 Q Excuse me. Not Blockbuster.
14 A I'm sorry.
15 Q Stonehill.
16 A No, it's the Blockbuster case in 2010, and Stonehill was
17 apparently on it, but I just don't have a recollection of
18 their involvement.
19 Q All right. So when Mr. -- who sent you the text message
20 in February of 2021 from Stonehill?
21 A Michael Stern.
22 Q And had you actually met him before?
23 A I think I had, but we didn't know each --
24 Q All right.
25 A You know, we certainly didn't know each other, we'd never

1 worked on anything together, but I --
2 Q Do you have all your text messages from that period of
3 time, that first quarter of 2021?
4 A I believe I do, yes.
5 Q They're saved?
6 A Yes.
7 Q Okay. When did the automatic delete button on your cell
8 phone start?
9 MR. STANCIL: Your Honor, objection. We've covered
10 this this morning. I believe this is a motion coming down the
11 pike, and I thought we had -- thought we had had tabled this
12 preservation issue.
13 MR. MCENTIRE: This has a direct bearing on his
14 communications with Farallon and Stonehill in this period of
15 time, Your Honor. We have one text message that he's
16 identified, and I have a right to examine whether there are
17 others. Or if not, why not.
18 MR. STANCIL: Your Honor, he's --
19 MR. MCENTIRE: That's a legitimate -- I'm not
20 finished. That's a legitimate area of inquiry in this
21 examination.
22 MR. STANCIL: He's testified he has them all. Your
23 Honor did not order document discovery. I think that's it for
24 purposes of today's hearing, Your Honor.
25 THE COURT: Okay. I sustain the objection.

1 BY MR. MCENTIRE:
2 Q After this text message that you received from Stonehill
3 in February 2021, did you have any follow-up?
4 A Well, his text message, I don't recall what it said other
5 than I was -- I do recall that he gave me his email address,
6 because I didn't have it. And we just didn't know each other
7 well enough. But we definitely had follow -up. He wanted to
8 talk to me, and at some point we talked.
9 Q And when did you talk?
10 A I'm sorry?
11 Q When did you talk?
12 A When? I -- it was at the, initially, end of February,
13 beginning of March. So it would have been somewhere in that
14 -- in that time period.
15 Q End of February, beginning of March? And we also know
16 that you next talked to Farallon, according to your testimony,
17 and they advised you they had already purchased all their
18 claims as of March 15, correct?
19 A On March 15th, they sent me an email that said they had
20 purchased an interest in claims, and --
21 Q So -- go ahead.
22 A I'm not finished. And then at some point after that, we
23 arranged a quick discussion, because that was a curious --
24 Q I want to assure you I will always let you finish.
25 A Thank you very much.

1 Q Unlike others. So, with that said, Mr. Seery, can you
2 identify -- let me back up. Was there a data room set up at
3 Highland Capital for claims investors to come in and look at
4 data?
5 A No, there was not.
6 Q Are you aware, sitting here today, that Farallon did any
7 due diligence in connection with its investment in the claims
8 it purchased that are at issue in this proceeding?
9 A I have indication that they did some, yes. I don't know
10 how much they did.
11 Q What is the indication?
12 A In the email in June of 2020, Mr. Linn said that he and
13 his associate were following the case, thought it was --
14 that's the one that congratulated me on being an independent
15 director, and that they were paying attention to the case.
16 And it -- I don't recall the exact other items in there, but
17 it was clear that they were following the Highland matter.
18 And then in the email in January 2021, he also indicated that
19 they'd been following the case further, and said, Looks like
20 you have things well in hand, or something to that effect. So
21 --
22 Q Do you have that email, too? Have you saved that email?
23 A They're all saved, yeah.
24 Q Okay. So let's talk about that. But you had no data room
25 that would allow them to come in and actually investigate the

1 underlying assets. Is that correct?
2 A Not in respect of anybody trying to buy claims. We did
3 have a data room with respect to financing.
4 Q Please listen to my question. I'll get to it. Data room
5 for claims investors. There was no data room set up on or
6 before March 15 to allow Farallon to come in and investigate
7 its investment in this claim?
8 A That's correct.
9 Q There was no data room set up prior to March 15 to allow
10 Stonehill to come in and investigate its investment in the
11 claims it purchased. Is that correct?
12 A That's correct.
13 Q Can you identify any due diligence, sitting here today --
14 let me back up. You heard Mr. Dondero's testimony about
15 portfolio companies, correct?
16 A Yes.
17 Q Portfolio companies are companies in which Highland
18 Capital has an interest that actually have separate and
19 distinct management. Is that correct?
20 A Generally. And it -- I disagree with some of his
21 testimony, but generally that's correct, yes.
22 Q Well, okay. Let's just take on the part that you agree
23 with. With regard to those portfolio companies, was there
24 anything that was disclosed in the Highland publicly-available
25 financials that would allowed a detailed analysis of

1 Highland's investments in each of those portfolio companies?
2 A I don't know. Certainly, in the four or five sets of
3 projections that were filed, there were financial projections.
4 I'm not sure exactly what was included in each one or in the
5 disclosure statement.
6 Q Fair enough. Well, I'll represent to you I don't think
7 there's detailed information on each individual portfolio
8 company.
9 MR. MORRIS: Your Honor, he's not here to testify. I
10 move to strike.
11 MR. MCENTIRE: Okay.
12 THE COURT: Sustained.
13 BY MR. MCENTIRE:
14 Q In that regard, Mr. Seery, can you identify what Farallon
15 did to investigate the underlying asset value of any of these
16 portfolio companies?
17 A I don't have any knowledge as to what Farallon did before
18 it bought claims.
19 Q Can you identify what due diligence Stonehill did to
20 investigate the underlying asset value in any of these
21 portfolio companies?
22 A I don't -- I mean, in connection with claims purchasing, I
23 have no idea what Stonehill did.
24 Q Now, I understand that you solicited -- perhaps I don't
25 recall correctly. Did you solicit both Farallon and Stonehill

1 to participate in a bid to provide exit financing?
2 A I don't think that's fair. I solicited Farallon because I
3 knew they already owned claims. Stonehill reached out to me,
4 and that was one of the things they were interested in doing,
5 if there was financing needs.
6 Q Okay.
7 A And at the time they reached out, which was right after
8 confirmation -- right after confirmation and the confirmation
9 order, we didn't know what our needs would be. We didn't
10 really, at the early stage, think we needed exit financing.
11 When we looked at some of the difficulty we were going to have
12 -- for example, collecting notes and realizing on assets -- we
13 realized that we were going to need some exit financing in
14 order to have enough money to support the enterprise to
15 monetize the assets.
16 Q And I think you used the -- I think the phrase you used,
17 you are the straw man or a straw man bid? Is that what you
18 called it the other day?
19 A We did. You set up a very typical competitive process to
20 do exit financing.
21 Q And what was the --
22 A And what -- well, I --
23 Q -- suggest --
24 A I was going to get to your straw man. And one of the
25 things you do is you assess what the market's going to look

1 like, what you think the market looks like, what you think a
2 financing would be good for the enterprise, the flexibility
3 you need, how you'd structure it. And then you put that out
4 to prospective lenders and say, Here's our straw man. This is
5 what we'd like you to consider in terms of financing. And
6 then they do their work and come back. And they can either
7 say, that looks great, or we have a totally different idea of
8 what the financing might be, or some other combination of
9 those things.
10 Q Mr. Seery, thank you for that answer, but I need to ask
11 you to do me a favor. I'm on the clock, and so I'd just like
12 to get my questions out, if you'd try to respond. Okay?
13 A Uh-huh.
14 Q Because your answers, as long as they may be, are
15 impacting me a little bit.
16 So let me ask this question. In the straw man proposal
17 that you put out for bid, what was the suggested interest
18 rate?
19 A You know, you asked me that the other day, and I think I
20 was slightly off. So it -- and I -- but I did tell you that
21 it depended. There was -- I don't recall what the rate was,
22 but it starts -- if everybody wants to put out money -- and I
23 apologize for the length of the answer -- they look and they
24 say, well, what if I get paid back in six months? Nobody
25 wants to do that. So, duration makes a difference. So

1 there's an interest rate. There's upfront fees. There's
2 often exit fees. And sometimes there's other amounts. So,
3 our -- my recollection is that our straw man was somewhere in
4 the low teens on the high end, and then closer to high single-
5 digits on the low end. Something in that range.
6 Q And Farallon indicated to you they were not interested,
7 correct?
8 A No, not exactly. What Farallon said was they didn't --
9 they signed an NDA because we invited them in. We invited in
10 six folks. Five signed NDAs. Two of the -- I invited in
11 Farallon. I invited in Stonehill. Well, Stonehill called me.
12 I invited in Contrarian because they had bought claims. And
13 then two lenders that I knew. And Farallon did the work and
14 came back and said, this isn't really what we do. And the
15 other guys, you're telling me, which I was, that other people
16 are more competitive. And so it's not really what we do, we
17 don't think the returns are good enough, but if you need us,
18 because now they're already invested in the claims, call us.
19 Q Okay.
20 MR. MCENTIRE: And again, I'll object as
21 nonresponsive. Your Honor, that was a very long answer
22 talking about a lot of other entities. My only question was
23 what the interest rate was.
24 MR. MORRIS: Your Honor, we oppose the motion to
25 strike. I think it's --

1 MR. MCENTIRE: No, I didn't strike it. I said -- my
2 objection was nonresponsive. I will now follow it up with a
3 motion to strike his answer.
4 THE COURT: Overruled. Okay.
5 BY MR. MCENTIRE:
6 Q Mr. Seery, you just told us that the interest rate was in
7 the high single digits to in the 12 and 13 percent range.
8 A No, I was giving you the all-in return for the lender.
9 That's a very different --
10 Q All-in return?
11 A -- thing for the -- than an interest rate.
12 Q That's even better.
13 A And it depended on the time.
14 Q Fair enough.
15 Q So if -- the shorter the duration, the higher the
16 effective return, because he's not getting the return for as
17 long a period of time. If I have $100 million and I get 10
18 percent, I get just $10 million. But if I have that out for
19 $3 million, I've earned $30 million. So maybe that gets
20 squeezed in the longer it's out.
21 Q And Farallon said that the interest rate or the return
22 rate was not what they were looking for?
23 A They indicated two things. I believe I've said this
24 several times. One is they said, this isn't really what we
25 do, a $50-ish million dollar loan to do an exit. But we're in

1 the case. If you need us, call us. Included in that was, it
2 doesn't look attractive enough to us because you're telling me
3 other guys are more competitive.
4 Q Okay. And do you know what kind of rate of return they
5 were going to get on the investment of the -- on the claims at
6 a 71 percent projected return rate?
7 A If we only hit the plan, Farallon's two purchases, based
8 on the numbers you get -- you gave, over a two-year period,
9 would be 38.9 percent.
10 Q Okay, but we're going to talk about that in a second.
11 Okay. How much -- how much did Farallon actually invest?
12 A I'd have to look back at your numbers. They're in your
13 pleading. I don't know what they actually paid. I just have
14 it from your pleading.
15 Q Okay. And do you have paperwork that -- can you
16 (inaudible) calculation here?
17 A I have a calculator that, when I looked at your numbers, I
18 ran that, and I --
19 Q I see. All right.
20 A I'm able to remember certain things.
21 Q So, so if it's projected that the internal rate of return
22 is only six percent, do you disagree with that?
23 A A hundred percent disagree. There's -- that's virtually
24 impossible.
25 Q Okay.

1 A And that's, by the way, for hitting the plan.
2 Q I'm sorry?
3 A That's for hitting the 70 -- the 71-and-change percent.
4 Q I want to ask you a question about that. The 71-percent-
5 and-change --
6 A Uh-huh.
7 Q -- that came out of the plan for Class 8, --
8 A Yes.
9 Q -- that was for Class 8, correct?
10 A Correct.
11 Q There was zero expected return to Class 9, correct?
12 A That's correct. They would only get upside, and I think
13 it says in the projections, based upon our view at the time,
14 litigation that could ensue, and that was part of the plan.
15 Q And as I understand it, that 71-and-some-change --
16 A Uh-huh.
17 Q -- projected return rate never changed from the date of
18 confirmation all the way up to the effective date. Am I
19 correct?
20 A The -- we didn't change the projections that we'd filed
21 with the plan because the plan was confirmed. We didn't need
22 to change the projections that were filed with the plan.
23 Q The NDAs, as you understand it, can you tell me
24 specifically when the NDAs were signed?
25 A I know it's the first week of April to the second week of

1 April. Blue Torch may have signed -- who actually ended up
2 doing the financing -- they may have signed it a week or so
3 before. They'd been around offering financing a number of
4 times in the past.
5 Q Fair enough. But we know that you understood as of March
6 15th that Farallon had already made their investments? I
7 mean, claims?
8 A That's what they told me in that email, yes.
9 Q Okay. When did Stonehill sign the NDA?
10 A In and around the same time.
11 Q But you don't know when Stonehill actually purchased their
12 claims?
13 A I don't know exactly when. I know generally that by the
14 end of April, early May, they were -- they were the holder of
15 the Redeemer claim. And --
16 (Interruption.)
17 A -- I can't remember whether it was from them or whether it
18 was from --
19 Q Did you ever communicate with Stonehill during the time
20 that they were doing their due diligence on the exit
21 financing?
22 A Yes.
23 Q Okay. Did they come to your offices?
24 A I don't know if we were back yet. I think we were back,
25 but I don't recall them coming to our offices. I think it was

1 all virtual. It's early '21, so there would have been
2 vaccines. It would have been very -- very -- I don't recall
3 them coming to the offices at that time.
4 Q But just to be clear, you don't know, you can't give the
5 Court a date when Stonehill actually completed their
6 investments in either Redeemer or HarbourVest?
7 A No, I don't. I don't know. Did -- just --
8 Q That was my question.
9 A When you say Redeemer or HarbourVest, they never bought
10 HarbourVest.
11 Q It was just Redeemer?
12 A Correct.
13 Q All right. You understand that Muck is an entity, a
14 special-purpose entity created by Farallon?
15 A That's my understanding, yes.
16 Q And you understand Jessup is a special-purpose entity
17 created by Stonehill?
18 A That's my understanding, yes.
19 Q Muck and Jessup are both on the Oversight Committee?
20 A They are. They -- those entities are the --
21 Q Is it the Oversight Committee or the Oversight Board?
22 A Same thing.
23 Q Fair enough.
24 A I'll consider them the same.
25 Q And there's a third member, too, correct?

1 A That's correct.

2 Q Okay.

3 A Independent member.

4 Q Okay. So you have a three-person board; is that right?

5 A That's correct.

6 Q And one of their jobs is to make decisions concerning your

7 compensation?

8 A The structure of the Claimant Trust Agreement provides

9 that I'm to negotiate with the -- either the Committee or the

10 Oversight Board. And the compensation in the Claimant Trust

11 Agreement is a base salary of $150,000, which is -- a month,

12 which is the same as the one in the case, plus severance, plus

13 a success fee. And it's very specific that that will be

14 negotiated by the -- either the Committee or then the

15 Oversight Board.

16 Q And Michael Linn, who Mr. Dondero has referred to, he's

17 actually on the Oversight Board, is he not?

18 A He's the Muck representative on the Oversight Board.

19 Q All right.

20 A Yes.

21 Q If I understand it correctly, you are currently receiving,

22 as the Trustee, $150,000 a month. Is that correct?

23 A That's incorrect.

24 Q What are you receiving?

25 A I receive $150,000 a month as the Trustee and the CEO of

1 Highland Capital.
2 Q Well, --
3 A So I have --
4 Q -- fair enough.
5 A I have both roles. The Trustee, for example, doesn't
6 manage the team, they actually work for Highland Capital, and
7 I'm the CEO of Highland Capital.
8 Q There was some suggestion that the $150,000 was something
9 that the Court had passed upon prior to the effective date or
10 part of the plan. This is a separate negotiated item that you
11 -- that you allegedly negotiated that was awarded to you post-
12 effective date, correct?
13 A That's false.
14 Q Okay. So the $150,000 had a discount that was supposed to
15 drop down to $75,000 after a period of time. That never
16 happened, did it?
17 A The -- you seem to be mixing concepts. But the $150,000 a
18 month was set by the plan and the -- and the Claimant Trust
19 Agreement as the "base salary." That wasn't going to move.
20 When we -- it never was supposed to move.
21 When I began negotiating with the Oversight Board for the
22 success fee, they pushed back and said, we would like that to
23 step down. So in our -- I did not say, oh, that's a great
24 idea. We ended up negotiating, and they included a provision
25 that we would renegotiate depending on the level of work.

1 That's one of the provisions.
2 Q Okay. But renegotiate down to $75,000 after a period of
3 time, but that never happened?
4 A Initially, I believe it was supposed to step down to
5 $75,000 automatic, subject to renegotiation that it go back
6 up, not a structure that I particularly liked. And since
7 then, we've negotiated on that point.
8 Q So you currently are making $150,000 a month?
9 A That's correct.
10 Q How often do you come to Dallas?
11 A Usually I'm here at least once a month. Usually it's
12 between two and four days.
13 Q Okay. And you have a staff here in Dallas at Highland
14 Capital, correct?
15 A Yes.
16 Q How many people?
17 A Eleven.
18 Q Eleven people?
19 A Uh-huh.
20 Q Working full-time?
21 A Yes.
22 Q And you're still making $1.8 million a year?
23 A Yes.
24 Q You also have a bonus structure, correct?
25 A That's correct.

1 Q And that's performance-based?
2 A That's correct.
3 MR. MCENTIRE: Can you pull up the agreement please?
4 Okay.
5 (Pause.)
6 BY MR. MCENTIRE:
7 Q All right. Do you see --
8 MR. MCENTIRE: We're having technical difficulty
9 here.
10 BY MR. MCENTIRE:
11 Q All right. Can you identify this document?
12 MR. MCENTIRE: What exhibit number is this?
13 MR. MILLER: 28.
14 BY MR. MCENTIRE:
15 Q Exhibit 28.
16 MR. MCENTIRE: I believe this is already in evidence.
17 THE COURT: Hunter Mountain Exhibit 28?
18 MR. MCENTIRE: Yes, Your Honor.
19 THE COURT: Okay.
20 BY MR. MCENTIRE:
21 Q This is the memorandum of agreement. Do you see that?
22 A Yes.
23 Q On the third line, it says -- and your name is identified
24 here. You're the Claimant Trustee, correct?
25 A Claimant Trustee/CEO.

1 Q Engaged in robust, arm's length, and good-faith
2 negotiations regarding the incentive compensation program.
3 As part of this robust, arm's length, and good-faith
4 negotiation, did you personally conduct any independent search
5 in the marketplace?
6 A I did -- what do you mean by search in the marketplace?
7 Q Well, did you try to do a market study? I asked that
8 question in your deposition.
9 A I didn't know if you were asking a different question.
10 Q Same question.
11 A You mean market study on compensation?
12 Q Yes.
13 A No, I did not.
14 Q Are you aware of whether or not any member of the
15 Oversight Board or Oversight Committee did a market study?
16 A On compensation?
17 Q On compensation.
18 A I'm not aware that they did one, no.
19 Q So this robust, arm's length, and good-faith negotiation,
20 as far as you know, is divorced from any market study database
21 or -- or methods. Is that correct?
22 A I don't believe that's correct, no.
23 Q I see. So did -- was any third-party consultant hired?
24 A Not by me or Highland or the Trust, no.
25 Q All right.

1 MR. MCENTIRE: Can you scroll down a little bit,
2 please?
3 BY MR. MCENTIRE:
4 Q You signed this agreement, correct?
5 A Yes.
6 Q And we have Michael Linn signing on behalf of Muck, who
7 also is with Farallon, correct?
8 A That's correct.
9 MR. MCENTIRE: Scroll down.
10 BY MR. MCENTIRE:
11 Q And by the way, this is a heavily-redacted document. The
12 redactions deal with what?
13 A The redactions deal with the portion that would go to the
14 team as opposed to going to me.
15 Q Are we talking about the 11-member team?
16 A Correct.
17 MR. MCENTIRE: Can you scroll down? Stop. Go back.
18 BY MR. MCENTIRE:
19 Q So we have the assumed allowed claim amounts under Section
20 D. Do you see that?
21 A Yes.
22 Q Class 9, $98 million and some change. Class 8, $295
23 million and some change. Then we go into the incentive
24 payment tiers. Do you see that?
25 A Yes.

1 Q What's the purpose of the tiers?
2 A The purpose of the tiers was to set additional
3 compensation so that, the more recovery, the higher the
4 compensation. So, below Tier 1, there was really effectively
5 no bonus, is my recollection. And then in each tier there
6 would be a percentage.
7 So the first tier is $10 million. There would be a
8 percentage of that $10 million that could be allocated for
9 bonus. Then in the next tier it would be $56 million. A
10 portion of that would be allocated for bonus. And it's
11 weighted more heavily to the higher-recovery tiers, meaning it
12 incentivizes both me and the team to try to reach deeper into
13 Class 8 and Class 9 and get higher recoveries.
14 Q Okay. So the idea is, the more difficult it is to get the
15 recoveries, the higher percentage you should get, because if
16 you're successful then you should be rewarded accordingly? Is
17 that kind of how it works?
18 A I'm not sure if difficult is the term, but it's a
19 combination of both expertise, difficulty, and time.
20 MR. MCENTIRE: All right. Can you scroll down,
21 please? Next page.
22 BY MR. MCENTIRE:
23 Q And here are your actual tier participations. They go --
24 you said basically nothing Tier 1, up through 6 percent. So
25 Tier 1 is the 71 percent, right?

1 A It's .72 percent, and it's of the -- that's the first
2 piece. You have to get to Tier 1. So if we had not -- I
3 believe it's structured is if we don't get to Tier 1, for
4 example, we don't hit the plan, right around the plan number
5 of 71-and-change cents, then there wouldn't -- there wouldn't
6 be upside.
7 So it was very much structured in a way that you had to
8 perform. And then the better the performance, the bigger the
9 percentages of the tier.
10 Q So, in theory, Mr. Seery, by the time you get down to Tier
11 4 and Tier 5, it's a little bit less certain that you're ever
12 going to get there. Is that right?
13 A Well, out of the gate, going deeper was uncertain. It's a
14 question of being able to execute well on the assets and being
15 able to control the costs and being able to make
16 distributions. It wasn't based on what we just got for the
17 assets. It's actually based on actual distributions --
18 Q I understand that.
19 A -- to Class 8 and 9 claimants.
20 Q I understand that. And the idea is, is that it take a lot
21 more effort -- the theory was it might take a lot more effort
22 to get all the way to the bottom of Tier 5 to pay all the
23 Class 9 claims, right?
24 A And maybe a little luck.
25 Q Yeah. And Class 10 is not even factored into this, is it?

1 A No, it is not.
2 Q And so you didn't consider Class 10. You stopped at Tier
3 5?
4 A That's correct.
5 Q So your entitlement to a 6 percent return, or a 6 percent
6 bonus on the recoveries, you say it's there to incentivize
7 you. You didn't expect that to actually happen, did you, when
8 you signed this? Is that your testimony?
9 MR. STANCIL: I object to the form of the question.
10 It mischaracterizes the agreement.
11 BY MR. MCENTIRE:
12 Q You didn't expect it to happen, did you, sir?
13 THE WITNESS: Well, the six --
14 THE COURT: Wait. I'm sorry. Could you rephrase the
15 question?
16 MR. MCENTIRE: Sure.
17 BY MR. MCENTIRE:
18 Q Are you telling the judge that you really didn't expect
19 that to happen and that's why you were entitled to a higher
20 percentage?
21 A No. We didn't expect to reach Class 9 and go deep into
22 Class 9, but we certainly held out the possibility that we
23 could. And it's not six percent. It's six percent of the
24 increment. These are cumulative. So you get .72 of Tier 1.
25 You get 1.17 of Tier 2. And you can add those, and you earn

1 them when you've actually made the distribution, but you don't
2 get paid until you get all your distribution or we're
3 relatively done or there's a renegotiation. Because the
4 Committee wanted to make sure that I didn't say, hey, I hit
5 Tier 3, time to go, I got a better job.
6 Q So, Mr. Seery, if Farallon told Mr. Dondero that they
7 wouldn't sell basically at any price because you said it was
8 too valuable, and they rejected a 40 or 50 percent premium, if
9 they said that, is that -- is that a lie?
10 A That I -- rephrase that, please. I don't -- didn't quite
11 understand your question.
12 Q Yeah. You've heard the testimony that Farallon, Michael
13 Linn, told Mr. Dondero that they were not going to sell their
14 claim at any amount because you had told them it was too
15 valuable. Is that a lie?
16 A I think that's -- yeah, I don't think that's true.
17 Q Okay. And obviously, if they're not going to be willing
18 to sell at any amount, they must be pretty certain they're
19 going to hit Tier 5. Would that just be a lie?
20 A That -- that conversation was before this negotiation.
21 That -- there's no -- they could not have had any expectation,
22 either when they had that conversation in May or when we had
23 this discussion that I was going to hit Tier 5 and I hadn't
24 hit Tier 5. And the idea that they wouldn't sell at any price
25 is complete utter nonsense, because they're capped on what

1 they can get.
2 Q So if -- sure. Okay. So, but if Farallon told --
3 A But that's what you said.
4 Q If Farallon told Mr. Dondero that they wouldn't even sell
5 at 130 percent of the purchase price because you told them it
6 would be too valuable, is that a lie?
7 A I never told them it would be too valuable. I don't -- I
8 don't know any of the other parts that you're saying, the 130
9 percent of an unknown number, some guess number that Mr.
10 Dondero had. I never told them it would be too valuable.
11 That would be their own assessment of where we were at the end
12 of May 2021.
13 Q If they said that you told them not to sell, that it was
14 too valuable, is that a lie?
15 A That's untrue, yes.
16 Q If they told him -- if they told him that he told you --
17 that you told them it was too valuable because of MGM, is that
18 a lie?
19 A Yes.
20 Q How many shares of stock did Highland Capital own?
21 MR. MCENTIRE: Well, one second. What is my time?
22 How much time do I have?
23 THE CLERK: Right now you're at --
24 MR. MCENTIRE: So I'm almost two and a half hours in?
25 THE CLERK: Just about. A little under.

1 BY MR. MCENTIRE:
2 Q I'm going to have to speed up here, Mr. Seery.
3 THE COURT: A little under two and a half, you said.
4 BY MR. MCENTIRE:
5 Q Mr. Seery, I want to make sure. Highland Capital owns
6 interests in the CLOs. What is the CLOs' stake in the MGM
7 stock, or what was it?
8 A Highland Capital does not own any interest in any of the
9 CLOs it manages. It has a fee stream, and it can have certain
10 deferred fees that it can get, but it didn't own any interest
11 in any of the CLOs that it managed.
12 Q Fair enough. How about the portfolio companies?
13 A Did Highland Capital own interests in the portfolio
14 companies?
15 Q Yes.
16 A Some of the ones Mr. Dondero listed, but they weren't
17 portfolio companies. So he said OmniMax, but we didn't have
18 any management of OmniMax. We just had debt that converted to
19 equity, but we didn't control the -- the thing. That was
20 during the case, the company.
21 Q Did Multistrat have an interest in MGM?
22 A Multistrat owned MGM, yes.
23 Q Okay. And did your company, Highland Capital -- your
24 company -- Highland Capital have an interest in Multistrat?
25 A Highland Capital owns 57 percent of Multistrat, yes.

1 Q And did Highland Capital have an interest in any other
2 portfolio companies that have an interest in -- had a stake in
3 MGM?
4 A RCP. Restoration Capital Partners.
5 Q And do you recall what the value of that was?
6 A It shifted over time. I don't -- I don't know what time
7 you're talking about.
8 Q And isn't it true that 90 percent of all the securities
9 that Highland Capital owned at the time that the sale went
10 public was roughly 90 percent of all of Highland Capital's
11 securities?
12 MR. STANCIL: Objection, Your Honor. I don't know
13 what that question is asking.
14 THE COURT: I don't understand it, either.
15 Could you rephrase?
16 MR. MCENTIRE: I'll try to.
17 BY MR. MCENTIRE:
18 Q At the time that the announcement was made about Amazon
19 buying MGM in May of 2021, what percentage of all the
20 securities did MGM comprise of the securities that were owned
21 by Highland Capital?
22 A Of the securities that were directly owned by Highland
23 Capital, it may have been -- I'm thinking of public or semi-
24 public securities, the 150,000 or 170,000 that we had that
25 were subject to the Frontier lien. Might have been almost all

1 of the securities that we owned. It wasn't -- it was a good
2 position, but it wasn't a huge driver for the directly-owned
3 shares. There was more value in the Multistrat and the RCP.
4 Q What percent of shares of all --
5 MR. STANCIL: Your Honor, I'm sorry, I'm having
6 trouble hearing the end of Mr. Seery's answers. So I know
7 it's not his --
8 THE WITNESS: I'm sorry.
9 THE COURT: Okay. If you could make sure you speak
10 into the mic.
11 THE WITNESS: Yeah. I'm sorry.
12 MR. STANCIL: I'm having trouble with Mr. McEntire
13 talking over the end of Mr. Seery's answers.
14 THE COURT: Ah.
15 MR. STANCIL: I'm having trouble following.
16 THE COURT: Okay.
17 MR. STANCIL: I apologize.
18 THE COURT: Okay. Could you --
19 MR. MCENTIRE: I didn't know I was doing that.
20 THE COURT: Well, --
21 MR. MCENTIRE: I'll try to do better.
22 BY MR. MCENTIRE:
23 Q Mr. Seery, of all the stock that Highland Capital owned in
24 May of 2021, what percentage of that was (inaudible) stock?
25 A Hopefully this is clear. Highland Capital did not own a

1 lot of stock. Highland Capital did have a direct ownership
2 interest in MGM, so that might have been the vast majority of
3 the stock that Highland Capital owned. It did own interest in
4 other entities, like its investment in RCP or its investment
5 in Multistrat. But of the stock that it owned directly, that
6 was probably it, and that's the one that was liened up to
7 Frontier.
8 Q Mr. Seery, did Highland Capital own approximately 170,000
9 shares of MGM stock in May of 2021?
10 A Yes. You -- I'm sorry. You asked me what percentage, and
11 I think I said roughly that amount of stock liened up to
12 Frontier, and that that might have been almost all of the
13 stock we owned.
14 Q Does Highland Capital own a direct interest in HCLOF?
15 A In HC --
16 Q HCLOF?
17 A HCLOF? Yes. Highland Capital owns a small direct
18 interest, and a large indirect interest which we got through
19 the settlement with HarbourVest.
20 Q And the entity in which you acquired the indirect
21 interest, what's the name of that entity?
22 A I don't recall. It's a -- it's a single-shell special-
23 purpose entity that we own all of it and it has no other
24 assets.
25 Q And just to make sure that the record is clear, you deny

1 under oath that HCLOF has any interest -- or had any interest
2 in MGM stock?
3 A HCLOF has never owned MGM stock and still doesn't own MGM
4 stock. It's never owned it.
5 Q Um, --
6 A At least -- at least, as long as I've been in this case.
7 MR. MCENTIRE: One second, Your Honor, please.
8 (Pause.)
9 MR. MCENTIRE: I'm going to have to pass the witness
10 because of time sensitivities, Your Honor, so I'll pass the
11 witness at this time.
12 THE COURT: Okay. Cross?
13 CROSS-EXAMINATION
14 BY MR. MORRIS:
15 Q Mr. Seery?
16 A Yes, sir.
17 Q You just covered a lot of what we would have covered, so I
18 want to be really, really quick here. Okay? We're not
19 covering old ground. Let's just start with the HarbourVest
20 settlement. Do you recall that Mr. Dondero sent the email to
21 you on December 17th?
22 A Yes.
23 Q Okay. When did you reach the agreement with HarbourVest
24 on the settlement?
25 A December 10th.

1 Q Okay.
2 MR. MCENTIRE: Your Honor, I'd like to move into
3 evidence Exhibit 31. Actually, let me lay a foundation first.
4 Can you give the witness --
5 MR. MCENTIRE: Is this a new exhibit?
6 MR. MORRIS: No. It's Exhibit 31.
7 MR. MCENTIRE: Can I see it, Tim, please?
8 MR. MORRIS: It's in your box.
9 MR. MCENTIRE: Give me a minute.
10 MR. MORRIS: Uh-huh.
11 THE COURT: Okay. We're about to focus on Highland
12 Exhibit what?
13 MR. MORRIS: 31.
14 THE COURT: Okay.
15 MR. MORRIS: Do you have it, Your Honor?
16 THE COURT: I do.
17 BY MR. MORRIS:
18 Q Do you have it, Mr. Seery?
19 A I do, yes.
20 MR. MORRIS: Do you have it, sir?
21 MR. MCENTIRE: I do. Thank you.
22 MR. MORRIS: Okay.
23 BY MR. MORRIS:
24 Q Can you just tell the Court what this is?
25 A This is an email chain. It starts from me to the other

1 independent directors, copying counsel, to outline the terms
2 of the HarbourVest settlement that I had just made the offer
3 to HarbourVest to settle on these terms on December 8th. And
4 this was the product of a number of negotiations that had
5 taken place over the prior weeks, and this was the final offer
6 that I was making to them to settle.
7 Q Directing your attention to the bottom of the first page,
8 the first email dated December 8, 2020 at 6:46 p.m., can you
9 just read the first sentence out loud.
10 A I lost -- you lost me.
11 Q That begins, "As discussed yesterday."
12 A Oh. "As discussed yesterday, after consultation with John
13 Morris" -- that would be you -- "regarding litigation risks,
14 this evening I made an offer" -- it says "and," but it should
15 have said "an" -- "offer to HarbourVest to settle their
16 claims. The following are the proposed terms."
17 Q Okay. Just stop right there. And you were -- this is the
18 report that you gave to the independent directors?
19 A The other independent directors.
20 Q Right.
21 A I was also one.
22 Q Right. And did Mr. Dubel respond?
23 A He did, yes.
24 Q And can you just describe briefly what your understanding
25 was of his response?

1 A Dubel responds a couple hours after I sent the original
2 email: "Jim, this basically looks like a $10 million -- net
3 $10 million payment to HV." That's HarbourVest. "Is that
4 correct? Does the 72-cent recovery include the $22-1/2
5 million that we get from the transfer of HCLOF interests?
6 Remind me again, post-effective date, who is managing HCLOF?"
7 So I think my understanding was Mr. Dubel was querying me
8 on some of the terms that I had set forth here, including that
9 the value of the claim in our estimation was going to be about
10 $9.9 million, meaning they would have a $45 million senior
11 claim, a $35 million junior claim, and we thought, based on
12 the values we had then, it was going to pay out about $9.9
13 million.
14 Q Okay. And was this offer accepted?
15 A Yes, it was.
16 Q When was it accepted?
17 A I think I just said. On -- on December 10th.
18 Q Okay. And did the terms that you described for the other
19 independent directors on December 8th, did they change in any
20 way at all from that reflected in this email until the time we
21 got to the 9019 hearing?
22 A Not at all, no.
23 Q Okay. I see that you mention in here that you -- it says,
24 quote, "The interests have a marked value of $22-1/2 million,
25 according to Hunter Covitz." Do you see that?

1 A That's correct, yes.
2 Q Who's Hunter Covitz?
3 A Hunter Covitz was a Highland employee. He ran the
4 structured products business. So he was responsible for
5 making sure that the CLO we managed, which was AC7, was
6 compliant and was -- with the indentures. He also was
7 responsible for monitoring the -- what we call the 1.0 CLOs,
8 even though they weren't really CLOs, they were more like
9 closed-in funds. And he also kept track of the Acis -- CLOs
10 that HCLOF had an interest in that were managed by Acis.
11 Q Okay. And do you recall how he conveyed to you the NAV?
12 A Well, I talked to him numerous times, so this wasn't our
13 -- I didn't just call him up at the end and say, what's the
14 NAV? I had had discussions with him while I was negotiating
15 with HarbourVest. And at some point, he or someone -- he told
16 me the amount, and at some point he gave me a NAV statement
17 that actually showed the NAV of HCLOF, which at 11/30 was
18 roughly $45 million.
19 Q Okay. Can you turn to Exhibit 31-A, the next document in
20 the binder?
21 A Mine's completely blacked out.
22 THE COURT: I'm sorry, what number?
23 MR. MORRIS: 31-A.
24 THE COURT: Oh.
25 MR. MORRIS: And the first two pages are redacted

1 just because they're not relevant and they're business
2 information.
3 BY MR. MORRIS:
4 Q But can you turn to the last page, sir?
5 A Yes.
6 Q Can you tell the judge what this is?
7 A So this is a net asset value statement from HCLOF. That's
8 Highland CLO Funding, Limited. That's the Guernsey entity
9 that -- that held these interests. And this is a net asset
10 amount, and it shows what the net -- what the net asset value
11 is as of this time on a carryforward basis of $45.191 million.
12 Q Okay. And where did you get this document?
13 A I believe I got it from Covitz. It's generated by an
14 entity called Elysium, which is the fund administrator for
15 HCLOF, and I believe they're out of Guernsey.
16 Q And did you rely on this document in setting the proposal
17 to HarbourVest?
18 A Well, both the conversations with Covitz and the document.
19 And frankly, HarbourVest got the same documents because they
20 were -- they held a membership interest in HCLOF. So he --
21 Michael Pugatch knew what the NAV was.
22 Q And would Mr. Dondero or entities controlled by him who
23 also have interests in HCLOF, is it your understanding that
24 they would have also had this document available?
25 A All members would --

1 MR. MCENTIRE: Excuse me. Excuse me. I object to
2 that question, the question being "and the entities controlled
3 by Mr. Dondero." There's no foundation for this witness to
4 answer a question like that.
5 BY MR. MORRIS:
6 Q Who else owned --
7 THE COURT: Sustained.
8 BY MR. MORRIS:
9 Q -- an interest in HCLOF?
10 THE COURT: Go ahead.
11 THE WITNESS: It would have been DAF.
12 BY MR. MORRIS:
13 Q The DAF?
14 A Yeah.
15 Q Okay. Let's just ask this question. Is it your
16 understanding that these NAV valuation reports were made to
17 all holders of interests in HCLOF?
18 A Yes. And that would include the DAF. And I did leave off
19 that there were three former Highland employees long gone, or
20 at least not around at this point, who also owned very small
21 interests, and they would have gotten those statements as
22 well.
23 Q And does HCLOF also produce audited financial statements?
24 A It does, yes.
25 Q Can you go to Exhibit 60, please?

1 A Six zero?
2 Q Yes, sir. A couple of questions here. Is this a document
3 that Highland would have received in the ordinary course of
4 business?
5 A Yes, it is.
6 Q Okay. And what is the NAV depicted on this page as of the
7 end of the year 2020?
8 A Well, you have to look through it, because this document
9 is actually dated 4/21/21, --
10 Q Okay.
11 A -- which you can see on Page 10 where it's signed. And
12 that shows a net asset value of $50.4 million as of 12/31/21.
13 12/20. I'm sorry. And -- but it wasn't prepared until -- the
14 audits aren't done and we don't get this document until after
15 the directors sign off in April.
16 Q Okay.
17 MR. MORRIS: And Your Honor, I move for the admission
18 into evidence of these three HarbourVest-related documents,
19 30, 31-A, and 60.
20 MR. MCENTIRE: No objection.
21 THE COURT: They're admitted.
22 MR. MORRIS: Okay.
23 (Debtors' Exhibits 30, 31-A, and 60 are received into
24 evidence.)
25 BY MR. MORRIS:

1 Q Okay. Let me move on. We've seen Mr. Dondero's email
2 today. You've seen that before, correct?
3 A Yes.
4 Q Okay. What was your reaction when you got it?
5 A I was highly suspicious.
6 Q Why is that?
7 A Well, not to replow too much old ground, but this came
8 after he threatened me. He threatened me in writing. I'd
9 never been threatened in my career. I've never heard of
10 anyone else in this business who's been threatened in their
11 career. So anything I would get from him, I was going to be
12 highly suspicious.
13 It also followed the imposition of a TRO for interfering
14 with the business. He knew what was in the TRO and he knew
15 what it applied to, and it restricted him from communicating
16 with me or any of the other independent directors without
17 Pachulski being on it.
18 Furthermore, Pachulski had advised Mr. Dondero's counsel
19 that not only could they not communicate with us, if they
20 wanted to communicate they had to prescreen the topics.
21 And how do we know that? Because Dondero filed a motion
22 to modify the TRO. And that was all before this email.
23 In addition, that followed the termination of the shared
24 service arrangements, the approval of the disclosure
25 statement, and the demand to collect on the demand notes that

1 Mr. Dondero and his entities were liable for.
2 So at that point, he'd been interfering with the business,
3 he had threatened me, he was subject to a TRO, and I got this
4 email and I was highly suspicious.
5 Q Did you ever share this email with anybody at Farallon?
6 A No.
7 Q Did you ever share this email with anybody at Stonehill?
8 A No. And just to be clear, not just the email, the
9 contents. Never discussed it with them.
10 Q That was going to be my next question. Did you ever share
11 any information about MGM with anybody?
12 MR. MCENTIRE: Objection. Leading.
13 MR. MORRIS: I'm asking the question.
14 MR. MCENTIRE: No, you're leading.
15 MR. MORRIS: This is the whole --
16 MR. MCENTIRE: You're leading the witness.
17 THE COURT: Overruled. Finish the question.
18 BY MR. MORRIS:
19 Q Did you ever share any information concerning with MGM
20 with anybody at Stonehill before you learned that they had
21 purchased claims?
22 MR. MCENTIRE: Objection. Leading.
23 THE COURT: Overruled.
24 THE WITNESS: No. No, I did not.
25 BY MR. MORRIS:

1 Q Did you ever share any information with anybody at
2 Farallon concerning MGM before you learned that they purchased
3 their claims?
4 MR. MCENTIRE: Objection. Leading.
5 THE WITNESS: No, I did not.
6 THE COURT: Overruled.
7 THE WITNESS: I'm sorry.
8 (Pause.)
9 THE WITNESS: You know, you just asked me something
10 about Stonehill.
11 THE COURT: No.
12 THE WITNESS: I'm sorry.
13 BY MR. MORRIS:
14 Q Yeah. No question.
15 A I wanted to clarify one.
16 Q What did you want to clarify, sir?
17 A Certainly didn't share anything about this email, any of
18 the contents of it. I don't know if I ever -- I don't know
19 exactly when Stonehill bought their claims, and they were
20 subject to the NDA to do the financing process. So I know
21 when Farallon told me they had bought their claims and I know
22 we never had any discussions at all before they acquired their
23 claims, and I don't know when Stonehill got those -- their
24 claims, so I don't know when -- what was in the data room or
25 what -- what might have been discussed about MGM while they

1 were under an NDA.
2 Q Okay.
3 A But certainly nothing -- I never shared the contents of
4 this email, the substance of this email, the email at all.
5 That's what I wanted to clarify.
6 Q What data room are you talking about, sir?
7 A This was the data room related to the exit financing where
8 we sought exit financing and ultimately got exit financing
9 from Blue Torch Capital.
10 Q And who put together the data room?
11 A DSI, which was our financial consultants, and our finance
12 team.
13 Q And why did you -- did you delegate responsibility for
14 creating the data room to DSI and the members of your team you
15 just identified?
16 A Yeah, of course.
17 Q How come?
18 A I don't really know how to put together a data room.
19 Q Did you -- did you direct them to put anything in the data
20 room?
21 A Not specifically. We had a deck that we -- that certainly
22 I worked on and commented on, which would have been a general
23 overview of the -- of the post-reorganized Highland and the --
24 and the -- and the Claimant Trust. So I certainly commented
25 on that. But the specific information in the data room, I

1 don't -- I never looked at it. I don't know what it is.
2 Q How many -- how many entities who were participating in
3 the exit facility process wound up making bids or offers?
4 A There were five that signed NDAs. Three provided
5 substantive proposals. One was verbal. That was Bardin Hill,
6 who'd been contacting me throughout the case, and they do this
7 kind of financing, and they submitted a competitive bid.
8 Stonehill in writing, and then amended, a more aggressive one,
9 in writing. And Blue Torch probably three, and the most
10 aggressive.
11 Q And did you give the -- did you give the opportunity to
12 your age-old friends at Stonehill?
13 A They're not my age-old friends. And no, they lost. They
14 were second, they were close, it was a good real proposal, but
15 they didn't win.
16 Q So, --
17 A Blue Torch won.
18 Q So is it fair to say that you -- did you pick the best
19 proposal that you thought provided the best value for the
20 company that you were managing?
21 MR. MCENTIRE: Your Honor, again, for the last ten
22 minutes, we've had nothing but leading questions. And it just
23 is --
24 MR. MORRIS: Fine. Happy to --
25 THE COURT: Sustained. Rephrase.

1 BY MR. MORRIS:
2 Q Why did you pick Stone -- why did you pick Blue -- Blue-?
3 A Blue Torch.
4 Q Blue Torch, over the other bids?
5 A It was the best bid. So, structurally, it was the least
6 expensive, although they were extremely close. I had a lot of
7 confidence in Blue Torch because this type of financing is
8 what they do. And while you can never have a hundred percent
9 confidence that if somebody goes through the -- this is an
10 LOI, right, so this is a letter of intent. When they go
11 further, they may -- they may not complete it. But I had a
12 high degree of confidence that they would get there, because,
13 again, that's what they do. And they were the -- they were
14 just the better bid.
15 Q Okay. Do you recall that in Mr. Dondero's notes he wrote
16 down that he was told that Farallon had purchased their claims
17 in February or March?
18 A I saw that on what he claimed, yes.
19 Q And is that consistent with what you were told by Farallon
20 in March?
21 A They told me they acquired the claims -- they had acquired
22 the claims on March 15th, by email. I don't know if they
23 acquired them in February or March. Or even January. I know
24 they said they had them on March 15.
25 Q Did you ever speak with Farallon about anything having to

1 do with the purchase of their claims?
2 MR. MCENTIRE: Objection. Leading.
3 THE COURT: Overruled.
4 THE WITNESS: Not -- not before they sent me that
5 email.
6 MR. MORRIS: I apologize. Withdrawn.
7 BY MR. MORRIS:
8 Q Before -- before learning of their purchase, had you had
9 any discussions with them about potential claim purchases?
10 MR. MCENTIRE: Objection.
11 THE WITNESS: No.
12 MR. MCENTIRE: Leading.
13 THE WITNESS: I'm sorry.
14 THE COURT: Overruled.
15 THE WITNESS: No, I didn't.
16 BY MR. MORRIS:
17 Q Okay. Before you learned that Stonehill had purchased
18 claims in the Highland bankruptcy, had you ever had any
19 conversation with them about the potential purchase of claims?
20 MR. MCENTIRE: Objection. Leading.
21 THE WITNESS: No, I don't -- I don't --
22 THE COURT: Overruled.
23 THE WITNESS: I'm sorry. I don't -- I don't believe
24 so, no.
25 BY MR. MORRIS:

1 Q Do you have any knowledge at all as to how the sellers
2 went about selling their claims?
3 A I have some knowledge now, post-effective date, that I
4 believe I have some understanding, but not a great one.
5 Q Did you ever communicate with any of the sellers about the
6 potential sale of their claims prior to the time their claims
7 were sold?
8 MR. MCENTIRE: Objection. Leading.
9 THE COURT: Overruled.
10 THE WITNESS: I did have a conversation with Eric
11 Felton who was the Redeemer representative on the Creditors'
12 Committee. And it came out of one of the emails I got. I
13 think it indicated that --
14 MR. MCENTIRE: Objection, hearsay, Your Honor. I
15 mean, hearsay, Your Honor.
16 THE COURT: Okay.
17 MR. MCENTIRE: It's hearsay.
18 THE COURT: Okay. He's about to say something that's
19 hearsay is the objection. Any response?
20 MR. MORRIS: I'm not offering it for the truth of the
21 matter asserted. I'm offering it for Mr. Seery's state of
22 mind and the extent of his communications. How about that?
23 MR. MCENTIRE: I don't see how you could offer it for
24 anything other than for the truth of the matter asserted.
25 It's coming from a third party, so I object to hearsay.

1 MR. MORRIS: Okay. You know what? We --
2 BY MR. MORRIS:
3 Q Other than the one conversation --
4 THE COURT: Are you withdrawing the question or do I
5 need --
6 MR. MORRIS: Yeah. This is just --
7 THE COURT: Okay. You're withdrawing the question.
8 MR. MORRIS: I'll withdraw the question.
9 THE COURT: Okay.
10 BY MR. MORRIS:
11 Q Other than the one conversation with Mr. Felton, did you
12 ever have a conversation with any seller prior to the time you
13 learned that Farallon or Stonehill --
14 MR. MCENTIRE: Objection. Leading.
15 BY MR. MORRIS:
16 Q -- purchased the claims?
17 THE COURT: Overruled.
18 THE WITNESS: No.
19 BY MR. MORRIS:
20 Q Did you play any role in facilitating or recommending to
21 Farallon or Muck that it purchase claims?
22 MR. MCENTIRE: Objection. Leading.
23 THE COURT: Overruled.
24 THE WITNESS: No. None whatsoever.
25 BY MR. MORRIS:

1 Q Did you play any role in facilitating or recommending that
2 Stonehill or Jessup purchase claims?
3 A No.
4 MR. MCENTIRE: Objection. Leading.
5 THE COURT: Overruled.
6 THE WITNESS: I'm sorry.
7 BY MR. MORRIS:
8 Q All right. Let's just finish up with compensation. Can
9 you go to Exhibit 41, please? Can you just identify that
10 document for the Court?
11 A This is the -- it's a memorandum agreement that sits on
12 top of an outline. It is the December 2 incentive
13 compensation agreed terms for Highland Capital --
14 Q Okay.
15 A -- and the Trust.
16 Q And when was this signed?
17 A It would have been -- the date is December 6th.
18 Q And --
19 A 2021. I'm sorry.
20 Q Okay. And when did you and the Committee members begin
21 discussing your compensation package?
22 A Shortly after the effective date, which was August 11,
23 2021.
24 Q And were there any negotiations during that intervening
25 three- or four-month period?

1 A Considerable negotiations during that period, yes.
2 Q Can you go to the last page of Exhibit 41? Can you
3 describe that for the Court? I know it's hard to read, but --
4 A I --
5 Q -- the numbers don't matter so much as the infor... you
6 know, just, can you just describe --
7 A Yeah.
8 Q -- what's being conveyed?
9 A So it's very hard to read, but it says -- because it's
10 small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal
11 2, Oversight Counter 2, and then it continues down. My
12 recollection is that we had four or five rounds of back-and-
13 forth that were meaningful. But it -- but it even took a
14 detour in the middle, because it started with my proposal,
15 which was pretty robust, and their response to me that they
16 didn't like the structure or the amount, and so then we
17 started talking about that. And then they -- after we were
18 kind of hitting numbers and structure at the same time, they
19 came back to me and said, stop, we've got to agree on the
20 structure before we agree on the amounts.
21 MR. MCENTIRE: Your Honor, I'm going to object as
22 it's hearsay and move to strike. This is -- he's not talking
23 about the document. He's talking about something outside of
24 the four corners of the document. I object to hearsay.
25 MR. MORRIS: Hearsay? There's no statement.

1 THE COURT: There was --
2 MR. MORRIS: It's a description of what happened.
3 MR. MCENTIRE: But he's actually referring to
4 statements in his substantive comments.
5 THE COURT: Overruled. Okay.
6 MR. MORRIS: I move for the admission into evidence
7 of Exhibit 41.
8 THE COURT: Any objection?
9 MR. MCENTIRE: That's the memorandum agreement, Mr.
10 Morris? Is that it?
11 MR. MORRIS: Yes, sir.
12 MR. MCENTIRE: No objection.
13 THE COURT: Admitted.
14 (Debtors' Exhibit 41 is received into evidence.)
15 BY MR. MORRIS:
16 Q Can we go backwards to Exhibit 39, please? Can you
17 describe for the Court what that is?
18 A This is a redacted copy of minutes of the board meeting on
19 August 21 -- 26, 2021.
20 Q And there's a lot of stuff redacted there. Do you have an
21 understanding as to why there is redactions?
22 A It would have nothing to do with these issues that we're
23 discussing or the alleged *quid pro quo*.
24 Q Okay. Can you just read out loud the last portion that's
25 unredacted on the second page, beginning with "Mr. Seery

1 reviewed"?
2 A It actually says, "Mr. Seery also presented the board with
3 an overview of his incentive compensation program proposal,
4 which would include not only Mr. Seery but the current HCMLP
5 team. The terms and structure of the proposal had been
6 previewed with the board in prior operating models presented
7 by Mr. Seery. Mr. Seery reviewed the proposal and stated his
8 view that the proposal was market-based and was designed to
9 align incentive between himself and the HCMLP team on the one
10 hand and the Claimant Trust beneficiaries on the other. The
11 board asked questions regarding the proposal and determined
12 that it would consider the proposal and revert to Mr. Seery
13 with a counterproposal."
14 Q All right. When you were -- when you were shown one of
15 these documents before, you were asked to identify Mr. Linn,
16 but you weren't asked about the others. Do you see Richard
17 Katz there?
18 A Yes.
19 Q Who's that?
20 A He's the independent member.
21 Q Did he play any role in the negotiation of your
22 compensation package?
23 A Yes. He was actively involved.
24 Q Okay. And how about Mr. Provost? Who's he?
25 A He is the Jessup person. Jessup is the board member.

1 He's their representative on the board.
2 Q Okay.
3 MR. MORRIS: And I move for admission into evidence
4 of Exhibit 39.
5 MR. MCENTIRE: No objection, Your Honor.
6 THE COURT: Admitted.
7 (Debtors' Exhibit 39 is received into evidence.)
8 BY MR. MORRIS:
9 Q Let's go to Exhibit 40, please. Can you just describe for
10 the Court what that is?
11 A This is a subsequent board meeting minutes, August 30,
12 2021.
13 Q And can you just read into the record -- why are there
14 redactions?
15 A Again, they would -- if there are redactions, it would
16 have nothing to do with the issues that are being brought up
17 in this motion.
18 Q And can you just read into the record the paragraph
19 beginning, "Mr. Katz"?
20 A "Mr. Katz began the meeting by walking the Oversight Board
21 and Mr. Seery through the Oversight Board's counterproposal to
22 the HCMLP incentive compensation proposal, including the
23 review of the spreadsheet and summary of the counterproposal.
24 Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery
25 asked numerous questions and received detailed responses from

1 the Oversight Board. Mr. Seery and the Oversight Board agreed
2 to continue the discussion and negotiations regarding the
3 proposed incentive compensation plan for the Claimant Trustee
4 and the -- and the HCMLP."
5 Q So they didn't accept your original proposal that you made
6 in the earlier document?
7 A They did not.
8 Q Okay. And did negotiations continue?
9 A They did, yes.
10 MR. MORRIS: Before we go on, I move for admission
11 into evidence Exhibit 40.
12 THE COURT: Any --
13 MR. MCENTIRE: No objection.
14 THE COURT: It's admitted.
15 (Debtors' Exhibit 40 is received into evidence.)
16 BY MR. MORRIS:
17 Q Can you go to Exhibit 59, please? Can you describe for
18 the Court what this is?
19 A This is an email string between me and the Oversight Board
20 regarding the compensation proposal.
21 Q Okay. And directing your attention to the bottom, I
22 guess, of the second page, there is an email from Mr. Katz
23 dated October 26. Do you see that?
24 A At the bottom of the second -- oh, yes, yes.
25 Q Okay. Can you just read the sentence at the bottom of the

1 page beginning "We propose"?
2 MR. MCENTIRE: Well, Your Honor, I would, first of
3 all, object to him just reading from the document until it's
4 been put into evidence.
5 THE COURT: I'm sorry, say again?
6 MR. MCENTIRE: I would object to Exhibit --
7 THE COURT: We can't pick things up on the record
8 when you don't speak in a mic.
9 MR. MCENTIRE: I object to him simply reading from
10 the document before the document is offered into evidence.
11 MR. MORRIS: Okay.
12 MR. MCENTIRE: Accepted into evidence.
13 MR. MORRIS: Sure. I'd move it into evidence.
14 MR. MCENTIRE: I object as hearsay.
15 MR. MORRIS: This is a present sense recollection --
16 recorded. It's a clear business record. It's a negotiation
17 that's happening over time. Mr. Seery is here to answer any
18 questions about authenticity.
19 MR. MCENTIRE: Well, first of all, it's an email
20 string involving communications with third parties. That's
21 hearsay in and of itself. And it's not been established that
22 this is a business record. And Mr. Morris's statements to
23 that effect, frankly, don't carry his burden. There's
24 internal hearsay contained throughout the document, Your
25 Honor, even if it is a business record.

1 MR. MORRIS: Your Honor, just to be clear, let me
2 respond.
3 THE COURT: Uh-huh.
4 MR. MORRIS: Exceptions to hearsay rule. 803(1)
5 present sense impression; (2) -- (3) existing mental
6 impression, state of mind about motive, (5) recorded
7 recollection, (6) records of regularly-conducted activity, or
8 Federal Rule of Evidence 807, residual exception for
9 trustworthy and probative evidence. I'll take any of them.
10 MR. MCENTIRE: None of them apply.
11 MR. MORRIS: Okay.
12 THE COURT: Okay. Overruled.
13 MR. MORRIS: Thank you.
14 THE COURT: I admit it. 59's admitted.
15 (Debtors' Exhibit 59 is received into evidence.)
16 BY MR. MORRIS:
17 Q Can you just read that last sentence at the bottom of that
18 page?
19 A This is from Rich Katz to me.
20 Q Uh-huh.
21 A (reading) We propose doing this in two stages. First,
22 we'd like to come to agreement on structural, underscored,
23 elements of the ICP.
24 ICP means incentive compensation program or plan.
25 Only after we'd done that, when the board had greater

1 understanding of what plan they were pricing, would we haggle
2 out the specific numbers, underscore, tier attachment points,
3 and percentage participation in each tier.
4 Q Okay. And going to the right-hand part of that, do you
5 see where it says, Salary J.S. Only?
6 A Yes.
7 Q Can you just, you know, generally describe for the Court
8 what the debate is or the negotiation that's happening on that
9 particular point?
10 A Well, this was brought up earlier. The salary was
11 $150,000 a month. That was the same salary that I'd had
12 during the case that was approved by the Court. It had been
13 approved by the Committee, approved by the other independent
14 members. That was continuing. It was also contained as an
15 actual base salary in the plan and the Claimant Trust
16 Agreement, and they were never amended.
17 The Committee came back to me and said, we'd like that to
18 step down. And they'd like it to step down on a definitive
19 specific schedule, because they had a view that that would
20 incentivize me to work faster to make distributions before the
21 stepdown and that I wouldn't linger in the role. And the
22 yellow --
23 Q Can you just read the yellow out loud?
24 A That's --
25 Q Read the whole thing.

1 A That's my response.
2 Q Read the whole thing.
3 A (reading) Based on the required expertise, volume, and
4 personal risk of the work today, I do not think that any
5 formulaic reduction in base comp is appropriate. With the
6 complexity and amount of issues that I have to manage on a
7 daily basis, I currently do not have capacity to take on
8 significant outside work. Of course, things can change. If
9 they do, I am open to discussing reduction in the base. I
10 have no interest in sitting around doing nothing, having no
11 risk, and collecting the full base compensation. We can
12 include prefatory language and an agreement to revisit our
13 terms, but I do not see an avenue to set parameters to lock in
14 an agreement for the future at this time.
15 And then there's another paragraph on severance.
16 Q You can stop there.
17 MR. MORRIS: I have no further questions.
18 THE COURT: All right. Pass the witness.
19 MR. MCENTIRE: Do you have any questions?
20 A VOICE: No.
21 MR. MCENTIRE: Okay. How much time do I have,
22 please?
23 THE CLERK: So, the limit is at two hours and 32
24 minutes.
25 MR. MCENTIRE: All right.

1 REDIRECT EXAMINATION

2 BY MR. MCENTIRE:

3 Q Just a couple questions very quickly, Mr. Seery. Highland

4 Capital Management paid HarbourVest cash as part of the

5 settlement, correct?

6 A That's incorrect.

7 Q There was no cash component at all?

8 A There was not.

9 Q And in connection with the HarbourVest settlement,

10 HarbourVest transferred an interest in HCLOF to Highland

11 Capital or an entity affiliated with Highland Capital; is that

12 not correct?

13 A That's correct.

14 Q And that -- that entity -- and HCLOF, and HCLOF had an

15 interest in various CLOs, correct?

16 MR. MORRIS: Your Honor, I object. This is beyond

17 the scope of my cross, or redirect, however you prefer.

18 MR. MCENTIRE: Well, you spent a lot of time on

19 HarbourVest. I'm just trying to clear it up.

20 MR. MORRIS: I didn't say the word CLO. I did not

21 say the word CLO.

22 THE COURT: Overruled. He can go there.

23 If you'd please move the mic towards your voice.

24 BY MR. MCENTIRE:

25 Q And HCLOF had an interest in various CLOs, correct?

1 A I believe it had an interest in five CLOs. Oh, that's not
2 true. It had an interest in five of the 1.0 CLOs. It also
3 owned one hundred -- basically, somewhere between 87 and a
4 hundred percent of Acis 3, 4, 5, 6, and 7, which is about a
5 billion dollars of CLOs to 10 (inaudible) leveraged vehicles,
6 and they owned basically all the equity, so that was the
7 driver of the value.
8 Q And various entities that were -- I mean, some of these
9 various CLOs had an interest in MGM stock, correct?
10 A The 1. -- the Highland 1.0s did. The value drivers I just
11 described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.
12 Q But one of them did have an interest in MGM?
13 A That's not correct.
14 Q What did you just say?
15 A 3, 4, 5, 6, and 7 did not have any interest in MGM.
16 Q Were there any CLOs that had an interest in MGM?
17 A Some of the 1.0 CLOs did, --
18 Q I see.
19 A -- yes.
20 MR. MCENTIRE: Pass the witness.
21 MR. MORRIS: No further questions.
22 THE COURT: Mr. Seery, I want to ask you one thing.
23 THE WITNESS: Yes, Your Honor.
24 EXAMINATION BY THE COURT
25 THE COURT: We dance around it a lot. The Highland

1 ownership of MGM stock. If think -- if you could confirm I've
2 heard this correct -- you said Highland itself owned 170,000
3 shares that were subject to a Frontier Bank lien?
4 THE WITNESS: Yes, Your Honor. I believe that's the
5 right amount. So, Highland directly owned about 170,000
6 shares. Those were liened up to Frontier. They were -- they
7 were never transferred. Highland never sold any MGM stock.
8 THE COURT: Okay. So Frontier still holds it or
9 what?
10 THE WITNESS: No. In fact, post-effective -- I
11 believe it was post-effective date, and with cash generated,
12 we -- we paid off the Frontier loan, --
13 THE COURT: Uh-huh.
14 THE WITNESS: -- released that lien, and then we held
15 those shares in MGM until the merger was consummated.
16 THE COURT: Okay.
17 THE WITNESS: So we tendered our shares into the --
18 into the merger and got the merger consideration, which was
19 cash.
20 THE COURT: Okay. And so there was that. But other
21 than that, you said Highland owned 50 percent of Multistrat,
22 which owned some MGM stock?
23 THE WITNESS: Multistrat had a -- I don't recall the
24 amount, but a material amount of MGM stock. That also -- so,
25 Highland owned 57 percent of Multistrat. Is also the manager

1 of Multistrat.
2 THE COURT: Uh-huh.
3 THE WITNESS: Multistrat did not sell any MGM stock.
4 It also tendered them into the merger as well.
5 THE COURT: Okay. And then you said Highland owned
6 some percentage of Restoration --
7 THE WITNESS: Restorations Capital Partners.
8 THE COURT: -- Capital Partners, which owned some
9 MGM stock?
10 THE WITNESS: Similarly, Highland is the manager of
11 what we call RCP. RCP owned a material amount of MGM stock.
12 RCP did not sell any MGM stock. However, in 2019, you'll
13 recall that Mr. Dondero sold $125 million of stock
14 postpetition out of RCP. It was MGM stock. He sold it back
15 to MGM. We had a -- we had a hearing on it, because
16 subsequently the Independent Board learned about it, the
17 Committee learned about it, they had not -- it had not been
18 disclosed, but there was a -- what we thought was a binding
19 agreement with MGM, and MGM indicated that they were going to
20 hold us to it, and so we had a hearing about approving that
21 transaction. The Committee was not happy.
22 THE COURT: Okay. I'm fuzzy on when that was. You
23 said?
24 THE WITNESS: That would have been in early 2020,
25 probably April-ish timeframe.

1 THE COURT: Okay.
2 MR. MORRIS: Your Honor?
3 THE WITNESS: The transaction was in November, I
4 believe.
5 MR. MORRIS: If it's helpful, Your Honor, you can
6 find it at Docket 487.
7 THE COURT: Okay.
8 MR. MORRIS: I think that's the objection from the
9 Committee where the issue was -- comes up at least at one
10 time.
11 THE COURT: Okay. And then I think this is the last
12 category I heard, that HCM and its specially-created sub owned
13 just over 50 percent of HCLOF, and it in turn owns interest in
14 a lot of CLOs, and a few of those, what you call the 1.0 CLOs,
15 did own some MGM stock?
16 THE WITNESS: That's correct. So if you look on the
17 audited financials that we had introduced into evidence,
18 you'll see actually every asset that HCLOF owns. There's no
19 MGM in there. It does own interest. There were minority
20 interests in five or six of the 1.0 CLOs. Grayson,
21 Greenbrier, Gleneagles, Brentwood, Liberty, and one other.
22 And it had interest in those, but it never owned any MGM stock
23 and it never traded any MGM stock. It didn't own any.
24 THE COURT: All right. Did I cover the universe of
25 what MGM stock was owned by Highland or something Highland had

1 an interest in?
2 THE WITNESS: Yeah. So, the ones that HCLOF had an
3 interest in that I just listed, those -- Jasper was the other
4 one. I apologize. The -- they owned -- they owned MGM stock
5 among their other -- they had a lot of other assets. The
6 other CLOs, the 1.0 CLOs that Highland had, every one of them
7 owned MGM stock. None of them sold or bought any stock.
8 Those all tendered into the merger as well. Highland did not
9 own any interest in any of those entities.
10 THE COURT: Uh-huh.
11 THE WITNESS: It just managed them.
12 THE COURT: Okay. And this is my last question.
13 Someone brought up or it came up today that exactly two years
14 ago today -- I didn't remember we were on an anniversary of
15 that -- but was when we had a hearing, and I think it was a
16 contempt hearing, but I had, I guess, read in the media, like
17 many other human beings, an article about the MGM-Amazon
18 transaction, and I had said I had hope in my heart and brain
19 that this could be an impetus or a triggering event for maybe
20 a settlement. And that was kind of quickly pooh-poohed, if
21 you will.
22 Remind me why I was quickly persuaded, oh well, I guess
23 that's not going to happen. I just can't remember what I
24 heard that day.
25 THE WITNESS: Well, it was widely known that

1 Highland, meaning not the 171,000 --
2 THE COURT: Uh-huh.
3 THE WITNESS: -- but the entities that Highland or
4 related entities, including DAF, the other Dondero entities,
5 controlled a lot of Highland stock, as even Mr. Dondero said
6 between Anchorage --
7 THE COURT: You mean MGM?
8 THE WITNESS: MGM, I'm sorry. Between -- there were
9 only five major holders. There was the two we just mentioned
10 and Davidson Kempner and Monarch and Owl Creek, and just a few
11 other big holders.
12 And so Your Honor would have learned it from the case, but
13 you also would have learned it from the paper, that any time a
14 holder is mentioned, it's first Anchorage, because they owned
15 the biggest piece, and Kevin Ulrich, who was the chairman of
16 Anchorage, was also the chairman of MGM. And then Highland
17 was always mentioned.
18 The reason that it didn't have some great amount of
19 capital that went on to Highland, although there was money
20 from RCP and there was money from MGM, is Highland doesn't own
21 the stock that's -- or interests in the 1.0 CLOs that owned
22 all of it. We just manage it.
23 THE COURT: Uh-huh.
24 THE WITNESS: And that goes to various other
25 entities, including, in large part, to Dondero entities. So

1 there wasn't a big windfall to Highland from that.
2 The possibility of some upside from HCLOF, because it
3 owned small interests in those five, there was some value in
4 that, but a lot of it got tied up in the litigation that other
5 entities, Dondero entities, are bringing against U.S. Bank and
6 Acis, which has tied up everything in that -- those
7 distributions.
8 THE COURT: Okay. All right. Thank you. You are
9 excused from the stand.
10 THE WITNESS: Thank you, Your Honor.
11 MR. STANCIL: I owe you a docket number, Your Honor.
12 You said don't let us leave before we give you a docket number
13 for that second contempt order. We promised to come back. It
14 was #2660.
15 THE COURT: Okay. Got it.
16 MR. STANCIL: Which -- did we move that into
17 evidence?
18 MR. MORRIS: No. We asked the Court to take judicial
19 notice.
20 THE COURT: I will take judicial notice of 2660, --
21 MR. STANCIL: Thank you, Your Honor.
22 THE COURT: -- I already said. Thank you.
23 THE WITNESS: Thank you, Your Honor.
24 THE COURT: You're excused.
25 (The witness steps down.)

1 THE COURT: All right. Are you going to have any
2 other evidence, Mr. McEntire?
3 MR. MCENTIRE: Your Honor, as I respond to your
4 question, I think we have 30 -- approximately 30 minutes left.
5 THE CLERK: Twenty-six, yes.
6 MR. MCENTIRE: Twenty-six. We do have another
7 witness. We also have a closing final argument. And we also
8 have an opportunity -- we want to reserve an opportunity for
9 our experts that is still under advisement.
10 So my first action would be to ask for an extension of
11 time, or we would like to add to our time limit. Instead of
12 just three hours, we'd like to increase the time so we can
13 accomplish all these things.
14 I mean, if the Court is unwilling to give us additional
15 time, then I will be forced not to call another witness. I
16 will move to a very short final argument. I need to preserve
17 some time for my experts, should you allow them to testify.
18 THE COURT: Well, --
19 MR. MORRIS: May I respond?
20 THE COURT: -- you don't have to preserve time. I'm
21 either going to allow you to put on your experts, and we said
22 30 minutes/30 minutes, --
23 MR. MORRIS: That was what I was going to say, Your
24 Honor.
25 THE COURT: Okay.

1 MR. MORRIS: There's no prejudice here. Nobody's
2 being harmed. There's no appellate issue. I thought we were
3 really clear. Everybody gets their three hours today. We
4 will file our reply brief on Monday. The Court will determine
5 both whether it needs to hear expert testimony and whether or
6 not our motion should be sustained. If the Court denies the
7 motion, we'll take a couple of depositions and each side will
8 get whatever period of time the Court orders.
9 But, you know, the attempts to create an appellate record
10 are just -- you know, that's not -- there's no issue here. He
11 can -- he's got 26 minutes. He can put on his witness, he can
12 make his closing in the 26 minutes that they've always had.
13 THE COURT: All right. Well, we have --
14 MR. MCENTIRE: May I caucus? May I caucus very
15 quickly, Your Honor?
16 THE COURT: Okay. Uh-huh. And while you're
17 caucusing, we have our game plan on the experts. We know how
18 that's going to happen. And I'm not extending the three
19 hours.
20 MR. MORRIS: (sotto voce) We have 62 minutes?
21 (Pause.)
22 MR. MCENTIRE: Your Honor, accordingly, I'll just --
23 we'll move into a final argument at this time.
24 THE COURT: Okay. So you rest?
25 MR. MCENTIRE: I rest.

1 THE COURT: All right.
2 MR. MORRIS: We call Mark Patrick.
3 THE COURT: All right. Mr. Patrick, you've been
4 called to the witness stand.
5 MR. MORRIS: I just need to find my examination
6 notes. Just give me one moment, please.
7 THE COURT: All right. Please raise your right hand.
8 Could you remain standing, please.
9 (The witness is sworn.)
10 THE COURT: All right. You may be seated.
11 MARK PATRICK, DEBTORS' WITNESS, SWORN
12 DIRECT EXAMINATION
13 BY MR. MORRIS:
14 Q Hi, Mr. Patrick.
15 A Hello.
16 Q Did you ever meet with anybody at the Texas State
17 Securities Board?
18 A No.
19 Q Do you know if -- do you know anybody who ever met with
20 anybody at the Texas State Securities Board concerning
21 Highland?
22 A Yes.
23 Q And who met with the Texas State Securities Board
24 concerning Highland?
25 A Ronnie (phonetic) Patel.

1 Q And is that a lawyer?
2 A Yes.
3 Q Do you know who retained Mr. -- that lawyer?
4 A Yes.
5 Q Who retained that lawyer?
6 A The DAF, the Charitable DAF Fund. Or one of its entities.
7 Q Okay. And is it your understanding that the DAF Fund or
8 one of its charitable entities filed a complaint with the
9 Texas State Securities Board?
10 A Yes.
11 Q Okay. Thank you very much. Does Hunter Mountain owe any
12 money to Mr. Dondero?
13 A No.
14 Q Is there a promissory note that's outstanding that Mr.
15 Dondero has pursuant to which Hunter Mountain owes him $60-
16 plus million?
17 A No.
18 Q Who created Hunter Mountain?
19 A Well, I don't recall specifically. I just recall the
20 facts that, when Hunter Mountain was created, Thomas Surgent,
21 the chief compliance officer of Highland Capital Management,
22 who was representing the Dugaboy Investment Trust as well as
23 Highland Capital legally with respect to that transaction,
24 requested to Rand that the Hunter Mountain Investment Trust be
25 created for purposes of Highland filing its ADV with the SEC.

1 It was my understanding that when the ADV would be filed, sort
2 of the ownership change would -- chain would stop at Hunter
3 Mountain.
4 Q Okay. Dugaboy is Mr. Dondero's family trust, correct?
5 A No. But I'll help you along. Just please use the full
6 name of the trust.
7 Q If I refer to the Trust, will you know that that's -- is
8 that for the Hunter Mountain Investment Trust, or do you want
9 me to use trust --
10 A There's no entity called Dugaboy. Just Dugaboy. There's
11 not.
12 Q Okay.
13 A It's a shorthand. I'm --
14 Q Okay. I'll refer to Dugaboy then, okay?
15 A What are we referring to?
16 Q The trust known as Dugaboy.
17 A Okay. Fair enough. Go ahead.
18 Q Okay. Did Dugaboy contribute a portion of its ownership
19 interest in Highland to the Highland -- to the Hunter Mountain
20 Investment Trust?
21 A Contribute? No.
22 Q Did it transfer?
23 A Yes.
24 Q And did it receive in exchange a promissory note from
25 Hunter Mountain?

1 A Yes, it did.
2 Q Okay. And Mr. Dondero is the lifetime beneficiary of
3 Dugaboy, correct?
4 A Yes and no. It's a placeholder -- a placeholder provision
5 that's never been used.
6 MR. MCCLEARY: Your Honor, pardon me. Pardon me.
7 Objection, relevance, Your Honor.
8 THE COURT: Relevance?
9 MR. MORRIS: This is -- we've been told so many times
10 that Mr. Dondero has no interest in this case, he has nothing
11 to do with Hunter Mountain. He's the lifetime beneficiary of
12 Dugaboy. And if I --
13 THE WITNESS: That provision has never been invoked.
14 He's received no money through that provision.
15 THE COURT: Okay. Just wait. We're resolving --
16 MR. MORRIS: Right.
17 THE COURT: -- an objection at the moment.
18 BY MR. MORRIS:
19 Q Can we turn to Exhibit 51?
20 THE COURT: I'm still working on the objection.
21 MR. MORRIS: I'm going to try and lay a foundation.
22 Okay?
23 THE COURT: Okay. So he's withdrawing the question.
24 MR. MCCLEARY: He's withdrawing the question? Okay.
25 THE COURT: Okay.

1 BY MR. MORRIS:
2 Q You have a binder in front of you, sir. Can you go to
3 Exhibit 51?
4 THE COURT: And this is Highland's Exhibit 51?
5 MR. MORRIS: Yeah.
6 THE COURT: Okay.
7 BY MR. MORRIS:
8 Q And is that a promissory note that was made --
9 A Yes, it is.
10 Q -- that was made by Hunter Mountain in favor of Dugaboy
11 back in 2015?
12 MR. MCCLEARY: Objection, relevance, Your Honor.
13 MR. MORRIS: I'm trying to connect Mr. Dondero to
14 Hunter Mountain.
15 THE COURT: Okay. Overruled.
16 THE WITNESS: Yeah. It's a secured promissory note
17 with the amount of approximately $62.6 million signed by
18 Beacon Mountain, LLC, --
19 MR. MORRIS: Uh-huh.
20 THE WITNESS: -- as administrator for Hunter Mountain
21 Investment Trust.
22 BY MR. MORRIS:
23 Q Okay. And as the -- what's your role with Hunter Mountain
24 today?
25 A And it's in favor, just to answer your question, it's in

1 favor of the Dugaboy Investment Trust. That's where I was
2 just being a little stickler --
3 Q I appreciate that.
4 A -- previously. Sorry.
5 Q I do.
6 A Okay. What is your question?
7 Q What's your role with Hunter Mountain today?
8 A I am the administrator.
9 Q When did you become the administrator?
10 A On or about August of 2022.
11 Q Okay. How did you become the administrator?
12 A Through the acquisition of Rand Advisors.
13 Q And does Hunter Mountain have any employees?
14 A No.
15 Q Does it have any operations?
16 A No.
17 Q Does it generate any revenue?
18 A Not -- not currently.
19 Q Okay. Did it generate any revenue in 2022?
20 A No.
21 Q Does it own any assets?
22 A Yes.
23 Q What does it own?
24 A It has -- it's my understanding it has a contingent
25 beneficiary interest in the Claimants Trust.

1 Q And that's the only asset it has, right?
2 A Correct.
3 Q So that if it -- if that interest has no value, then
4 Hunter Mountain has no ability to pay the Dugaboy note. Fair?
5 A (sotto voce) If that interest has no value?
6 That is correct.
7 Q Okay.
8 MR. MORRIS: I move Exhibit 51 into evidence.
9 MR. MCCLEARY: Your Honor, relevance. Objection.
10 THE COURT: Your response?
11 MR. MORRIS: Mr. Dondero desperately needs Hunter
12 Mountain to win in this lawsuit because otherwise his family
13 trust will get nothing on this $63 million note.
14 THE COURT: Okay. Overrule the objection. It's
15 admitted.
16 (Debtors' Exhibit 51 is received into evidence.)
17 BY MR. MORRIS:
18 Q Neither you or any representative of Hunter Mountain has
19 ever spoken with any representative of Farallon, correct?
20 A Correct.
21 Q Neither you nor any representative of Hunter Mountain has
22 ever spoken with anybody at Stonehill, correct?
23 A Correct.
24 Q You have -- neither you nor Hunter Mountain have any
25 personal knowledge about a *quid pro quo*, correct?

1 A (sotto voce) Nor Hunter Mountain have any personal
2 knowledge about a *quid pro quo*.
3 Correct.
4 Q Neither you nor anybody at Hunter Mountain have any
5 personal knowledge about how Mr. Seery's compensation package
6 was determined, correct?
7 A Correct.
8 Q Neither you nor anybody at Hunter Mountain had any
9 knowledge about the terms of Mr. Seery's compensation package
10 until the Highland parties voluntarily disclosed that in
11 opposition to the Hunter Mountain motion, correct?
12 A No. I --
13 MR. STANCIL: Objection, relevance, Your Honor.
14 THE COURT: Overruled.
15 THE WITNESS: No. I seem to -- I seem to have an
16 awareness that the performance fee was amended at a certain
17 time post-confirmation, or, you know, around the confirmation
18 time period. And so that's with respect to the compensation.
19 I -- just myself.
20 BY MR. MORRIS:
21 Q Can you tell Judge Jernigan everything you know or
22 everything you knew before receiving Highland's opposition to
23 this motion about Mr. Seery's compensation as the CEO of the
24 Reorganized Debtor at the Claimant Trustee?
25 MR. MCCLEARY: Objection, Your Honor. That's

1 overboard and an unclear question.
2 THE COURT: Overruled. He's gone through some
3 specific things now. I guess he's just trying to encompass
4 anything we haven't covered.
5 THE WITNESS: Yeah. I had a -- I personally had a
6 general understanding that Mr. Seery's compensation changed
7 after the claims trading to put in a performance-based-type
8 measure. But I do recall that it was always very -- it was
9 unclear exactly the terms.
10 BY MR. MORRIS:
11 Q Okay. Did you learn anything else?
12 A Such as?
13 Q Just, did you ever learn anything else about Mr. Seery's
14 compensation package that you haven't testified to yet?
15 MR. STANCIL: Your Honor, objection. Vague.
16 THE COURT: Overruled.
17 THE WITNESS: No.
18 BY MR. MORRIS:
19 Q Okay. Neither you nor Hunter Mountain has any personal
20 knowledge whatsoever about any due diligence that Stonehill
21 did in connection with the purchase of claims, correct?
22 MR. MCCLEARY: Your Honor, he's getting into
23 allegations in the complaint which involve attorney work
24 product, so we object on the basis of invading the attorney
25 work product.

1 THE COURT: Overruled.
2 THE WITNESS: Can you restate the question again?
3 BY MR. MORRIS:
4 Q Yes, sir. Neither you nor Hunter Mountain have any
5 personal knowledge as to what due diligence Stonehill did
6 before purchasing its claims in this case, correct?
7 MR. MCCLEARY: Objection. Attorney work product.
8 Invasion of that. Could I --
9 THE COURT: I just ruled.
10 MR. MCCLEARY: I understand.
11 THE COURT: I just --
12 MR. MCCLEARY: Could I have a running objection to
13 this line of questioning on that basis, Your Honor, invasion
14 of attorney work product?
15 THE COURT: Why don't you explain why it's attorney
16 work product. I'm missing --
17 MR. MCCLEARY: Because they might -- he would have
18 knowledge from the efforts and investigation through attorneys
19 in the case. I assume he's not asking -- you can't separate
20 that, potentially. So he's getting into attorney work
21 product.
22 MR. MORRIS: I'm asking for facts.
23 THE COURT: He's asking for facts. I overrule.
24 BY MR. MORRIS:
25 Q Can you answer the question, sir?

1 A Yeah. I'm not aware -- I'm not personally aware of how
2 much work Farallon did, or Stonehill.
3 Q You have no knowledge whatsoever about the diligence
4 Stonehill did before purchasing its claims, correct?
5 A Well, I would generalize now is that they did nothing.
6 Q And that's on the basis of Mr. Dondero's testimony,
7 correct?
8 A I would just call it on a basis of our general inquiry,
9 which would be including, in part, Mr. Dondero's testimony.
10 Q What else are you relying upon for your conclusion that
11 you just described other than Mr. Dondero's? What other
12 facts?
13 A Yeah, we -- yeah, we have not uncovered any facts that
14 indicated that they did conduct any due diligence of any sort.
15 Q Okay. And are you -- do you have any personal knowledge
16 as to what Farallon did in connection with its due diligence
17 prior to buying its claim?
18 A Yeah. We have not been able to find any facts that would
19 suggest that Farallon conducted any due diligence of any kind.
20 Q Okay.
21 MR. MORRIS: One second, Your Honor.
22 (Pause.)
23 BY MR. MORRIS:
24 Q Who's paying Hunter Mountain's legal fees?
25 A Hunter Mountain is paying -- is legally obligated and

1 paying its own legal fees.
2 Q If it generates no income and its only assets is the
3 interest in Highland, where is it getting the funds to pay
4 legal fees?
5 MR. MCCLEARY: Objection, Your Honor. This is
6 irrelevant and invades the attorney-client privilege.
7 MR. STANCIL: Your Honor, I'm happy to read a Fifth
8 Circuit case that says the identity of a third-party payer of
9 attorneys' fees is not privileged. I would refer them to *In
10 re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit
11 case. I can read from Judge Jones' opinion, but you tell me
12 how much you want to hear on this.
13 THE COURT: Okay. I overrule your objection. He can
14 answer.
15 THE WITNESS: There is a settlement agreement by
16 Hunter Mountain Investment Trust as well as the Dugaboy
17 Investment Trust that provides for the payment of attorney
18 fees.
19 MR. MORRIS: No further questions, Your Honor.
20 THE COURT: Okay. Cross?
21 MR. MCCLEARY: Yes, Your Honor, briefly.
22 CROSS-EXAMINATION
23 BY MR. MCCLEARY:
24 Q Mr. Patrick, how would you describe Mr. Dondero's
25 relationship with Hunter Mountain Investment Trust today?

1 A None.
2 Q You were asked some -- let me ask you about litigation,
3 and litigation involving the sub-trust. Has Hunter Mountain
4 been involved in litigation with Mr. Kirschner?
5 A Yes.
6 Q Okay. And what is your understanding of Mr. Kirschner's
7 role?
8 MR. MORRIS: Your Honor, while I would love for them
9 to continue --
10 MR. MCCLEARY: He's the --
11 MR. MORRIS: -- to use their time, I object that
12 it's beyond the scope of my examination. They passed on the
13 witness. They rested their case. He should be limited to the
14 scope of my inquiry.
15 THE COURT: Okay. How does this tie to direct?
16 MR. MCCLEARY: Your Honor, it -- just very generally.
17 This is --
18 THE COURT: Okay. I need to know how it ties to the
19 direct.
20 MR. MCCLEARY: This doesn't tie directly to the
21 direct, Your Honor.
22 THE COURT: Then it's beyond the scope, you
23 acknowledge?
24 MR. MCCLEARY: Yes, Your Honor.
25 THE COURT: Okay. Sustained, then.

1 MR. MCCLEARY: Okay.
2 BY MR. MCCLEARY:
3 Q Mr. Patrick, has Hunter Mountain Investment filed any
4 litigation as a plaintiff other than its efforts to be a
5 plaintiff in this lawsuit and its action as a petitioner in
6 the Rule 201 matter earlier this year in Dallas state court?
7 A The 202.
8 Q 202, yes.
9 A No, it has not.
10 Q All right. And then it's -- has it been a party, then, to
11 any other litigation other than the efforts to file this
12 action, the Rule 202 action, and has it been a defendant in
13 any lawsuits?
14 A To my understanding, no.
15 Q Is it involved as a defendant in the Kirschner litigation?
16 A Yes.
17 Q Mr. Kirschner is suing Hunter Mountain; is that correct?
18 A That is correct.
19 Q Okay. So, is Hunter Mountain a vexatious litigant?
20 MR. MORRIS: Objection, Your Honor. This is now
21 really beyond the scope. We're not doing -- this is -- we're
22 not doing it. I'm not letting -- because there's a vexatious
23 litigant motion pending now in the district court right now
24 before Judge Starr. This has nothing to do with anything I
25 asked.

1 THE COURT: Okay.
2 MR. MCCLEARY: They're trying to draw --
3 THE COURT: You've already asked him is it a party in
4 any other litigation besides the 202 and this attempted one,
5 so where are we going with this?
6 MR. MCCLEARY: Well, they're just trying to draw Mr.
7 Dondero into this and -- this vexatious litigant argument, and
8 we're just developing the fact that obviously Hunter Mountain
9 has only filed -- attempting to file this action and a Rule
10 202 proceeding. So they're not involved in a lot of
11 litigation and they're not a vexatious litigant.
12 THE COURT: Okay. I think I'll sustain that and we
13 can just move on.
14 MR. MCCLEARY: Okay. Then I'll pass the witness.
15 Thank you, Your Honor.
16 THE COURT: Okay. Any redirect?
17 MR. MORRIS: No, thank you, Your Honor.
18 THE COURT: All right. You are excused, Mr. Patrick.
19 (The witness steps down.)
20 THE COURT: Anything else?
21 MR. MORRIS: Just a time check for both sides and
22 let's get to closings.
23 THE COURT: Okay. Caroline?
24 THE CLERK: Movant has 23 minutes left and the
25 Respondents have 47.

1 THE COURT: 23 and 47. Any other evidence from the
2 Respondents?
3 MR. MORRIS: That is a fair question.
4 (Discussion.)
5 MR. MCCLEARY: Your Honor, I just want to confirm
6 that all the exhibits that they did not object to have been
7 admitted into evidence.
8 THE COURT: All right. Well, let me --
9 MR. MCCLEARY: We do offer them.
10 MR. MORRIS: Oh.
11 THE COURT: Hang on.
12 MR. MORRIS: Did I get Exhibit 45, Your Honor?
13 THE COURT: Just a moment. I'm doing two things at
14 once here. 45 is in.
15 MR. MORRIS: Okay.
16 THE COURT: All right. On HMIT's exhibits, okay,
17 first, as we all know, 29 through 52 are carried until -- if
18 we have another hearing with the experts.
19 (HMIT's Exhibits 29 through 52 carried.)
20 THE COURT: I'm showing we have -- and speak up if
21 anyone questions this -- I show that we have Hunter Mountain
22 Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26
23 through 38, and 53 through 57, 64, 65, and then 67 through
24 seventy --
25 (HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

1 67-70 are received into evidence.)
2 MR. MCCLEARY: Your Honor, I apologize. From 36 --
3 26 to 32 are in?
4 THE COURT: I believe that was part of the
5 stipulation, Mr. Morris, right?
6 MR. MCCLEARY: Yes.
7 MR. MORRIS: I think that's right.
8 THE COURT: Okay.
9 MR. MORRIS: We really didn't object to very many.
10 THE COURT: Yes.
11 MR. MCCLEARY: That would be 25, too. That would
12 include 25?
13 MR. STANCIL: No. Objection. 25 is not --
14 THE COURT: It's not admitted.
15 MR. STANCIL: It's not in evidence.
16 THE COURT: 25 and 24 were not admitted.
17 MR. MORRIS: Correct. Those are my emails.
18 THE COURT: Okay. So --
19 MR. MCCLEARY: 25 is an article.
20 THE COURT: Your 25 was John Morris Email Re: Text
21 Messages dated March 10, 2023.
22 MR. MCCLEARY: Okay.
23 THE COURT: Okay. I can't remember where I left off.
24 I think I left off -- I'll just repeat after the expert
25 exhibits that are carried. I've admitted 53 through 57. I

1 have admitted 64, 65, 67 through 71.
2 (HMIT's Exhibit 71 is received into evidence.)
3 Now, I'm not sure if I ended up admitting 72. That was
4 the articles. I can't remember if you stipulated on that
5 finally.
6 MR. MORRIS: I said they --
7 MR. MCCLEARY: They had no objection.
8 MR. MORRIS: -- they come in --
9 THE COURT: Not for the truth of the matter asserted.
10 MR. MORRIS: -- self -- exactly.
11 THE COURT: Okay.
12 MR. MORRIS: Self-authenticating.
13 THE COURT: So 72 is in.
14 MR. MCCLEARY: Okay.
15 (HMIT's Exhibit 72 is received into evidence.)
16 THE COURT: Then we had some pleadings. I think 73,
17 74, 75 are in, but again, not for the truth of the matter
18 asserted in any advocacy on 73 and 74. And then 77, 78, 79
19 are in. And that's it.
20 (HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received
21 into evidence.)
22 MS. DEITSCH-PEREZ: Your Honor, I didn't make an
23 appearance, but I was taking notes (inaudible).
24 MR. MCCLEARY: Your Honor, I believe 80 should be in.
25 MR. MORRIS: No objection to 80. It's on our -- it's

1 part of our Exhibit 5.

2 THE COURT: Okay. 80 is in. Admitted.

3 (HMIT's exhibit 80 is received into evidence.)

4 MR. MORRIS: Yeah. That's really Section A of that

5 thing that I gave you this morning.

6 THE COURT: If Ms. Deitsch-Perez wants to consult

7 with the Hunter Mountain lawyers, she can. I don't know --

8 MR. MORRIS: Can I go through quickly mine, Your

9 Honor? Because we actually never had the opportunity to put

10 our exhibits in.

11 THE COURT: Okay. Let's make sure we're to --

12 MR. MORRIS: Okay. I'm sorry. I'm sorry.

13 THE COURT: -- closure on the Hunter Mountain

14 exhibits.

15 MR. MORRIS: I'm sorry.

16 THE COURT: Anything I said that you disagree with?

17 I don't think --

18 (Pause.)

19 THE COURT: Okay. Let's hurry up. What is the

20 controversy?

21 A VOICE: Roger? The Court's addressing you.

22 MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just

23 a little unclear of whether you have Exhibits 21 through 25

24 admitted.

25 THE COURT: I have 21, 22, and 23. Not 24. Not 25.

1 Okay. Anything else?
2 MR. MCCLEARY: Okay. Then we do offer 24 and 25.
3 THE COURT: You offered them. I did not admit them.
4 MR. MCCLEARY: Okay. 76. I believe -- was that --
5 you're carrying?
6 MS. DEITSCH-PEREZ: Carried.
7 MR. MCCLEARY: You're carrying that?
8 THE COURT: Okay. I carried that and --
9 MR. MCCLEARY: It's part of the expert issue.
10 THE COURT: Okay. Yes, part of the expert. So it's
11 carried.
12 (HMIT's Exhibit 76 is carried.)
13 (Pause.)
14 MR. MCCLEARY: I understand you've admitted 53
15 through 83, although some of them have now not been approved.
16 THE COURT: All right. Well, we need to clarify. 58
17 through 63, you think you offered them and I admitted them,
18 but not for the truth? I remember that being discussed for 58
19 through 63. Are you actually offering them?
20 MR. MCCLEARY: Yes. 58 through 63.
21 THE COURT: All right. And Mr. Morris, you
22 ultimately agreed that yes, but not for the truth of the
23 matter asserted?
24 MR. MORRIS: That's right, Your Honor.
25 THE COURT: Okay. So they are admitted. Okay.

1 (HMIT's Exhibits 58 through 63 are received into
2 evidence.)
3 THE COURT: And then there was an objection to the
4 Mark Patrick declaration for the same thing, not for the truth
5 of the matter asserted.
6 MR. MORRIS: Exactly.
7 THE COURT: But you agree as long as it's --
8 MR. MORRIS: Correct.
9 THE COURT: Okay. So what that means is, to recap,
10 53 through 75 are admitted, although some of those are only --
11 they're not for the truth of the matter asserted. And then 77
12 through 80 are admitted. Okay?
13 MR. MCCLEARY: And 76? We offered 76.
14 THE COURT: That's -- we carried it. We carried it.
15 It relates to the expert.
16 MR. MCCLEARY: Carried it.
17 (Pause.)
18 MR. MCCLEARY: Thank you, Your Honor.
19 THE COURT: Okay. Now let's straighten out
20 Highland's exhibits. So, I'm showing 1 through 16 have been
21 admitted, and then 25 through 31-A?
22 MR. MORRIS: 25 through 31-A?
23 THE COURT: I'm sorry. Yes. 25 through 31-A.
24 MR. MORRIS: Okay.
25 THE COURT: And then 34. And then 39, 40, 41, and

1 then 45. 51, 59, and 60.
2 MR. MORRIS: Okay. So I'm going to do my best not to
3 burden the Court. I'm trying to focus. We move for the
4 admission into evidence of Exhibit 32, which is Mr. Dondero's
5 objection to the HarbourVest settlement. And the reason that
6 we're offering it is because he made no mention of any concern
7 at all that the settlement implicated material nonpublic
8 inside information.
9 THE COURT: All right. Any objection?
10 MR. MCCLEARY: 32?
11 THE COURT: Uh-huh.
12 MR. MCCLEARY: Yes, Your Honor. Relevance and
13 hearsay.
14 THE COURT: Overruled. And I can take judicial
15 notice of it in any event.
16 (Debtors' Exhibit 32 is received into evidence.)
17 MR. MORRIS: We move for the admission into evidence
18 of Exhibit 33, which is the recent letter from the Texas State
19 Securities Board declining to take any action after conducting
20 an investigation of the Dugaboy complaint.
21 THE COURT: Okay. Any objection?
22 MR. MCCLEARY: We object on the grounds of relevance,
23 403, hearsay, and authenticity, Your Honor.
24 And I also, I think it's important that the decision by a
25 regulatory body has no bearing on this cause of action or the

1 colorability of this claim, and the Texas State Securities
2 Board will tell you that. This is completely and utterly
3 irrelevant to your inquiry, Your Honor.
4 THE COURT: Okay. I overrule the relevance
5 objection. Certainly, it goes to colorability. It's some
6 evidence. It's some evidence. A regulatory body did not
7 choose to go forward --
8 MR. MCCLEARY: But that could be for --
9 THE COURT: -- on the complaint.
10 MR. MCCLEARY: That could be for reasons entirely
11 unrelated.
12 THE COURT: True, true. It's some evidence.
13 MR. MORRIS: That's speculation.
14 MR. MCCLEARY: Not for this.
15 THE COURT: But what is the authenticity objection?
16 MR. MCCLEARY: Well, there's no demonstration. I
17 don't believe they sponsored that with anyone.
18 THE COURT: Pardon? Say again?
19 MR. MCCLEARY: They didn't sponsor that with anyone.
20 MR. MORRIS: Your Honor, I actually -- if they really
21 put me to it, because I was reading the Rules of Evidence in
22 the wee hours of the morning, I am certain that there's an
23 exception for government documents and government statements
24 and government decisions.
25 MR. STANCIL: Your Honor, as to its authenticity, I

1 could produce a witness from Highland who said they got it, if
2 that's really what we're doing. That it's the letter, they
3 got it from the TSSB, if we're really doing authenticity.
4 MR. MCENTIRE: Well, first of all, it's hearsay and
5 there is no authenticity issue and it's irrelevant. I
6 understand --
7 MR. STANCIL: What is the authenticity issue, Mr.
8 McEntire?
9 THE COURT: I'm trying to understand the authenticity
10 issue. You think this is a --
11 MR. STANCIL: Do you think it's a real letter or a
12 fake letter?
13 MR. MCENTIRE: Well, first of all, I'm going to
14 address the Court and not you, okay?
15 Your Honor, --
16 THE COURT: Well, address by speaking in a --
17 MR. MCENTIRE: Yeah. Thank you.
18 THE COURT: Okay. I'm just saving the court reporter
19 from grief, okay?
20 MR. MCENTIRE: It is hearsay, and it is hearsay that
21 is calculated to be misrepresented or mischaracterized because
22 it's utter speculation as to the basis for their decision.
23 And if it's -- utter speculation is the basis of your
24 decision, it has no reason to come in. There's no --
25 THE COURT: What you're telling me, it goes to the

1 weight of the evidence. Okay?
2 MR. MCENTIRE: Your Honor, --
3 THE COURT: Okay. You're not telling me it's
4 inadmissible hearsay.
5 MR. MCENTIRE: Well, it is inadmissible hearsay.
6 MR. MORRIS: Can I just, for one second?
7 THE COURT: Please.
8 MR. MORRIS: Paragraph 34 of their motion, Your
9 Honor. Quote, "The Court also should be aware that the Texas
10 State Securities Board opened an investigation into the
11 subject matter of the insider tradings at issue, and this
12 investigation has not been closed. The continuing nature of
13 this investigation underscores HMIT's position that the claims
14 described in the attached adversary proceeding are plausible
15 and certainly far more than merely colorable."
16 They used the investigation to try to convince you that
17 their claims are colorable, and now we have a letter saying
18 there's nothing.
19 THE COURT: Okay. You want to explain that to me?
20 MR. MCENTIRE: Well, we put no evidence in, in this
21 proceeding --
22 THE COURT: You put what?
23 MR. MCENTIRE: We have put no evidence in, in this
24 proceeding, --
25 THE COURT: You filed a pleading under Rule 11

1 suggesting this was highly relevant, right?
2 MR. MCENTIRE: We filed a motion. Yes, we did.
3 THE COURT: Under Rule 11.
4 MR. MCENTIRE: Yes. Of course we did.
5 THE COURT: Okay.
6 MR. MCENTIRE: Of course we did.
7 THE COURT: Suggesting this Texas State Securities
8 Board complaint and investigation was highly relevant.
9 MR. MCENTIRE: The fact that it had opened an
10 investigation and was conducting an investigation is
11 irrelevant. Its decision to stop the investigation without
12 further elaboration or clarification, this is why it calls for
13 utter speculation.
14 MR. MORRIS: Your --
15 THE COURT: Okay. Do you have the hearsay exception
16 that applies? I'm looking at my evidence rules right now for
17 the government record or public record. Is it 803(8) that we
18 need to have addressed here?
19 MR. STANCIL: 803(8), Your Honor.
20 A VOICE: Yeah, public records.
21 THE COURT: Okay.
22 MR. STANCIL: Public record. Sets out --
23 THE COURT: Public records, 803(8), hearsay
24 exception. Moreover, you pled allegations suggesting this
25 investigation was really relevant. So I overrule your

1 objection, and so that means 33 is admitted.

2 (Debtors' Exhibit 33 is received into evidence.)

3 MR. MORRIS: Thank you, Your Honor. I continue.

4 Exhibit 36 --

5 MR. MCENTIRE: Which one was that?

6 MR. MORRIS: That was 33.

7 So now we're up to 36, Your Honor. I'm going to skip some

8 of these.

9 THE COURT: Okay.

10 MR. MORRIS: But this is just the Court's order

11 approving Mr. Seery's original --

12 THE COURT: I'm waiting for any objection for the

13 record. Do we have an objection, Mr. McCleary?

14 MR. MCCLEARY: 36, relevance, Your Honor.

15 MR. MORRIS: The relevance is that this Court

16 approved without objection Mr. Seery's compensation package in

17 an amount that included a base salary of $150,000, which the

18 Claimant Purchasers and the independent director saw fit to

19 continue.

20 THE COURT: Objection overruled. It's admitted.

21 (Debtors' Exhibit 36 is received into evidence.)

22 MR. MORRIS: I think 38 may be on their list. Yeah,

23 38 is in as their 26, right? So that should be admitted.

24 THE COURT: Admitted.

25 (Debtors' Exhibit 38 is received into evidence.)

1 MR. MCCLEARY: If it's on our list, we agree.
2 THE COURT: Okay. It's admitted.
3 MR. MORRIS: That's it, Your Honor.
4 THE COURT: Okay. Do you all need a five-minute
5 break before we do closing arguments?
6 MR. MORRIS: I'd be grateful.
7 THE COURT: Okay.
8 MR. MCCLEARY: Yes, Your Honor. Thank you.
9 THE COURT: Will do.
10 THE CLERK: All rise
11 (A recess ensued from 5:49 p.m. to 5:57 p.m.)
12 THE CLERK: All rise.
13 THE COURT: All right. Please be seated.
14 We're back on the record in the Highland matter. Closing
15 arguments. Just for everyone's benefit, time -- you said 47
16 minutes and 23 minutes back several minutes ago, and then we
17 had all the housekeeping stuff. So I'm not sure if that's
18 where we are right now or if --
19 MR. MCENTIRE: I'm waiting for my monitor guy to be
20 here.
21 THE COURT: Okay. Okay.
22 So Caroline, is it still 47 and 23?
23 THE CLERK: Yes.
24 THE COURT: That's when we started the housekeeping
25 stuff.

1 MR. MCENTIRE: So 27 minutes?
2 THE COURT: Twenty-three.
3 THE CLERK: Twenty-three.
4 MR. MCENTIRE: Twenty-three? Can I get a five-minute
5 warning, please? Would you pull up the PowerPoint? And let's
6 go to Slide 39.
7 May I proceed, Your Honor?
8 THE COURT: You may.
9 CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST
10 MR. MCENTIRE: So, before I go to the PowerPoint, I'd
11 like to kind of give a high-altitude overview of the situation
12 as I see it from the evidence perspective. We don't believe
13 this should have been an evidentiary hearing. Evidence has
14 been allowed.
15 We had a situation where, if you believe Mr. Dondero's
16 testimony as contrasted with Mr. Seery's testimony, you have a
17 credibility issue. So the Court is now conducting an inquiry
18 presumably on the basis in part on the credibility of
19 witnesses. And if you engage -- and if you want to indulge
20 that type of inquiry, the credibility of witnesses, without
21 allowing the Plaintiff in this case or the Movant in this case
22 to conduct some level of meaningful discovery, I would suggest
23 we have been deprived of due process, because without
24 documents to test Mr. Seery's statements, we are being
25 deprived of something that's basically very fundamental in our

1 judicial process.
2 And therefore, it underscores our argument and our
3 rationale why this shouldn't be an evidentiary hearing,
4 because I don't believe the Court can consider credibility
5 issues.
6 We have, on the one hand, unequivocal notes from Mr.
7 Dondero prepared contemporaneously that would suggest that
8 someone admitted to him and stated to him that they did in
9 fact obtain material nonpublic information. Mr. Seery says
10 that didn't happen. I specifically said, is that a lie? Yes,
11 it's not true. Well, that's a real problem, because that's
12 not the criteria that this Court should use for determining
13 whether we have a colorable claim. A colorable claim is
14 whether there is some possibility. It's something less, even
15 less stringent than a 12(b)(6) standard, plausibility. We
16 have that.
17 If you look at our pleadings, we have set forth all of the
18 facts we need, all the elements we need to establish a trade
19 on material inside information, nonpublic information. We
20 have evidence -- we have allegations that there was no due
21 diligence. And Farallon's lawyer stood up here -- well, I'm
22 not going to really address that today. But if there was any
23 day to address it, it was today. We have no evidence to
24 suggest they did do due diligence. Even Mr. Seery said, I
25 don't know what due diligence they did. We have evidence to

1 suggest that the only due diligence they did was to talk to
2 Mr. Seery, who has told -- who told them that this is very
3 valuable, don't -- this is a really good -- a good investment
4 here, it's a lot better than the 71 percent that's on our
5 disclosures.
6 And Judge, that evidence supports the colorability of the
7 claim. And if you go down the pathway of saying, well, I'm
8 not sure about Mr. Dondero because he had been held in
9 contempt two years ago, that's a real problem. That's a
10 problem for this Court. And I'm going to suggest that's why
11 this should have been a four-corners deliberation. Even
12 Farallon and Stonehill suggest this should be a four-corners
13 deliberation.
14 We have evidence now of no due diligence. We have
15 evidence before you that suggests that they did learn about
16 MGM before the announcement date. We have evidence that Mr.
17 Seery did trade on -- did -- was aware and received
18 information of material nonpublic information. And for him, a
19 CEO of his reputed stature, to sit here and say that was not
20 material and that was nonpublic defies common sense. It
21 defies reasonableness. That goes to credibility.
22 Mr. Dondero's notes speak volumes. The trades themselves
23 speak volumes. Mr. Dondero established that the interest --
24 return of interest here is to be less than one -- it's in the
25 one digits, and hedge funds trade in the 30, 40, 50 percent

1 range. Well, if that's the case, we have Farallon walking
2 away from a return on the exit financing of 13 percent, and
3 that wasn't good enough for him. How could six percent be
4 good enough for him? There's something missing here. There's
5 something not right.
6 And we're entitled to get our lawsuit on file and do some
7 discovery. And if they want to do a 12(b)(6), they do a
8 12(b)(6). If they want to do a Rule 56 after discovery, they
9 could do a Rule 56, all in this Court. But to address this
10 threshold issue now based upon this, what happened here today,
11 is a fundamental denial of due process.
12 I'd like to go to my pleadings.
13 Can you go to Slide 39, please?
14 First of all, let there be no doubt -- 39. Slide 39. 38.
15 38, please.
16 We can plead on information and belief. We have a right
17 to plead on information and belief. And the Fifth Circuit --
18 that is an acknowledged procedural practice in the Fifth
19 Circuit. And if some of our allegations are based upon
20 information and belief, so be it. The test here is not at
21 this stage. The test here is whether I have sufficient
22 factual allegations, whether on information and belief or
23 otherwise, to satisfy at most a plausibility standard. That's
24 it.
25 And if they want to challenge us at a later date, they

1 can. Rule 56. 12(b)(6). Or standing. But we have standing.
2 We have standing. We have standing under Delaware law. We're
3 a contingent beneficial interest that has standing under
4 Delaware law and all other law. All -- even Texas agrees that
5 a contingent interest has standing, an inchoate interest as
6 Mr. Seery described. A property interest. You have property
7 interest, you have standing.
8 THE COURT: Let me ask you.
9 And Caroline, turn the clock off when the Court
10 interrupts.
11 Just so you know, I mean, my analysis here is standing
12 first. Does your client have standing? Because we all know
13 that's a subject matter jurisdiction inquiry and I have to
14 explore that first. And then I've said many times the legal
15 standard question for colorability. That's kind of the second
16 place I go --
17 MR. MCENTIRE: Sure.
18 THE COURT: -- if I find there's standing. But can
19 you tell me, have there been appellate decisions that are
20 relevant today on standing? Contrary to what people may
21 expect, I don't follow every appellate decision from every
22 appeal in the Highland case. Okay? I wait until I get a
23 mandate --
24 MR. MCENTIRE: Sure.
25 THE COURT: -- to where I have to act on something.

1 MR. MCENTIRE: Sure.
2 THE COURT: So I feel like I've learned at some point
3 that some either district judge or Fifth Circuit said some
4 party didn't have standing. And I don't know if it was Hunter
5 Mountain or some other trust.
6 MR. MCENTIRE: Not --
7 THE COURT: And is there anything they said that, if
8 it wasn't Hunter Mountain, could be relevant here?
9 MR. MCENTIRE: I hope somebody kicks me if I'm wrong,
10 what I'm about to say. I'm not aware of any such issue --
11 THE COURT: Okay.
12 MR. MCENTIRE: -- dealing with Hunter Mountain
13 Investment Trust. I am not.
14 THE COURT: But any other party that might somehow
15 bear on this case?
16 MR. MORRIS: I apologize, Your Honor, I was
17 distracted. For which issue?
18 THE COURT: Standing. Because I was saying my first
19 thing I've got to tackle in ruling on this is standing of
20 Hunter Mountain. And I seem to remember learning that either
21 the district court on an appeal or the Fifth Circuit on some
22 appeal from Highland --
23 MR. MORRIS: Correct.
24 THE COURT: -- said some party didn't have standing.
25 MR. MORRIS: Correct.

1 THE COURT: And I don't know if it was --
2 MR. MORRIS: Dugaboy on the 2015.3, for sure, was a
3 Fifth Circuit standing decision.
4 THE COURT: Okay.
5 MR. MORRIS: I think there was a district court order
6 that preceded that.
7 THE COURT: Okay.
8 MR. MORRIS: That was the subject of the appeal.
9 THE COURT: The Dugaboy --
10 MR. MORRIS: 2015.3.
11 THE COURT: -- motion to require those --
12 MR. MORRIS: Yeah.
13 THE COURT: -- 2015.3 statements. Okay.
14 MR. MCENTIRE: So what we have here -- we can go back
15 on the clock if you'd like.
16 THE COURT: Yes, please.
17 MR. MCENTIRE: How much time do I have?
18 THE CLERK: You have just under 16 minutes.
19 MR. MCENTIRE: Sixteen? Okay. Give me a two-minute
20 warning. Sorry.
21 Your Honor, what we have here --
22 THE COURT: I don't think the U.S. Supreme Court
23 justices will give you a two-minute warning, but maybe I'm
24 wrong.
25 MR. MCENTIRE: Would you give me a two-minute

1 warning, please?
2 THE COURT: And I'm sure not a Supreme Court justice.
3 MR. MCENTIRE: What we have here is we have a 99.5
4 percent equity interest that has now been relegated to a
5 category of contingent interest, which we don't believe we
6 should be, and that's part of our declaratory judgment relief
7 we're asking for, which we have standing to do that at a
8 minimum because we want to be treated like a Class 9.
9 If they want to treat us like a Class 10, I have an
10 argument for that, and it's more than colorable. It's
11 persuasive. It's -- it is a winning argument. And that is we
12 do have standing in our individual capacity, and we have given
13 you a whole bunch of cases in our PowerPoint, or we will give
14 you a whole bunch of cases in our PowerPoint and in our
15 briefing to support that.
16 We also have given you Delaware case law that says we have
17 standing under Delaware trust law to bring a derivative action
18 against the Trustee. We have done everything appropriate
19 here.
20 We have the -- a demand upon Seery obviously would be
21 futile to prosecute the claim. A demand upon the Oversight
22 Board would be futile to make a demand on Muck and Jessup,
23 because they're Defendants and they're SPEs of Farallon and
24 Stonehill. And a demand upon Mr. Kirschner would be futile.
25 They suggest that there's an assignment of some sort, but that

1 would be a modification -- of the claims over to the
2 Litigation Trust, but that would be a modification of the
3 plan.
4 There's been no assignment of this claim, or these claims,
5 to the Litigation Trust Trustee. But even if there had been,
6 we pled that in the alternative as well. And it would be
7 futile to make a demand on Mr. Kirschner because he's suing
8 Hunter Mountain.
9 So we are an appropriate party. The only, then, issue
10 becomes whether or not we have standing under Delaware law to
11 bring a derivative action. And we have briefed that and we --
12 and that's included in our PowerPoint. The answer is yes.
13 I'd like to go briefly to Page -- next slide.
14 In our factual section, we set forth why this investment
15 would defy any kind of rational economic sense in the absence
16 of material nonpublic information as a factual allegation
17 supported by data, supported by dates, supported by time.
18 Based upon that, we also have allegations that are framed
19 around the admissions that Mr. Michael Linn provided. We have
20 allegations that he turned down a 30 or 40 percent premium in
21 our petition. We have allegations that they admitted that
22 they did no due diligence. We have allegations that they
23 admitted that they got material -- basically information about
24 MGM.
25 And again, it's not all about MGM. It's about the values

1 of all the portfolio companies. They want to make it about
2 MGM. If they do, we win. But it's much broader than that.
3 And we have standing to bring this claim because if we're
4 right Mr. Seery will have to return excess compensation and
5 the Claims Purchasers will have to disgorge. And that's going
6 to help not just Hunter Mountain. That's going to help other
7 creditors who haven't been paid yet.
8 So this is not exclusively -- Hunter Mountain would
9 substantially benefit. I'm not suggesting otherwise. But it
10 also benefits innocent stakeholders other than Hunter
11 Mountain. And that's why we are an appropriate party. We
12 don't have a conflict of interest to bring this. Everybody on
13 their side of the table does. There's no one else who could
14 bring this.
15 Your Honor, it's very clear when the trades took place.
16 We give dates and times. It's very clear that -- next slide,
17 40. It's very clear that their investment was over $160
18 million. If it isn't, I don't see any denials. All we got
19 today was a lame statement from the lawyer saying we're not
20 here today to deny this.
21 MR. MORRIS: I'm offended.
22 THE COURT: He's offended by being called lame.
23 MR. MCENTIRE: Not you lame personally.
24 MR. MORRIS: Oh, thanks for the clarification.
25 THE COURT: Okay.

1 MR. MCENTIRE: A lame statement by you. In fact, it
2 wasn't even you, so --
3 In any event, Your Honor, --
4 MR. MORRIS: I've been called worse.
5 MR. MCENTIRE: -- the point being is that there was
6 no -- there's not -- never been an attempt to deny the factual
7 allegations in our pleadings dealing with Farallon and
8 Stonehill. None at all.
9 And so -- not that that's ultimately relevant, because
10 that's an evidentiary issue outside of the four corners of our
11 pleading, but it does -- it just stands out and screams. It
12 screams. And it screams volumes.
13 So right, now based upon our pleadings -- we even plead in
14 Paragraph 42, Paragraph 42, exactly what they invested. This
15 is what you have before you. No one has disputed it. It's in
16 the four corners of our pleading. We've got dates, times,
17 amounts. We have admissions to Mr. -- well, we have
18 admissions from Michael Linn, Paragraph 47. We have -- we do
19 plead upon information and belief the *quid pro quo* on
20 compensation. And frankly, the evidence here today is that
21 the compensation is excessive. And the experts will further
22 confirm that it is excessive. $1.8 million with a bonus
23 program in place to pay him another $8, $9, $10 million, when
24 in fact the risks don't exist and there's no uncertainty and
25 therefore the percentages make no sense. That's --

1 THE COURT: What do you mean, the risks don't exist
2 and there is no uncertainty?
3 MR. MCENTIRE: If Mr. Seery is telling Farallon and
4 Stonehill don't sell, this could be really valuable, it's
5 inconsistent with the notion that the schedule and the
6 performance -- performance schedule in the compensation
7 agreement is rationally justified. Because if it's really
8 certain or it's likely you're going to make a lot of money,
9 there's no reason to give him six percent to incentivize him
10 because it's already a done deal.
11 And the whole point here is that I scratch your back, you
12 scratch mine. They make a lot of money on their deal and he
13 gets a lot of money on the backside post-effective date.
14 Post-effective date.
15 Next slide, 49.
16 It would have been impossible, based upon the publicly-
17 available information in Paragraph 49, impossible for
18 Stonehill and Farallon, in the absence of inside information,
19 to forecast any significant profit when they made their
20 investments. It's not possible. Because given the amount of
21 the Claim 8 and Claim 9 claims -- they actually invested in
22 Claim 9 with a zero return. It's projected to be a negative
23 result. On Claim 8, even if you allocate their entire
24 purchase price to Claim 8, they're going to get something less
25 than a 10 percent return paid out over a couple years. Nobody

1 invests that kind of money in an unsecured creditor asset that
2 hasn't been collateralized. There's something wrong here.
3 And we have a right to have our day in court to show that.
4 We have our right to take a true deposition of Mr. Seery with
5 documents. We have a right to take Farallon and Stonehill's
6 deposition with documents. And we have tried to get
7 information and we have been turned down at every turn. We
8 have a right to have our day in court, Your Honor.
9 We have allegations of excessive compensation. I know Mr.
10 Morris suggested the other day that we didn't have any such
11 allegations. They're here. The whole idea here is that Mr.
12 Seery would really profit on the backside. And, you know, he
13 actually testified, I believe -- I won't do that because
14 that's outside the four corners of our pleading. But the --
15 there is a *quid pro quo*. We allege there's a *quid pro quo*
16 upon information and belief. And we also allege willfully and
17 knowingly, we allege conduct that falls clearly within the
18 exceptions.
19 None of this -- none of these claims were released. Mr.
20 Seery's not an exculpated party in the context of how we --
21 proposing to sue him here. None of the protected parties, to
22 the extent that Muck and Jessup claim to be protected parties,
23 they're not protected here, because all of the claims we're
24 making are on the basis of willful misconduct and bad faith,
25 which are the standards that they used and incorporated in the

1 plan and in the gatekeeper provisions.
2 How much time do I have?
3 THE CLERK: Right now you have --
4 MR. MCENTIRE: Thirty seconds?
5 THE CLERK: -- seven minutes left.
6 MR. MCENTIRE: Okay. Next slide, please.
7 Mr. Seery has admitted that he has a duty to avoid self-
8 dealing. We allege that he did self-deal. There is clearly a
9 relationship. We have a right to explore the depths of that
10 relationship. Well, already we know there is a relationship.
11 We have investments in charities, contributions to charities,
12 meet-and-greets, congratulatory emails. It's not as if
13 Farallon and Stonehill are strangers, or Mr. Seery's a
14 stranger to them. It's not like that at all. They contacted
15 him to get involved.
16 And by placing -- by acquiring these claims -- and by the
17 way, this is the most significant trading activity in your
18 bankruptcy, in this bankruptcy proceeding. Post-confirmation.
19 Post-confirmation. By acquiring these claims, they were
20 guaranteed to be put onto the Oversight Board. By acquiring
21 these claims, they were guaranteed to be put in a position --
22 into a position where they would adjust, monitor, compensate
23 Mr. Seery. That's the terms of the Claimant Trust. Those are
24 the terms.
25 And it's interesting, because one of the amendments that's

1 in evidence to the plan, I think it's either the third or the
2 fourth amendment, that came out of nowhere right before
3 confirmation, they changed the structure of the Claimant Trust
4 to go off a standard base pay and added in a bonus structure
5 at the last minute. That's evidence.
6 Mr. Seery has acknowledged, we have alleged he had duties
7 to avoid self-dealing, to always look out for the best
8 interests of the estate, to avoid conflicts of interest.
9 Well, here, to the extent that there is a *quid pro quo*, he is
10 self-dealing and he has injured the Reorganized Debtor and
11 he's injured the Claimant Trust, because that's just less
12 money.
13 And we also allege, Your Honor, it's also an allegation
14 that --
15 THE COURT: And let me ask, the sole injury here is
16 compensation was more than it would have been if not for the
17 sale of the claims to Farallon and Stonehill --
18 MR. MCENTIRE: That's one of the injuries.
19 THE COURT: -- and therefore less money at the end of
20 the day for creditors and ultimately Hunter Mountain?
21 MR. MCENTIRE: Yes. And we also allege that, as part
22 of this arrangement, conspiracy, as we allege conspiracy, we
23 have seen over $200 million flow out of the coffers of this
24 estate in the form of --
25 THE COURT: What do you mean, as a result of the

1 alleged conspiracy? What do you mean?
2 MR. MCENTIRE: A delay, a postponement, making long-
3 term payouts, keeping the litigation alive. They actually
4 suggested to Mr. Linn, don't settle these claims, don't sell
5 out, because this is asset-backed, and we also have claims.
6 And so --
7 THE COURT: Wait, what? Say again?
8 MR. MCENTIRE: One of the things that Mr. Linn told
9 Mr. Dondero, according to Mr. Dondero's notes, is we have --
10 this is very valuable, we're buying assets and we're buying
11 into claims, the litigation claims that are being asserted in
12 this bankruptcy proceeding.
13 THE COURT: Yes. Got it.
14 MR. MCENTIRE: Yeah. And so the whole idea here is,
15 is that people are funneling money in and taking money out of
16 the coffers of this estate to fuel future litigation in order
17 to have a bigger payday at the end for Class 8 and Class 9.
18 That's exactly what those notes suggest.
19 THE COURT: I don't understand the correlation. What
20 correlation are you making? Because of the claims being
21 purchased, what?
22 MR. MCENTIRE: The claims being purchased allow Muck
23 and Jessup to be in a position to award compensation. We've
24 talked about that.
25 THE COURT: I got that.

1 MR. MCENTIRE: That's one type of injury. The other
2 injury is, and we have alleged it, is the fact that these
3 claims become very valuable not only because they're asset-
4 backed but because also the litigation claims that Mr.
5 Kirschner is prosecuting.
6 THE COURT: But how does the purchase of the claims
7 impact that? They were allowed claims at certain amounts
8 before, and after the purchase they're still allowed claims.
9 MR. MCENTIRE: Mr. Seery is telling them that,
10 basically, this is our plan, this is what we're doing, this is
11 --
12 THE COURT: That was the plan of reorganization that
13 was confirmed by the Court. I don't get how something
14 changed. I'm trying to get to what are the injuries that your
15 client has suffered. And I get the compensation argument
16 you're making, but I don't get the rest of it.
17 MR. MCENTIRE: If Mr. Dondero had been in a position,
18 or one of his entities had been in a position, or even Hunter
19 Mountain, and I'm not sure why Hunter Mountain -- be in a
20 position to have acquired the claims, then we would -- this
21 bankruptcy wouldn't even be in existence anymore. It'd be
22 over. All creditors would be paid. It would be done. Be
23 over. And that is an allegation we have made --
24 THE COURT: How do I know that?
25 MR. MCENTIRE: Because all the creditors would have

1 been paid off.
2 THE COURT: How do I know, if he would have purchased
3 the claims, that's what would have happened?
4 MR. MCENTIRE: Well, that's what he testified to
5 today here. I don't want to get off on a rabbit trail.
6 THE COURT: I'm trying to understand the injury, --
7 MR. MCENTIRE: Sure. I understand.
8 THE COURT: -- because that's part of my analysis
9 here.
10 MR. MCENTIRE: The focus, the focus is on the
11 compensation. And once they aid and abet, once they aid and
12 abet a breach of fiduciary duties, they are subject to
13 disgorgement, and disgorgement of all of their ill-gotten
14 gains. And the ill-gotten gains are now well over --
15 approaching over $100,000 million.
16 THE COURT: How do you get to that number?
17 MR. MCENTIRE: Easily. We know how much they
18 purchased, which has never been denied. We know how much has
19 been distributed to Class 8. And we know what percentage of
20 Class 8 they own. They own about 95 percent of all Class 8
21 claims. So if $270,000 million has been distributed to Class
22 8, they got 90 percent of that, 95 percent of it has already
23 gone to them, Farallon and Stonehill.
24 THE COURT: But it would have gone to the sellers of
25 the claims as well. I'm trying to make the connection.

1 MR. MCENTIRE: That's not the injury. The injury is
2 what -- that is a consequence of their conduct. The injury is
3 the compensation. All right? That's a distinct injury. They
4 are subject to disgorgement as a consequence because they have
5 done wrong, and the law should not tolerate -- should not
6 tolerate and allow wrongdoers to get away. And that's where
7 the unjust enrichment and disgorge --
8 THE COURT: And what are your best cases for that,
9 that they would have to disgorge --
10 MR. MCENTIRE: We have cited --
11 THE COURT: -- the Purchasers would have to disgorge
12 --
13 MR. MCENTIRE: We have cited cases in our brief.
14 THE COURT: I'm asking you now to --
15 MR. MCENTIRE: I don't have them in front of me right
16 this second. But an aider and abettor --
17 THE COURT: The *CVC* case, is that your best case?
18 MR. MCENTIRE: I don't have the cases in front of me.
19 I can say this, that the case law is robust, and I can supply
20 you --
21 THE COURT: It is not robust. That's why I'm asking
22 you to zero in. I read your *CVC* case from the Third Circuit,
23 and I'm wondering, is that your strongest case?
24 MR. MCENTIRE: No. I think we -- I think we have a
25 lot of strong cases. I'm not sure that it is the strongest.

1 THE COURT: Tell me which ones, so I --
2 MR. MCENTIRE: Ma'am, I just said I don't have it in
3 front of me. If you'll look --
4 THE COURT: Okay. Well, this is closing argument
5 where you present law in support of your position.
6 MR. MCENTIRE: Well, actually, I'm arguing facts
7 right now. But Your Honor, what I want to tell you is if
8 you'd like me to submit a letter brief on that, I will.
9 THE COURT: No.
10 MR. MCENTIRE: Okay. Then I won't. It's in my
11 brief. All of our authorities are in the brief.
12 In conclusion, --
13 THE COURT: Okay. So that was the *CVC* case from the
14 Third Circuit which dealt with an insider who purchased
15 claims, statutory insider, a board member, a 28-percent equity
16 owner, who purchased claims during the case to be in a
17 position to file a competing plan and didn't disclose to the
18 board or file a 3001(e) notice. Okay. There was -- claims
19 shouldn't be allowed at more than what the purchaser paid for
20 it.
21 MR. MCENTIRE: Okay.
22 THE COURT: Okay. I'm asking you, is that your best
23 case? Because you also cited *Adelphia*, which seemed kind of
24 factually off the mark. And so I really --
25 MR. MCENTIRE: I -- I'm sorry, --

1 THE COURT: I need to know, because I've made clear
2 from the beginning, --
3 MR. MCENTIRE: Yes.
4 THE COURT: -- I'm struggling with how is there a
5 cause of action related to claims trading.
6 MR. MCENTIRE: (chuckles)
7 THE COURT: I don't know why you're giggling. This
8 is --
9 MR. MCENTIRE: No, I'm not. But --
10 THE COURT: -- serious stuff. Okay?
11 MR. MCENTIRE: Agreed. Agreed.
12 THE COURT: A bankruptcy estate is being charged ka-
13 ching, ka-ching -- not bankruptcy estate -- the post-
14 confirmation trust. Ka-ching, ka-ching, ka-ching. So this is
15 serious stuff.
16 MR. MCENTIRE: Agreed.
17 THE COURT: I need to, you know, colorable claim.
18 MR. MCENTIRE: Agreed.
19 THE COURT: Colorable claim.
20 MR. MCENTIRE: Agreed.
21 THE COURT: Even if plausibility is the standard,
22 which I've expressed my doubt about that, how do you have a
23 plausible claim? What is your best case?
24 MR. MCENTIRE: Okay. This --
25 THE COURT: Just to recap what I'm focused on,

1 purchaser and seller, okay? I can see where breach of
2 contract, maybe some sort of torts between those two. Okay.
3 I can see where the U.S. Trustee, the SEC, I don't know, the
4 Texas State Securities Board, they might get concerned about
5 allegations of insider trading and there might be a regulatory
6 action. But the estate? Again, the post-confirmation trust
7 --
8 MR. MCENTIRE: Okay.
9 THE COURT: -- and a contingent beneficiary. I'm
10 trying to understand what is the best legal authority that
11 might support a colorable claim. And we talked about the *CVC*
12 case and *Adelphia*. I'm trying to figure out what are other
13 cases you think I should really hone in on to understand this.
14 MR. MCENTIRE: All right. At the very beginning this
15 morning, during my opening statement, I had said this is not
16 your typical claims-handling case, because I recall from our
17 last conference you asked that question a couple of times.
18 This is not your typical claims-handling case. And it's not a
19 typical claims-handling case because we have a fiduciary that
20 we claim breached his duties that were owed to the estate.
21 And he self-dealt. And he -- this has nothing to do with the
22 plan. This has something to do with what Mr. Seery did
23 outside the corners of the plan. Perhaps he used the plan
24 expediently. He self-dealt.
25 That's why this is not just between a seller and a buyer

1 of a claim. That's number one.
2 We have been denied an opportunity to discover the
3 communications between the sellers and the buyers, and my
4 guess is we have big boy agreements that prevent the sellers
5 from ever coming back at anybody for fraud. My expectation,
6 that's the case. We should have a right to go explore that.
7 So that's why they're not here.
8 THE COURT: Why? I mean, what would that tell you?
9 What would that tell you?
10 MR. MCENTIRE: That --
11 THE COURT: If there's a big boy agreement, if
12 there's not, what --
13 MR. MCENTIRE: It would tell us --
14 THE COURT: -- consequence would that have for this
15 --
16 MR. MCENTIRE: It would tell us --
17 THE COURT: -- proposed lawsuit?
18 MR. MCENTIRE: It would answer Mr. Morris's question
19 that he's raised several times, this is the seller's issue,
20 this is not -- this is not the Hunter Mountain's issue. It is
21 Hunter Mountain's issue. Hunter Mountain as an equity
22 interest-holder should be in a position to be certified as a
23 Class 9 beneficiary now pursuant to our declaratory judgment
24 action. That's number one.
25 Number two. As a contingent beneficiary, it is entitled

1 to protect its interests and bring suits if it sees that
2 something has happened that is incorrect and is a tort
3 involving the Reorganized Debtor and the Claimant Trust. That
4 is the nature and the essence of our claim.
5 And as a consequence, the aiders and abettors should not
6 be allowed to walk away unharmed. They should be required to
7 disgorge their ill-gotten profits. And that calculation is
8 easily done, as I've just demonstrated.
9 Your Honor, that's all I have. Thank you very much.
10 THE COURT: Thank you.
11 MR. MCENTIRE: And we talked -- we'd need an
12 opportunity to argue on the issue of experts, because --
13 whether you're just going to take it under advisement, I'm not
14 sure how you're going to handle that.
15 THE COURT: I'm going to read the pleadings and then
16 I'm going to let you all know are we coming back for another
17 day.
18 MR. MCENTIRE: Thank you.
19 THE COURT: All right. Who is making the closing
20 argument -- do we have three closing arguments?
21 MR. STANCIL: Yes.
22 MR. MCILWAIN: We're going to do it in reverse order.
23 MR. MORRIS: Reverse order in.
24 THE COURT: Okay. Reverse order of --
25 MR. STANCIL: Keep it interesting.

1 MR. MORRIS: I think I was last on the opening.
2 THE COURT: -- importance?
3 (Laughter.)
4 THE COURT: No. Just kidding. Just kidding.
5 MR. MORRIS: We're assuming you remember what the
6 original order was.
7 MR. STANCIL: Yeah, right, right.
8 MR. MORRIS: It was so many hours ago.
9 THE COURT: Okay. Oh, so many hours ago.
10 MR. MCILWAIN: I think I was referred to earlier as
11 the lame lawyer.
12 THE COURT: Oh, you were. I think --
13 MR. MCILWAIN: So I'll start. I think --
14 THE COURT: I think you --
15 MR. MCILWAIN: Or maybe it was the lame argument,
16 whatever. Whatever.
17 THE COURT: I think you were the lame one.
18 CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS
19 MR. MCILWAIN: Your Honor, Brent McIlwain here for
20 the Claim Purchasers.
21 Let me start, I guess, by saying I understand now why
22 Hunter Mountain did not want to put on evidence, because the
23 evidence that they put on, frankly, made their case much
24 worse.
25 As we argued or we stated in the opening statement, our

1 position is that you can look within the four corners of this
2 document and determine that there is no plausible or colorable
3 claim. What the evidence showed is that Mr. Dondero allegedly
4 had a call with one -- with Farallon, not with Stonehill, with
5 Farallon, Farallon wouldn't tell him what they paid, Farallon
6 did not accept an offer of 130 or 140 percent of whatever they
7 paid for the claim, and he thinks they did no due diligence,
8 right? He had nothing in his notes about MGM. So he can say
9 that he thought that they were positive because of MGM, but
10 it's certainly not -- I don't think the Court should take that
11 evidence with any credibility.
12 But interestingly, what Mr. Dondero says is, well, how do
13 you know how much they paid for these claims? He goes, well,
14 there was a market for the claims, right? They were all
15 trading at 50 or 60 cents. But yet no one would ever buy
16 these claims without any due diligence because the projections
17 in the plan indicate that they wouldn't -- they wouldn't get a
18 return.
19 Well, if there's a market for the claims and he's willing
20 to pay 30 or 40 percent more than whatever someone purchased,
21 certainly there is a market for the claims. And he is the
22 only one, frankly, that had inside information. That's why he
23 was willing to maybe pay more.
24 Or, alternatively, the case that you were describing
25 before, Mr. Dondero maybe wanted to buy the claims so he could

1 control the case, right, so he could dismiss any litigation
2 that was pending against himself so he could avoid the ire of
3 the estate that is aimed at him.
4 It also -- the Court's inquiry as to what the injury is I
5 think is precisely on point. The only injury offered at this
6 point really is that somehow my client's agreed-to higher
7 compensation that is reasonable or appropriate in return for
8 some inside information on claims that were allegedly trading
9 at 50 or 60 cents in any instance. And what the evidence
10 showed is that, one, Mr. Dondero never had any information
11 about that, about the compensation that Seery is receiving
12 when this complaint was filed, when this motion for leave was
13 filed.
14 And so if you judge the complaint within the four corners,
15 there is no -- there is no *quid pro quo*, right? Because he
16 says, well, there's obviously something up here because they
17 wouldn't have bought these claims without due diligence, and
18 they must have agreed to higher compensation, and that's why
19 it all happened. And if we throw all this out here, then
20 we'll get to do the discovery that we wanted to do.
21 Importantly, if you look at his notes, right, the first
22 thing that's written down is discovery to follow, because
23 that's how he operates. That's how a serial litigator
24 operates. Discovery to follow so that I can pay you back for
25 not selling your claim to me. Right? So I can't control the

1 world, so I can't control this case, you're going to pay. And
2 we're all paying. Every one of us here. Right? There's 15
3 lawyers in the courtroom and probably 10 on the phone, right?
4 We're all paying.
5 And so when Mr. McEntire says I'm not getting my day in
6 court, we've had an entire day in court. We've had three
7 hearings to decide what this hearing is going to be. And he's
8 gotten more than his day in court for, frankly, what is word
9 salad. This complaint doesn't pass any test, whether it's
10 12(b)(6) or under the *Barton* Doctrine. It's simply
11 allegations that are thrown out there, and they're saying, so
12 that we can do more discovery to determine if we actually have
13 allegations. Because they want to continue to harass people,
14 they want to continue to be a thorn in everyone's side, so
15 that perhaps they can avoid further litigation against Mr.
16 Dondero or they can convince somebody to settle with Mr.
17 Dondero.
18 It doesn't make any sense, Your Honor, and this is exactly
19 why there is a gatekeeper provision, right. That's why the
20 Court imposed this.
21 And you ask yourself, why would someone sell these claims?
22 Obviously, the sellers of the claims have not shown up.
23 Whether they're big boy, it doesn't matter, because the Court
24 and this estate had nothing to do with those sales. But they
25 haven't shown back up. I can -- I can venture a guess why, if

1 I was involved with Mr. Dondero, I would sell my claim, right?
2 Because I wouldn't have to be here. And that's exactly why
3 the Court should not authorize this complaint to be filed and
4 the gatekeeper provision of the order should prevent it. And
5 frankly, this should be shut down and we should not have to
6 have continued litigation over experts, or anything else, for
7 that matter. And frankly, we should just be able to go on and
8 let Mr. Seery do his job.
9 Because I think the evidence was pretty clear that his
10 compensation is reasonable and it was in line, frankly, with
11 what he was making before. And candidly -- and maybe it's
12 because Mr. McEntire is not involved in bankruptcy cases, but
13 this is similar compensation that I see in numerous cases, and
14 it's tiered to incentivize Mr. Seery to do his job, and he's
15 doing his job.
16 So, with that, Your Honor, I'll cede the rest of the time
17 to the other parties.
18 THE COURT: Okay. Thank you.
19 CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.
20 MR. STANCIL: Thank you, Your Honor. I'm going to
21 focus -- and I'm going to put my little clock up so Mr. Morris
22 doesn't, you know, give me the hook here.
23 THE COURT: Okay.
24 MR. STANCIL: But first --
25 THE COURT: Next time we're all here, maybe I'll have

1 one of those red, what do you call them, the buzzer.
2 MR. STANCIL: Oh, the big light?
3 THE COURT: The red light.
4 MR. STANCIL: We used to joke that the judge I
5 clerked for wished he had a trapdoor and he could just pull
6 the lever when it was done.
7 THE COURT: Okay.
8 (Laughter.)
9 MR. STANCIL: Maybe I shouldn't have put that in your
10 head.
11 THE COURT: Who was that? Are we going to say who
12 that was?
13 MR. STANCIL: So Your Honor, I'm going to try to set
14 the legal framework. I'm going to ask you -- and I think we
15 have our -- we have the deck. It's the little -- if we could
16 put that up and start on Slide 2.
17 I'd like to address what standard applies, and then I'd
18 like to spend a few minutes asking Your Honor again not only
19 to rule on multiple alternative grounds, but also I'd like to
20 walk through what if you did this on a pure 12(b)(6), because
21 it's going to collapse.
22 So, well, we'll just jump in. I said at the beginning
23 that we know that the question here is not what does the word
24 colorable mean in isolation. We wouldn't do that in any
25 context. We would always look and see what the operative

1 language here is in the Court's confirmation order. So the
2 question is, what did the Court mean, it must represent a
3 colorable claim?
4 So we mentioned before Paragraph 80 of the confirmation
5 order. That cites *Barton*. It cites the vexatious litigant
6 cases. I've not heard one word from Mr. McEntire answering
7 how it can be that we're here on a sub-12(b)(6) standard he
8 now says when the Court articulated this legal authority and
9 this legal basis in the confirmation order. If he believed
10 that, the time to make that argument was on the confirmation
11 appeal, and that's over.
12 But let me then say, how did we get, how did the Court get
13 to Paragraph 80? Well, that came after a series of factual
14 findings in the confirmation order -- in fact, actually, Josh,
15 do you have the hard copy of this?
16 MR. LEVY: Yeah.
17 MR. STANCIL: If I could hand that to the Court.
18 May I approach, Your Honor?
19 THE COURT: You may. Thanks.
20 MR. STANCIL: And I don't propose to go through every
21 slide, Your Honor.
22 THE COURT: Okay.
23 MR. STANCIL: But if you could turn to Slide #5.
24 This is Paragraph 77 of the Court's confirmation order.
25 Factual support for gatekeeper provision.

1 MR. MCENTIRE: Excuse me. May I have a copy? I
2 can't see it.
3 THE COURT: Oh.
4 MR. LEVY: Oh, yeah, sure, sure.
5 MR. STANCIL: And can we get a copy of yours as well,
6 --
7 MR. MCENTIRE: Sure.
8 MR. STANCIL: -- while we're at it? Thanks.
9 The facts supporting the need for the gatekeeper provision
10 are as follows. I will not read them all, but if you scroll
11 about eight lines down, it says, During the last several
12 months, Mr. Dondero and the Dondero-related entities have
13 harassed the Debtor, which has resulted in further
14 substantial, costly, and time-consuming litigation for the
15 Debtor. And then there are six separate enumerated examples
16 of that.
17 Paragraph 78 on the next slide. Findings regarding
18 Dondero postpetition litigation. The Bankruptcy Court finds
19 that the Dondero postpetition litigation was a result of Mr.
20 Dondero failing to obtain creditor support for his plan
21 proposal and consistent with his comments, as set forth in Mr.
22 Seery's credible testimony, that if Mr. Dondero's plan
23 proposal was not accepted he would, quote, burn down the
24 place.
25 Next slide. This is Paragraph 79. Necessity of the

1 gatekeeper provision. If you would just skim to the bottom of
2 that first column, it says, Approval of the gatekeeper
3 provision will prevent baseless litigation designed merely to
4 harass the post-confirmation entities charged with monetizing
5 the Debtors' assets for the benefit of its economic
6 constituents, will avoid abuse of the court system and preempt
7 the use of judicial time that properly could be used to
8 consider the meritorious claims of other litigants.
9 And then came Paragraph 80, which we've just discussed.
10 With respect, Your Honor, the question is, what is the meaning
11 of Paragraph 80? And in context, following those paragraphs
12 regarding vexatious litigation and abuse of litigation, it is
13 simply implausible to suggest that colorability is a sub-
14 12(b)(6) standard.
15 And that is Mr. McEntire's contention today, that the
16 gatekeeping order is actually lower than the threshold that
17 every other litigant faces. Everyone else has to file a
18 claim, pass a 12(b)(6), and on they go to get to discovery.
19 Mr. McEntire believes that the gatekeeping order imposes less
20 than that on him, and then he's treated just like everybody
21 else. It makes no sense whatsoever.
22 So I'll skip Slides 8 and 9, Your Honor, but that's where
23 the Fifth Circuit described the gatekeeping orders, affirmed
24 them in relevant part, citing *Barton*. There is no mystery
25 here.

1 If you could flip, Your Honor, to Slide 10 very briefly.
2 We've talked about this case a little bit in one of our status
3 hearings, *In re Vistacare Group*. This is the leading case
4 that describes what it is that one does under a *Barton*
5 analysis, and it says that the trustee must make a -- pardon
6 me -- a party seeking leave to sue a trustee must make a *prima*
7 *facie* case against the trustee, showing that its claim is not
8 without foundation. A *prima facie* case is more than a
9 12(b)(6).
10 And I would direct Your Honor to the language in the third
11 bullet. It involves a greater degree of flexibility than a
12 Rule 12(b)(6) motion to dismiss because the bankruptcy court,
13 which, given its familiarity with the underlying facts and the
14 parties, is uniquely situated to determine whether a claim
15 against the trustee has merit. Boy howdy, are we -- I'm
16 sorry. My kids are going to tease me for that.
17 But this -- no case has ever proved the wisdom of that
18 statement, Your Honor. We are here, and the Court is all too
19 familiar with the facts and the parties of this case. And
20 we're not here on an adversary proceeding. We're here on a
21 contested matter. And Your Honor has the authority on any
22 contested matter to take evidence, and a broad, broad
23 discretion as to what evidence is appropriate to meet that
24 standard.
25 So we have laid out briefly in Slide 11 what -- why we

1 believe that -- or how we believe that the *prima facie* showing
2 would work. And in short -- and maybe this will help us going
3 forward -- we believe that if they make -- if a party seeking
4 relief under the gatekeeping order says things, we have the
5 right to rebut them, like in a burden-shifting or a burden of
6 production -- pardon me -- analysis. So you can say that the
7 sun rises in the west, but we can bring in evidence to say it
8 doesn't, it rises in the east. And that's the plausibility
9 threshold.
10 And here, and if Your Honor would flip to the next slide,
11 I'm not sure it's entirely fair to say, even after they have
12 purported to withdraw their evidence, that they've really done
13 so. And we disagreed with Mr. McEntire, and advised him of
14 such leading up to this hearing, that we do not agree that his
15 redactions fully excise all of the evidentiary assertions from
16 his motion.
17 And I'll just pick one example here on Slide 12. On the
18 left is Paragraph 32 of the motion for leave prior to the
19 purported withdrawal. On the right is Paragraph 32 after the
20 withdrawal. Your Honor will see all they've withdrawn are the
21 citations. It's verbatim. It's the same allegations. And
22 they have argued various facts and put them in evidence. So
23 even if it were true, and it's not, but even if it were true
24 that all you get here is a 12(b)(6) ruling in the ordinary
25 case if you put no evidence in dispute, they forfeited that

1 right by putting these facts and evidence in dispute in their
2 motion.
3 The fact that they have withdrawn evidentiary support for
4 their evidentiary assertions does not relieve them of the
5 reality that they have made all sorts of factual arguments in
6 their motion for leave, and as a contested matter we have the
7 right to address it.
8 I'm proposing, Your Honor, unless you have questions on
9 the cases on 13, 14, those are the cases where we have
10 described the hearings that have been held under *Vistacare* and
11 *Foster*, and I know more about the down-in-the-weeds of *Foster*
12 than I ever cared to, but I don't want to repeat what's in our
13 briefs.
14 If Your Honor is willing to flip to Page 15, this is an
15 argument I've alluded to briefly, but boy, we don't hear -- we
16 have not heard a single thing as to what function the
17 gatekeeper serves, particularly in context of Your Honor's
18 factual findings in the confirmation order, if all it means is
19 12(b)(6) or lower. It just, it's an unanswerable point that
20 they just persist in ignoring.
21 But I'd like to address very briefly that third bullet,
22 because at various times and in their brief they have cited,
23 Hunter Mountain has cited, down here we call it *Louisiana*
24 *World*, I think in the Second Circuit we call it *STN*, but this
25 UCC derivative standing. There are, in fact, two elements one

1 has to pass for that, and that's a different context. The
2 first is colorability as it's used in that context, and that
3 is often a 12(b)(6) standard in that context. But still to
4 have standing, to bring that claim on behalf of the estate,
5 you have to show a cost-benefit analysis. As we've heard
6 today, we've probably spent more in legal fees today, or over
7 the last three months, than the purportedly excessive
8 compensation to Mr. Seery. And so I would respectfully
9 submit, if we were here on a *Louisiana World* or *STN* hearing,
10 this would be an open-and-shut case just as well.
11 So if I could, Your Honor, if you are willing to jump
12 ahead to Slide 17, I'd like to ask you -- and I do want to
13 address the standing jurisdictional question a little bit.
14 THE COURT: Okay.
15 MR. STANCIL: Not to get into the weeds of standing,
16 because I think we have briefed that out the wazoo in our
17 papers, and I read this morning -- I think it was this morning
18 -- from the Claimant Trust Agreement, which says they're not a
19 beneficial interest.
20 But my understanding is that Article III standing, whether
21 there is a theoretical injury in any way, that is -- that goes
22 to Your Honor's subject matter jurisdiction under Article III,
23 but that is not true of statutory standing under Delaware law
24 or prudential standing. Those are -- those go to basically
25 whether they state a claim.

1 So, Your Honor, I believe, can -- and I've confessed to my
2 colleague that the only way I remember this is I screwed it up
3 really, really badly when I was clerking years ago -- but I
4 believe Your Honor can, and in this case should, rule on the
5 standing ground in the alternative. Not on the Article III.
6 Article III is binary. They either have it or they don't.
7 But on the statutory standing, you can say -- I think you can
8 hold that they do not have standing under Delaware law to
9 pursue the claim, but even if they do have standing, and then
10 reach the remainder.
11 And we know we're headed for appeal. We've heard --
12 pretty much two-thirds of the time this morning has been
13 laying the groundwork for an appeal. And we would only like
14 -- we would like to make sure that we give the Fifth Circuit a
15 fulsome record.
16 So I would like to ask Your Honor to flip to Page 19. And
17 this is really the end of, I think, what we need to do. So,
18 Your Honor, what if we were here just on 12(b)(6)? So we've
19 got a *quid*, we've got a *pro*, we've got a *quo*. They fail at
20 each turn. Let me spend most of my time on the *quid*. I'll
21 let the documents of which the Court can take judicial notice
22 speak for themselves. I will let the bare-bones nature of the
23 assertion -- and it's okay to put in a complaint something on
24 information and belief, but you still have to pass *Iqbal* and
25 *Twombly*. I can't say upon information and belief that I was

1 denied a starting position on the Knicks, right? I would like
2 to believe that's the case, but it still has to be a plausible
3 allegation.
4 Let's look at this chart. And this chart is taken right
5 out of our brief. These are their numbers. This is at the
6 bottom. And I want to -- I would like to take head-on this
7 proposition that this is not a rational investment on their
8 numbers.
9 So let's take the Stonehill purchase of Redeemer. They
10 paid $78 million to earn a projected profit, according to the
11 November 30 disclosure statement, of $19.71 million. By my
12 arithmetic, that is a return of 25.27 percent. Even by Mr.
13 Dondero's lights, that's a pretty good return.
14 I'm going to come back to why that's not the end of the
15 return, but let's look at the Farallon purchase of Acis.
16 Spent $8 million. Projected profit, $8.4 million. I'll take
17 105 percent return any day.
18 Let's look at the Farallon purchase of HarbourVest.
19 Purchase price, $27 million. Projected profit, $5.09 million.
20 That is -- oh, I can't read my own writing anymore -- I think
21 that is 18.85 percent. I would again gladly take that every
22 day of the week, whether it's a distressed asset or otherwise.
23 But let me make one really important point that Mr.
24 Dondero obfuscated, Mr. McEntire does not acknowledge, and it
25 is just a fact. These are projected profits if all Mr. Seery

1 does is hit the plan. November 30, 2021. If he does no
2 better than what he thought these assets were worth then, this
3 is the expected return. So for those trades that we've talked
4 about, that's a slam dunk even on that.
5 But let's look about -- we'll talk about upside. Because,
6 as Your Honor knows from doing bankruptcy cases, upside, it's
7 all about upside for people who are purchasing claims. So it
8 isn't just that their returns were capped at these already-
9 ample percentages. If Class 8, for example, of Redeemer paid
10 out in full, they would be making not -- oh, gosh, I'm not
11 sure I should do this on the fly -- but they'd be recovering
12 $137 million on the Class 8 claim, not the $97.71 million. So
13 there's another $40 million of upside.
14 Even if it's a low-probability event, that's a -- hedge
15 funds do that all day every day.
16 Same here with Acis. Paid $8 million, expected $16.4
17 million, but they could get up to $23 million.
18 Now, we've heard so much about how Class 9 was worthless,
19 worthless, worthless. No, it's not. There's always the
20 potential for upside. Paid $27 million. Could recover $45
21 million just on Class 8. Could recover another $35 million on
22 Class 9. They could recover $80 million on a $27 million
23 purchase. Now, the probability of that is complicated, but
24 it's not zero. We know that it's not zero. All we've heard
25 from them today is that Mr. Seery is -- could pay off 8 and 9

1 in full. So I don't think that is even remotely plausible.
2 Let's talk briefly about UBS. They like to talk about UBS
3 for the projected profit of $3.61 million in loss. But that
4 was -- that's in August, and that claim trades.
5 So a couple of things that happened between the November
6 30 disclosure statement setting that projected value and the
7 purchase of the UBS claim in August. Number one is we are
8 nine, ten months past the worst of COVID. And Your Honor
9 could take judicial notice of massive market movements just if
10 you do nothing.
11 We don't need to get to that, because we talked all
12 morning about MGM. May 26th, it's announced publicly. May
13 26, 2021.
14 So the notion that a purchaser of a UBS claim in the
15 summer of 2021, after this MGM transaction is announced, would
16 think, you know what, I think these claims are only worth what
17 they were worth back in November, is not plausible.
18 And so this is why the comparisons to the debt, the exit
19 financing, well, 12 percent. That's a 12 percent capped
20 return. We're talking here about returns of 25 percent, 105
21 percent, 18.85 percent, just based on projections at the --
22 sort of in the darkest days post-COVID.
23 So it's not plausible. If a court were looking at this
24 just under the 12(b)(6) standard, we would be -- we'd be
25 dismissing this claim as well. And we really -- respectfully,

1 Your Honor, we need that ruling. We think we need that ruling
2 so that whatever the -- whatever they may say the standard is
3 in the Fifth Circuit, we only have to go one time. And we
4 really believe that we're entitled to that.
5 I'll let Your Honor -- I will just stand on the deck and
6 our briefs on the *pro* and the *quo*. But meet-and-greets, these
7 are just conclusory allegations in the complaint. He says
8 they worked -- that he worked for them 10 or 15 years ago,
9 which some of that's not even true, but even if it were all
10 true, if I were beholden to every client I've met at a
11 schmooze fest or everybody I worked for in a group 20 years
12 ago or 15 years ago, you know, I would be incapable of
13 operating without a conflict of interest. And it's just not
14 plausible. This is something that needs to go.
15 Unless the Court has questions, I will cede the remainder
16 of our time to Mr. Morris.
17 THE COURT: No questions. Thank you.
18 CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR
19 MR. MORRIS: Thank you so much, Your Honor, for your
20 patience. It's been a very long day. I am very grateful that
21 we're going to finish today.
22 As I said at the beginning, I believe this exercise, as
23 difficult as it may have been, is so important and so vital,
24 preserving this estate and what's left of it.
25 The gatekeeper exists for very important reasons. Your

1 Honor made those findings in her order that has been upheld on
2 appeal. And we're here to make sure that frivolous litigation
3 is not commenced against my clients, or, frankly, against
4 Stonehill and Farallon, given their capacity as Claimant
5 Oversight Board members.
6 Hunter Mountain confuses argument with facts. There's no
7 facts here to support anything, and that's what the gatekeeper
8 is about. The gatekeeper is making sure that there's a good-
9 faith basis to pursue claims. And as Mr. Stancil points out,
10 it is certainly acceptable to state things upon information
11 and belief. But the point of the gatekeeper is if somebody
12 says -- not somebody says -- somebody offers proof that those
13 beliefs are wrong, you no longer have a plausible claim. And
14 that's why we thought it was so important to go through this
15 exercise today. Because the facts show that their beliefs are
16 simply wrong, and the entire complaint is based on their
17 beliefs.
18 There is zero evidence concerning the compensation other
19 than their belief that the compensation is excessive. The
20 case is over. Like, you could stop there. I'm going to go
21 through a bunch of things that -- you could stop there.
22 I want to actually begin backwards, though, in time, with
23 the HarbourVest settlement. Right? After two years of
24 litigation and re-litigation and re-litigation of the
25 HarbourVest settlement, the claims of insider trading, finally

1 the Court has before it admissible indisputable evidence that
2 Mr. Seery negotiated the terms of the HarbourVest settlement
3 before he ever got this notorious email from Mr. Dondero.
4 That should be a finding of fact in Your Honor's order and it
5 should never be -- nobody should ever make that allegation
6 again. It's over. You have the documents. You have the
7 email from Mr. Seery to the board, here are the terms, and
8 those are the terms Your Honor approved.
9 And there's more. Because this is so important for us,
10 because we're tired of being accused of wrongdoing. We're
11 tired of being falsely accused of wrongdoing.
12 $22-1/2 million. That's the valuation Mr. Seery put on
13 it. You can see that he's doing it to his Independent Board
14 colleagues, copying his lawyers. He's telling them where he
15 got it, from Hunter Covitz. The evidence is now in the
16 record. It came from a regularly-published NAV report from
17 November 30th. It was seven days old. It can never be
18 disputed again that $22.5 million was a fair value, not based
19 on some subjective view of Mr. Seery but based on the person
20 who gave him the report that everybody relies upon that Mr.
21 Dondero got.
22 And it was ratified yet again in the audited financial
23 statements that came out, and it shows for the period ending
24 -- this is Exhibit 60, I believe -- for the period ending
25 December 31, 2020, $50 million. Okay, so it went up a few

1 million dollars in December.
2 This is their case? This is the case? Your Honor I know
3 is still working on the motion to dismiss. That's Mark
4 Patrick, right? That's the complaint that he brought. That's
5 what this is about. I don't mean to confuse the issue, but
6 it's time to put this stuff to rest, because it's wrong. Mr.
7 Dondero has lost and he's got to get over it at some point.
8 But here's the best piece of evidence about this whole
9 shenanigans about MGM being inside information. Mr. Dondero
10 filed a 15-page objection to the HarbourVest settlement and
11 didn't say a word about it. How is that possible? Six days
12 before the settlement, he sends this email. Two weeks later,
13 in January, he files a 15-page objection and doesn't mention
14 anything about insider trading, MGM, or any wrongdoing by Mr.
15 Seery. In fact, he argues the exact opposite, that Mr. Seery
16 cut a bad deal. How is that possible? This is a plausible
17 claim?
18 It gets better, or worse, depending on your point of view.
19 CLO Holdco filed an objection and they said they're entitled
20 to buy the asset. This is Mr. Dondero's, you know, operating
21 arm of the DAF. They lost -- they actually had an honorable
22 person who concluded, I don't really have that right. But
23 these are the claims that Mr. Patrick is asserting, and he
24 asserted them on April -- in April, before the MGM deal was
25 announced. Right? And Your Honor found, and that's why it

1 was so important for the Court to take judicial notice of the
2 second contempt order, because Mr. Dondero was intimately
3 involved in bringing those claims and in bringing those claims
4 against -- or trying to bring those claims against Mr. Seery,
5 in violating of the gatekeeper. This is all tied together.
6 I have to tell you, I don't know why we're not doing Rule
7 11. Forget about colorable claims. This is a fraud on the
8 Court. It really is. And I don't know when it's going to
9 stop. I'd love to move on with my life, to be honest with
10 you.
11 The tender offer. He's out there doing a tender offer
12 benefitting as the fund that he manages acquires more shares
13 and his interest goes up and the value goes up with all these
14 MGM holdings. Really? And he's going to accuse Mr. Seery of
15 wrongdoing?
16 There was one point of Mr. Dondero's testimony that made
17 my heart skip a beat. It's when he referred to the need to
18 get discovery. And why did it skip a beat? Because he
19 actually had a moment of candor where he admitted that the
20 notion that Mr. Seery gave them material nonpublic inside
21 information was his thought. It's not anything that Farallon
22 ever told him. And then it spins and it spins and it spins,
23 and finally when he gets to the fifth version of his sworn
24 statement MGM suddenly appears. It's not right. Colorable
25 claims? Fraudulent claims.

1 What's the undisputed evidence right now? I'll take Mr.
2 Dondero at his word that Mr. Patel told him that Farallon
3 bought the claims in February or March. How did they
4 reconcile that with the undisputed testimony that Mr. Seery
5 thereafter invited Farallon to participate in the exit
6 financing? And they signed an NDA in early April. Why would
7 you sign an NDA if you already got inside information? Who
8 would do that? What would be the purpose of that?
9 How do you reconcile the fact that, according to Mr.
10 Dondero, the claims were already in Farallon's pocket when
11 they signed an NDA to get information for an exit facility.
12 Is that plausible?
13 We've heard Mr. McEntire say a bunch of times it's much
14 broader than MGM. Not only not a scintilla of evidence, but
15 no substantive allegation. Again, confusing argument with
16 facts. Because he had -- yes, Mr. Seery had access to inside
17 information relative to Highland. He's the CEO. But where is
18 the evidence that he shared anything with anybody? There is
19 nothing.
20 Mr. Dondero admitted in his motion -- in a moment of
21 candor, he said that's what he concluded based on the fact
22 that Mr. Patel supposedly told him, I bought because Seery
23 told me to. He made the inference. No evidence. Nothing.
24 They're bringing this case for the benefit of innocent
25 parties? These people have told you time and again that

1 assets exceed liabilities. What innocent parties? Where are
2 they and how come they're not -- let's get to that point, too.
3 Because they're saying, oh, Mr. Seery is, like, just not
4 declaring the end of this. Seriously? How much do they think
5 Mr. Seery should reserve for indemnification claims as we do
6 trials like this with a mountain of lawyers billing $800,
7 $1,500 an hour? Seriously? Mr. Seery is somehow acting in
8 bad faith by not declaring the end of this case? How much is
9 he supposed to reserve? They keep skipping over that. We'll
10 talk about that in the mediation motion. We'll talk about
11 that in the Hunter Mountain motion in July. Who's prosecuting
12 that? Mr. Dondero's lawyer. I know there's a really big
13 separation between Hunter Mountain and Mr. Dondero, but
14 Stinson is prosecuting that claim on behalf of Hunter Mountain
15 when they're seeking information.
16 And they complain about the legal fees? We've put our
17 pens down. Kirschner put his pens down. We put down the
18 claim objection. What we're doing is defense at this point.
19 We're awaiting the ruling on the notes litigation, and we
20 will very much prosecute the vexatious litigant motion if
21 Judge Starr grants the pending motion to exceed the page limit
22 that's been out there for months. I'm not sure what's
23 happening there. We'll do that for sure. But otherwise,
24 we're just playing defense.
25 We're here today because they've made a motion, a motion

1 that lacks any good-faith basis whatsoever. And that's why
2 today was so important, so the Court could hear the witnesses.
3 They could -- the Court -- I mean, think about it. Texas
4 State Securities Board. The audacity of saying that somehow a
5 letter from the Texas State Securities Board saying they're
6 taking no action after conducting an investigation of
7 Dugaboy's claim of insider trading is irrelevant? Like, what?
8 I've told you before, all we do is play Whack-A-Mole.
9 Whack-A-Mole. They make an argument, we prove it's frivolous,
10 so they just make a new argument. Their pleading says their
11 claims are colorable because there's an open investigation.
12 Now there's no investigation and they say that's irrelevant.
13 How can they say that with a straight face? I couldn't.
14 I want to talk about Mr. Seery. I want to finish with my
15 Mr. Seery. I may not use all my time. We can go home early.
16 (Laughter.)
17 THE COURT: It's past early.
18 MR. MORRIS: But this guy has worked doggedly, Your
19 Honor, and I will defend him until the end of time. He's a
20 man who has so far exceeded expectations. And they're saying
21 he's not -- he's overpaid? The guy is overpaid? When he's
22 into Class 9? When he's being pursued with these frivolous
23 claims? Every day he's being attacked. How much do they
24 think he should be paid? I would have loved to -- I hope --
25 no, I don't hope. I don't think there's any reason to hear

1 expert testimony. I think Your Honor should exercise -- the
2 Court should exercise its discretion and say there's no need,
3 the Court doesn't need to hear expert testimony.
4 But if we do, I'll be delighted to hear their expert's
5 view on what Mr. Seery -- if it's not $8.8 million for all
6 these years, what should it be, after he takes an estate from
7 71 percent on the 8s to, according to them, assets exceed
8 liabilities, 9s are paid in full?
9 You know what? If they put their pens down, maybe there
10 would be a conversation. But as long as we keep doing this
11 ridiculous, baseless, frivolous litigation, Mr. Seery is going
12 to conserve resources, because he's got to pay people like me
13 to defend him and to defend the estate. This is a preview of
14 what we'll talk about at the mediation motion. He's doing a
15 great job. He's devoting his life to it. He has no other
16 income. He's got no other job. It's wrong.
17 The claims are not only not colorable, they are frivolous.
18 I ask the Court to stop this in its tracks right now.
19 Thank you very much.
20 THE COURT: Thank you.
21 All right. Is there any time for the Movant to have the
22 last word, which we usually give the Movant the last word.
23 THE CLERK: The Movant, I think, has a little under
24 -- maybe about a minute left.
25 THE COURT: Anything you want to say in a minute?

1 MR. MCENTIRE: Yes, just I'll take 30 seconds. How
2 is that?
3 THE COURT: Okay.
4 REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN
5 MR. MCENTIRE: I just want to direct your attention
6 to our reply brief, specific paragraphs that address your
7 question about authorities. We do cite several cases on Page
8 41, 40 and 41, dealing with the issue of unjust enrichment.
9 That's it.
10 Thank you, Your Honor, very much.
11 THE COURT: Okay. Thank you. Unjust enrichment?
12 MR. MCENTIRE: Disgorgement.
13 THE COURT: Okay. But I was really, you know, claims
14 trading in the bankruptcy context, just your best --
15 MR. MCENTIRE: Well, I think the cases that you
16 identified were our best cases. The --
17 THE COURT: Okay.
18 MR. MCENTIRE: -- *Adelphia* and the other cases.
19 THE COURT: All right. Well, --
20 MR. MCENTIRE: There are other cases, Your Honor, in
21 different contexts. There's also the *Washington Mutual* case
22 dealing with equitable disallowance. There's also the *Mobile*
23 *Steel* case, a Fifth Circuit --
24 THE COURT: *Mobile Steel*? Oh, my goodness. Okay.
25 MR. MCENTIRE: Okay. All right.

1 THE COURT: 1968? Or no. That doesn't mean it isn't
2 still quoted often, but --
3 MR. MCENTIRE: Those would also be relevant.
4 THE COURT: Equitable subordination --
5 MR. MCENTIRE: Yes, ma'am.
6 THE COURT: -- when there's bad acts.
7 MR. MCENTIRE: And Footnote #10 in the *Mobile Steel*
8 case. That is relevant, too. Just, --
9 THE COURT: Okay.
10 MR. MCENTIRE: Thank you.
11 THE COURT: All right. So I gave a deadline of
12 Monday, right, --
13 MR. STANCIL: Yes.
14 THE COURT: -- to reply to the response to the
15 motion in limine?
16 MR. STANCIL: Yes, Your Honor. Do you want time
17 before you leave for the day? I mean, it's not going to be
18 that long, so 4:00 o'clock Monday? Does that work for you?
19 THE COURT: I don't care. I probably won't start
20 looking at it until the next day.
21 MR. STANCIL: But I will -- I'll just reserve and so
22 I don't have my associates --
23 THE COURT: Yes. I think these days midnight, 11:59
24 p.m., is what lawyers tend to want.
25 MR. STANCIL: Oh, not this lawyer.

1 THE COURT: Oh, well, okay. Okay. So I'll just have
2 to look at this, and probably by Friday of next week I will
3 reach out through Traci and let you know what my decision is
4 on whether we're going to have another day of just 30 minutes,
5 30 minutes of experts.
6 MR. MCENTIRE: Your Honor, another housekeeping
7 matter. You'd wanted a copy of our PowerPoint, --
8 THE COURT: Yes.
9 MR. MCENTIRE: -- which I'm pleased to give you. We
10 found a typo that we can correct electronically on the version
11 I showed.
12 THE COURT: Uh-huh.
13 MR. MCENTIRE: I likely will send that to you and I
14 can copy opposing counsel. Is that --
15 THE COURT: Okay. Send it to Traci Ellison, my
16 courtroom deputy.
17 MR. MCENTIRE: All right.
18 THE COURT: And she'll --
19 MR. MCENTIRE: We'll do that first thing in the
20 morning.
21 THE COURT: Okay.
22 MR. MCENTIRE: So you'll have a copy --
23 MR. STANCIL: Can we get the hard copy that -- from
24 today, though?
25 MR. MCENTIRE: No, that had a typo on it. I really

1 don't want to share it. We fixed it.
2 THE COURT: What? I'm sorry, what?
3 MR. MORRIS: That's fine.
4 MR. STANCIL: Never mind.
5 THE COURT: Do I not need to know?
6 MR. STANCIL: Let's all go home.
7 THE COURT: Okay. And then my last question is --
8 and there was a mention of the CLO Holdco lawsuit, where
9 there's a pending motion to dismiss. There's an opinion I'm
10 writing well underway. I just keep getting sidetracked by
11 other things. Imagine that. So I know that people are
12 wanting to get an answer to that. So, trust me, it's going to
13 get done here pretty soon.
14 You mentioned Brantley Starr. I mean, it is not my role
15 to pick up the phone and call him and say hey, --
16 MR. MCENTIRE: No, I wasn't suggesting that.
17 THE COURT: -- District Judge, get busy on that.
18 MR. MCENTIRE: Yeah.
19 THE COURT: But I'll at least tell you, I know the
20 man seems to have more jury trials than any judge I've seen in
21 this building, so I suspect he's working late hours trying to
22 get things done.
23 MR. MCENTIRE: Yeah.
24 THE COURT: What do we have upcoming? We have what
25 you called the mediation motion. When is that set?

1 MR. MORRIS: June 26.
2 THE COURT: June 26th. Be here before we know it.
3 MR. MORRIS: Yeah. And just to keep the Court
4 informed, the Movant's reply was due today. We gave them a
5 week extension. They asked earlier today. I saw in my email
6 we gave them. So I think you should expect the reply on the
7 15th. The hearing is the 26th, and that's not in person.
8 THE COURT: Okay. Well, I'm very interested to dive
9 into those pleadings. I knew the motion was coming because
10 one of the lawyers said at a prior hearing it would be coming.
11 So I haven't read any of those pleadings, but, well, I'm just
12 very interested to hear how this plays out. I mean, I've said
13 it before.
14 MR. MORRIS: Uh-huh.
15 THE COURT: We had global mediation in summer of
16 2020. We had two very fine mediators. We had a heck of a lot
17 settled, to my amazement. But we're now way down the road and
18 whole lot of money has been eaten up fighting lots of stuff.
19 I mean, it would have to be pens down. There's an enormous
20 amount out there that would have to be part of it, and I just
21 don't know if everyone is fully appreciating that. I hope
22 they are. Anyone listening. We're really, really far down
23 the road now, and there's just how many appeals? Someone at
24 one time told me there were 26. I bet it's more than that by
25 now.

1 MR. MORRIS: I think that's right. I think we argued
2 on Monday, what is it, the sixth of nine appeals in the Fifth
3 Circuit. And we've got, you know, a cert petition that we're
4 waiting to hear from on the Supreme Court. And yeah, there's
5 still a couple dozen matters in the district court.
6 THE COURT: Okay.
7 MR. MORRIS: Not one of them, not one of them we're
8 prosecuting, with the exception of waiting on the Court to
9 rule on the Report and Recommendation on the notes litigation
10 and vexatious litigant. We are not the plaintiff, movant, in
11 anything.
12 THE COURT: We've got adversaries. The Reports and
13 Recommendations. That's just made everything go a lot slower.
14 But all right. So we have that. And anything else coming up?
15 MR. MORRIS: I think on July 11th maybe there is a
16 hearing scheduled on Hunter Mountain. If you recall, Hunter
17 Mountain had that valuation motion last year that you denied
18 on the grounds that they didn't have a legal right to
19 valuation information. They made a motion earlier this year
20 for leave to file an adversary proceeding to assert an
21 equitable claim and some other declaratory relief, is my
22 recollection.
23 While we filed an opposition, we didn't oppose the relief
24 requested, so that motion got resolved. They have filed an
25 adversary proceeding. And I think, if I remember correctly,

1 our response to the complaint, maybe that's what due. Oh, the
2 11th is a status conference. It could be a status conference,
3 maybe to set a scheduling order.
4 THE COURT: Okay.
5 MR. MORRIS: But that's it. I think that's the only
6 thing on the calendar.
7 THE COURT: That's a lot.
8 MR. MCENTIRE: Thank you.
9 THE COURT: Anything else? Okay.
10 MR. STANCIL: Thank you, Your Honor.
11 MR. MORRIS: Thank you, Your Honor.
12 THE CLERK: All rise.
13 (Proceedings concluded at 7:18 p.m.)
14 --oOo--
15
16
17
18
19 CERTIFICATE
20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the above-entitled matter.
22 **/s/ Kathy Rehling** **06/12/2023**
23 ______________________________________ ________________
24 Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber
25

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EXHIBIT 9

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: RAND ADVISORS, LLC	CRD Number: 172839
Annual Amendment - All Sections	Rev. 10/2021
2/15/2023 3:08:14 PM	

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you. If you are filing an *umbrella registration*, the information in Item 1 should be provided for the *filing adviser* only. General Instruction 5 provides information to assist you with filing an *umbrella registration*.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
RAND ADVISORS, LLC

B. (1) Name under which you primarily conduct your advisory business, if different from Item 1.A.
RAND ADVISORS, LLC

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

(2) If you are using this Form ADV to register more than one investment adviser under an *umbrella registration*, check this box ☐

If you check this box, complete a Schedule R for each relying adviser.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.(1)), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: **801-80265**
(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number:
(3) If you have one or more Central Index Key numbers assigned by the SEC ("CIK Numbers"), all of your CIK numbers:

CIK Number
1660386
1660401

E. (1) If you have a number ("*CRD* Number") assigned by the *FINRA's CRD* system or by the IARD system, your *CRD* number: **172839**

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

(2) If you have additional *CRD* Numbers, your additional *CRD* numbers:
No Information Filed

F. *Principal Office and Place of Business*
(1) Address (do not use a P.O. Box):

Number and Street 1:		Number and Street 2:	
2101 CEDAR SPRINGS ROAD		SUITE 1200	
City:	State:	Country:	ZIP+4/Postal Code:
DALLAS	Texas	United States	75201

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest twenty-five offices in terms of numbers of employees as of the end of your most recently completed fiscal year.

(2) Days of week that you normally conduct business at your *principal office and place of business:*
◉ Monday - Friday ○ Other:

Normal business hours at this location:
9AM-5PM

(3) Telephone number at this location:
214-908-8130

(4) Facsimile number at this location, if any:

214-550-4459

(5) What is the total number of offices, other than your *principal office and place of business*, at which you conduct investment advisory business as of the end of your most recently completed fiscal year?

1

G. Mailing address, if different from your *principal office and place of business* address:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

	Yes	No
I. Do you have one or more websites or accounts on publicly available social media platforms (including, but not limited to, Twitter, Facebook and LinkedIn)?	◉	○

If "yes," list all firm website addresses and the address for each of the firm's accounts on publicly available social media platforms on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. You may need to list more than one portal address. Do not provide the addresses of websites or accounts on publicly available social media platforms where you do not control the content. Do not provide the individual electronic mail (e-mail) addresses of employees or the addresses of employee accounts on publicly available social media platforms.

J. Chief Compliance Officer

(1) Provide the name and contact information of your Chief Compliance Officer. If you are an *exempt reporting adviser*, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

Name: Other titles, if any:

Telephone number: Facsimile number, if any:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

Electronic mail (e-mail) address, if Chief Compliance Officer has one:

(2) If your Chief Compliance Officer is compensated or employed by any *person* other than you, a *related person* or an investment company registered under the Investment Company Act of 1940 that you advise for providing chief compliance officer services to you, provide the *person's* name and IRS Employer Identification Number (if any):

Name:

IRS Employer Identification Number:

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

Name: Titles:

Telephone number: Facsimile number, if any:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

Electronic mail (e-mail) address, if contact person has one:

	Yes	No
L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?	◉	○

If "yes," complete Section 1.L. of Schedule D.

	Yes	No
M. Are you registered with a *foreign financial regulatory authority*?	○	◉

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

	Yes	No
N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?	○	◉

	Yes	No
O. Did you have $1 billion or more in assets on the last day of your most recent fiscal year? If yes, what is the approximate amount of your assets:	○	◉

- ○ $1 billion to less than $10 billion
- ○ $10 billion to less than $50 billion
- ○ $50 billion or more

For purposes of Item 1.O. only, "assets" refers to your total assets, rather than the assets you manage on behalf of clients. Determine your total assets using the total assets shown on the balance sheet for your most recent fiscal year end.

P. Provide your *Legal Entity Identifier* if you have one:

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

SECTION 1.B. Other Business Names

No Information Filed

SECTION 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Section 1.F. for each location. If you are applying for SEC registration, if you are registered only with the SEC, or if you are an *exempt reporting adviser*, list only the largest twenty-five offices (in terms of numbers of *employees*).

Number and Street 1: Number and Street 2:
City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box: ☑

Telephone Number: (214) 335-7969
Facsimile Number, if any:

If this office location is also required to be registered with FINRA or a *state securities authority* as a branch office location for a broker-dealer or investment adviser on the Uniform Branch Office Registration Form (Form BR), please provide the *CRD* Branch Number here:

How many *employees* perform investment advisory functions from this office location?
1

Are other business activities conducted at this office location? (check all that apply)

- ☐ (1) Broker-dealer (registered or unregistered)
- ☐ (2) Bank (including a separately identifiable department or division of a bank)
- ☐ (3) Insurance broker or agent
- ☐ (4) Commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (5) Registered municipal advisor
- ☐ (6) Accountant or accounting firm
- ☐ (7) Lawyer or law firm

Describe any other *investment-related* business activities conducted from this office location:

SECTION 1.I. Website Addresses

List your website addresses, including addresses for accounts on publicly available social media platforms where you control the content (including, but not limited to, Twitter, Facebook and/or LinkedIn). You must complete a separate Schedule D Section 1.I. for each website or account on a publicly available social media platform.

Address of Website/Account on Publicly Available Social Media Platform: HTTP://WWW.RANDADVISORS.COM/

SECTION 1.L. Location of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business.* You must complete a separate Schedule D, Section 1.L. for each location.

Name of entity where books and records are kept:
HIGHGATE CONSULTING GROUP INC

Number and Street 1:		Number and Street 2:	
2101 CEDAR SPRINGS RD		SUITE 1200	
City:	State:	Country:	ZIP+4/Postal Code:
DALLAS	Texas	United States	75201

If this address is a private residence, check this box: ☐

Telephone Number: 214-550-4459

Facsimile number, if any:

This is (check one):

- ○ one of your branch offices or affiliates.
- ◉ a third-party unaffiliated recordkeeper.
- ○ other.

Briefly describe the books and records kept at this location.
ALL BOOKS AND RECORDS OF THE ADVISER

SECTION 1.M. Registration with Foreign Financial Regulatory Authorities

No Information Filed

Item 2 SEC Registration/Reporting

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2.A. only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration. If you are filing an *umbrella registration*, the information in Item 2 should be provided for the *filing adviser* only.

A. To register (or remain registered) with the SEC, you must check **at least one** of the Items 2.A.(1) through 2.A.(12), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A.(13). Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the adviser):

☑ (1) are a **large advisory firm** that either:

(a) has regulatory assets under management of $100 million (in U.S. dollars) or more; or

(b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;

☐ (2) are a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars) and you are either:

(a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*; or

(b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;

*Click **HERE** for a list of states in which an investment adviser, if registered, would not be subject to examination by the state securities authority.*

(3) Reserved

☐ (4) have your *principal office and place of business* **outside the United States**;

☐ (5) are **an investment adviser (or subadviser) to an investment company** registered under the Investment Company Act of 1940;

☐ (6) are **an investment adviser to a company which has elected to be a business development company** pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn the election, and you have at least $25 million of regulatory assets under management;

☐ (7) are a **pension consultant** with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in rule 203A-2(a);

☐ (8) are a **related adviser** under rule 203A-2(b) that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

If you check this box, complete Section 2.A.(8) of Schedule D.

☐ (9) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days**;

If you check this box, complete Section 2.A.(9) of Schedule D.

☐ (10) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);

If you check this box, complete Section 2.A.(10) of Schedule D.

☐ (11) are an **Internet adviser** relying on rule 203A-2(e);

☐ (12) have **received an SEC order** exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A.(12) of Schedule D.

☐ (13) are **no longer eligible** to remain registered with the SEC.

State Securities Authority Notice Filings* and State Reporting by *Exempt Reporting Advisers

C. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. In addition, *exempt reporting advisers* may be required to provide *state securities authorities* with a copy of reports and any amendments they file with the SEC. If this is an initial application or report, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to direct your *notice filings* or reports to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* or reports from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

Jurisdictions

☐ AL	☐ IL	☐ NE	☐ SC
☐ AK	☐ IN	☐ NV	☐ SD
☐ AZ	☐ IA	☐ NH	☐ TN
☐ AR	☐ KS	☐ NJ	☑ TX
☐ CA	☐ KY	☐ NM	☐ UT
☐ CO	☐ LA	☑ NY	☐ VT
☐ CT	☐ ME	☐ NC	☐ VI
☐ DE	☐ MD	☐ ND	☐ VA
☐ DC	☐ MA	☐ OH	☐ WA
☐ FL	☐ MI	☐ OK	☐ WV
☐ GA	☐ MN	☐ OR	☐ WI
☐ GU	☐ MS	☐ PA	☐ WY
☐ HI	☐ MO	☐ PR	
☐ ID	☐ MT	☐ RI	

If you are amending your registration to stop your notice filings or reports from going to a state that currently receives them and you do not want to pay that state's notice filing or report filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

SECTION 2.A.(8) Related Adviser

If you are relying on the exemption in rule 203A-2(b) from the prohibition on registration because you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser

CRD Number of Registered Investment Adviser

SEC Number of Registered Investment Adviser
-

SECTION 2.A.(9) Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days

If you are relying on rule 203A-2(c), the exemption from the prohibition on registration available to an adviser that expects to be eligible for SEC registration within 120 days, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A.(10) Multi-State Adviser

If you are relying on rule 203A-2(d), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 15 states to register as an investment adviser with the *state securities authorities* in those states.

SECTION 2.A.(12) SEC Exemptive *Order*

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:

Application Number:

803-

Date of *order*:

Item 3 Form of Organization

If you are filing an *umbrella registration*, the information in Item 3 should be provided for the *filing adviser* only.

A. How are you organized?

- ○ Corporation
- ○ Sole Proprietorship
- ○ Limited Liability Partnership (LLP)
- ○ Partnership
- ◉ Limited Liability Company (LLC)
- ○ Limited Partnership (LP)
- ○ Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year?

DECEMBER

C. Under the laws of what state or country are you organized?

State	Country
Delaware	United States

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

	Yes	No
A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser, including, for example, a change of your structure or legal status (e.g., form of organization or state of incorporation)?	○	◉

If "yes", complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

SECTION 4 Successions

No Information Filed

Item 5 Information About Your Advisory Business - Employees, Clients, and Compensation

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.

Employees

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A. and Items 5.B.(1), (2), (3), (4), and (5). If an employee performs more than one function, you should count that employee in each of your responses to Items 5.B.(1), (2), (3), (4), and (5).

A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers.
2

B. (1) Approximately how many of the *employees* reported in 5.A. perform investment advisory functions (including research)?
2

(2) Approximately how many of the *employees* reported in 5.A. are registered representatives of a broker-dealer?
0

(3) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives*?
0

(4) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives* for an investment adviser other than you?
0

(5) Approximately how many of the *employees* reported in 5.A. are licensed agents of an insurance company or agency?
0

(6) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?
0

In your response to Item 5.B.(6), do not count any of your employees **and count a firm only once – do not count each of the firm's** *employees that solicit on your behalf.*

Clients

In your responses to Items 5.C. and 5.D. do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

C. (1) To approximately how many *clients* for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?
0

(2) Approximately what percentage of your *clients* are non-*United States persons*?
25%

D. *For purposes of this Item 5.D., the category "individuals" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.*
The category "business development companies" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (1)(d) or (3)(d) below.

Indicate the approximate number of your *clients* and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of *client*. If you have fewer than 5 *clients* in a particular category (other than (d), (e), and (f)) you may check Item 5.D.(2) rather than respond to Item 5.D.(1).

The aggregate amount of regulatory assets under management reported in Item 5.D.(3) should equal the total amount of regulatory assets under management reported in Item 5.F.(2)(c) below.

If a *client* fits into more than one category, select one category that most accurately represents the *client* to avoid double counting *clients* and assets. If you advise a registered investment company, business development company, or pooled investment vehicle, report those assets in categories (d), (e), and (f) as applicable.

Type of *Client*	(1) Number of *Client(s)*	(2) Fewer than 5 *Clients*	(3) Amount of Regulatory Assets under Management

Appx. 000812

(a) Individuals (other than *high net worth individuals*)	0	☐	$ 0
(b) *High net worth individuals*	0	☐	$ 0
(c) Banking or thrift institutions	0	☐	$ 0
(d) Investment companies	0		$ 0
(e) Business development companies	0		$ 0
(f) Pooled investment vehicles (other than investment companies and business development companies)	3		$ 148,241,158
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)	0	☐	$ 0
(h) Charitable organizations	0	☐	$ 0
(i) State or municipal *government entities* (including government pension plans)	0	☐	$ 0
(j) Other investment advisers	0	☐	$ 0
(k) Insurance companies	0	☐	$ 0
(l) Sovereign wealth funds and foreign official institutions	0	☐	$ 0
(m) Corporations or other businesses not listed above	0	☐	$ 0
(n) Other:	0	☐	$ 0

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☑ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify):

Item 5 Information About Your Advisory Business - Regulatory Assets Under Management

Regulatory Assets Under Management

Yes No

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? ◉ Yes ○ No

(2) If yes, what is the amount of your regulatory assets under management and total number of accounts?

		U.S. Dollar Amount		Total Number of Accounts
Discretionary:	(a)	$ 148,241,158	(d)	80
Non-Discretionary:	(b)	$ 0	(e)	0
Total:	(c)	$ 148,241,158	(f)	80

Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management. You must follow these instructions carefully when completing this Item.

(3) What is the approximate amount of your total regulatory assets under management (reported in Item 5.F.(2)(c) above) attributable to *clients* who are non-*United States persons*?

$ 148,230,772

Item 5 Information About Your Advisory Business - Advisory Activities

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☐ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies (as well as "business development companies" that have made an election pursuant to section 54 of the Investment Company Act of 1940)
- ☑ (4) Portfolio management for pooled investment vehicles (other than investment companies)
- ☐ (5) Portfolio management for businesses (other than small businesses) or institutional *clients* (other than registered investment companies and other pooled investment vehicles)
- ☐ (6) Pension consulting services
- ☐ (7) Selection of other advisers (including *private fund* managers)
- ☐ (8) Publication of periodicals or newsletters
- ☐ (9) Security ratings or pricing services
- ☐ (10) Market timing services
- ☐ (11) Educational seminars/workshops
- ☐ (12) Other(specify):

Do not check Item 5.G.(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- 0
- 1 - 10
- 11 - 25
- 26 - 50
- 51 - 100
- 101 - 250
- 251 - 500
- More than 500

If more than 500, how many?
(round to the nearest 500)

In your responses to this Item 5.H., do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

	Yes	No
I. (1) Do you participate in a *wrap fee program*?	○	◉

(2) If you participate in a *wrap fee program*, what is the amount of your regulatory assets under management attributable to acting as:

(a) *sponsor* to a *wrap fee program*
$

(b) portfolio manager for a *wrap fee program*?
$

(c) *sponsor* to and portfolio manager for the same *wrap fee program*?
$

If you report an amount in Item 5.I.(2)(c), do not report that amount in Item 5.I.(2)(a) or Item 5.I.(2)(b).

If you are a portfolio manager for a wrap fee program, list the names of the programs, their sponsors and related information in Section 5.I.(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check Item 5.I.(1) or enter any amounts in response to Item 5.I.(2).

	Yes	No
J. (1) In response to Item 4.B. of Part 2A of Form ADV, do you indicate that you provide investment advice only with respect to limited types of investments?	○	◉
(2) Do you report *client* assets in Item 4.E. of Part 2A that are computed using a different method than the method used to compute your regulatory assets under management?	○	◉

K. Separately Managed Account *Clients*

	Yes	No
(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D.(3)(d)-(f) (separately managed account *clients*)?	○	◉

If yes, complete Section 5.K.(1) of Schedule D.

	Yes	No
(2) Do you engage in borrowing transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉

If yes, complete Section 5.K.(2) of Schedule D.

	Yes	No
(3) Do you engage in derivative transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉

If yes, complete Section 5.K.(2) of Schedule D.

	Yes	No
(4) After subtracting the amounts in Item 5.D.(3)(d)-(f) above from your total regulatory assets under management, does any custodian hold ten percent or more of this remaining amount of regulatory assets under management?	○	◉

If yes, complete Section 5.K.(3) of Schedule D for each custodian.

L. Marketing Activities

	Yes	No
(1) Do any of your *advertisements* include:		
(a) Performance results?	○	◉

(b) A reference to specific investment advice provided by you (as that phrase is used in rule 206(4)-1(a)(5))?

(c) *Testimonials* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?

(d) *Endorsements* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?

(e) *Third-party ratings*?

(2) If you answer "yes" to L(1)(c), (d), or (e) above, do you pay or otherwise provide cash or non-cash compensation, directly or indirectly, in connection with the use of *testimonials*, *endorsements*, or *third-party ratings*?

(3) Do any of your *advertisements* include *hypothetical performance* ?

(4) Do any of your *advertisements* include *predecessor performance* ?

SECTION 5.G.(3) Advisers to Registered Investment Companies and Business Development Companies

No Information Filed

SECTION 5.I.(2) *Wrap Fee Programs*

No Information Filed

SECTION 5.K.(1) Separately Managed Accounts

After subtracting the amounts reported in Item 5.D.(3)(d)-(f) from your total regulatory assets under management, indicate the approximate percentage of this remaining amount attributable to each of the following categories of assets. If the remaining amount is at least $10 billion in regulatory assets under management, complete Question (a). If the remaining amount is less than $10 billion in regulatory assets under management, complete Question (b).

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment* . Mid-year is the date six months before the end of year date. Each column should add up to 100% and numbers should be rounded to the nearest percent.

Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets. Cash equivalents include bank deposits, certificates of deposit, bankers' acceptances and similar bank instruments.

Some assets could be classified into more than one category or require discretion about which category applies. You may use your own internal methodologies and the conventions of your service providers in determining how to categorize assets, so long as the methodologies or conventions are consistently applied and consistent with information you report internally and to current and prospective clients. However, you should not double count assets, and your responses must be consistent with any instructions or other guidance relating to this Section.

(a)

Asset Type	Mid-year	End of year
(i) Exchange-Traded Equity Securities	%	%
(ii) Non Exchange-Traded Equity Securities	%	%
(iii) U.S. Government/Agency Bonds	%	%
(iv) U.S. State and Local Bonds	%	%
(v) *Sovereign Bonds*	%	%
(vi) Investment Grade Corporate Bonds	%	%
(vii) Non-Investment Grade Corporate Bonds	%	%
(viii) Derivatives	%	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%	%
(xi) Cash and Cash Equivalents	%	%
(xii) Other	%	%

Generally describe any assets included in "Other"

(b)

Asset Type	End of year
(i) Exchange-Traded Equity Securities	%
(ii) Non Exchange-Traded Equity Securities	%
(iii) U.S. Government/Agency Bonds	%
(iv) U.S. State and Local Bonds	%
(v) *Sovereign Bonds*	%
(vi) Investment Grade Corporate Bonds	%
(vii) Non-Investment Grade Corporate Bonds	%
(viii) Derivatives	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%
(xi) Cash and Cash Equivalents	%
(xii) Other	%

Generally describe any assets included in "Other"

SECTION 5.K.(2) Separately Managed Accounts - Use of *Borrowings*and Derivatives

☑ No information is required to be reported in this Section 5.K.(2) per the instructions of this Section 5.K.(2)

If your regulatory assets under management attributable to separately managed accounts are at least $10 billion, you should complete Question (a). If your regulatory assets under management attributable to separately managed accounts are at least $500 million but less than $10 billion, you should complete Question (b).

(a) In the table below, provide the following information regarding the separately managed accounts you advise. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise. End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

In column 3, provide aggregate *gross notional value* of derivatives divided by the aggregate regulatory assets under management of the accounts included in column 1 with respect to each category of derivatives specified in 3(a) through (f).

You may, but are not required to, complete the table with respect to any separately managed account with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

(i) Mid-Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(ii) End of Year

Gross Notional	(1) Regulatory Assets	(2)	

Exposure	Under Management	*Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(b) In the table below, provide the following information regarding the separately managed accounts you advise as of the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

You may, but are not required to, complete the table with respect to any separately managed accounts with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*
Less than 10%	$	$
10-149%	$	$
150% or more	$	$

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

SECTION 5.K.(3) Custodians for Separately Managed Accounts

No Information Filed

Item 6 Other Business Activities

In this Item, we request information about your firm's other business activities.

A. You are actively engaged in business as a (check all that apply):

- ☐ (1) broker-dealer (registered or unregistered)
- ☐ (2) registered representative of a broker-dealer
- ☐ (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (4) futures commission merchant
- ☐ (5) real estate broker, dealer, or agent
- ☐ (6) insurance broker or agent
- ☐ (7) bank (including a separately identifiable department or division of a bank)
- ☐ (8) trust company
- ☐ (9) registered municipal advisor
- ☐ (10) registered security-based swap dealer
- ☐ (11) major security-based swap participant
- ☐ (12) accountant or accounting firm
- ☐ (13) lawyer or law firm
- ☐ (14) other financial product salesperson (specify):

If you engage in other business using a name that is different from the names reported in Items 1.A. or 1.B.(1), complete Section 6.A. of Schedule D.

		Yes	No
B. (1)	Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?	○	●
(2)	If yes, is this other business your primary business?	○	○

If "yes," describe this other business on Section 6.B.(2) of Schedule D, and if you engage in this business under a different name, provide that name.

Yes No

(3) Do you sell products or provide services other than investment advice to your advisory *clients*? ○ ◉

If "yes," describe this other business on Section 6.B.(3) of Schedule D, and if you engage in this business under a different name, provide that name.

SECTION 6.A. Names of Your Other Businesses

No Information Filed

SECTION 6.B.(2) Description of Primary Business

Describe your primary business (not your investment advisory business):

If you engage in that business under a different name, provide that name:

SECTION 6.B.(3) Description of Other Products and Services

Describe other products or services you sell to your *client*. You may omit products and services that you listed in Section 6.B.(2) above.

If you engage in that business under a different name, provide that name:

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

A. This part of Item 7 requires you to provide information about you and your *related persons*, including foreign affiliates. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
- ☐ (2) other investment adviser (including financial planners)
- ☐ (3) registered municipal advisor
- ☐ (4) registered security-based swap dealer
- ☐ (5) major security-based swap participant
- ☐ (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (7) futures commission merchant
- ☐ (8) banking or thrift institution
- ☐ (9) trust company
- ☐ (10) accountant or accounting firm
- ☐ (11) lawyer or law firm
- ☐ (12) insurance company or agency
- ☐ (13) pension consultant
- ☐ (14) real estate broker or dealer
- ☐ (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- ☐ (16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A. should not be used to disclose that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B.(1). The number of your firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B.(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D.

You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

SECTION 7.A. Financial Industry Affiliations

No Information Filed

	Yes	No
B. Are you an adviser to any *private fund*?	◉	○

If "yes," then for each private fund that you advise, you must complete a Section 7.B.(1) of Schedule D, except in certain circumstances described in the next sentence and in Instruction 6 of the Instructions to Part 1A. If you are registered or applying for registration with the SEC or reporting as an SEC exempt reporting adviser, and another SEC-registered adviser or SEC exempt reporting adviser reports this information with respect to any such private fund in Section 7.B.(1) of Schedule D of its Form ADV (e.g., if you are a subadviser), do not complete Section 7.B.(1) of Schedule D with respect to that private fund. You must, instead, complete Section 7.B.(2) of Schedule D.

In either case, if you seek to preserve the anonymity of a private fund client by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the private fund in Section 7.B.(1) or 7.B.(2) of Schedule D using the same code or designation in place of the fund's name.

SECTION 7.B.(1) *Private Fund* Reporting

Funds per Page: 15 Total Funds: 2

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:
   ATLAS IDF, LP
   (b) *Private fund* identification number:
   (include the "805-" prefix also)
   805-9274628204

2. Under the laws of what state or country is the *private fund* organized:

State:	Country:
Delaware	United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director
ATLAS IDF GP, LLC

   (b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):
   ☐ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940
   ☑ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

	Yes	No
6. (a) Is this a "master fund" in a master-feeder arrangement?	○	◉

   (b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

	Yes	No
(c) Is this a "feeder fund" in a master-feeder arrangement?	○	◉

   (d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?
   Name of *private fund*:

   Private fund identification number:
   (include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

		Yes	No
8.	(a) Is this *private fund* a "fund of funds"?	○	◉
	NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.		
	(b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?	○	○

		Yes	No
9.	During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?	○	◉

10. What type of fund is the *private fund*?

○ hedge fund ○ liquidity fund ◉ private equity fund ○ real estate fund ○ securitized asset fund ○ venture capital fund ○ Other *private fund*:

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*:

$ 20,963,757

Ownership

12. Minimum investment commitment required of an investor in the *private fund*:

$ 500,000

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund's* beneficial owners:

2

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:

0%

15. (a) What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by funds of funds:

0%

	Yes	No
(b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to *qualified clients*?	○	○

16. What is the approximate percentage of the *private fund* beneficially owned by non-*United States persons*:

100%

Your Advisory Services

		Yes	No
17.	(a) Are you a subadviser to this *private fund*?	○	◉

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

Yes No

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*? ○ Yes ◉ No

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

Yes No

19. Are your *clients* solicited to invest in the *private fund*? ○ Yes ◉ No

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

Yes No

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933? ◉ Yes ○ No

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

Yes No

23. (a) (1) Are the *private fund's* financial statements subject to an annual audit? ◉ Yes ○ No

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP? ◉ Yes ○ No

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

COHEN & CO.

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):

City:	State:	Country:
AKRON	Ohio	United States

Yes No

(d) Is the auditing firm an *independent public accountant*? ◉ Yes ○ No

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board? ◉ Yes ○ No

If yes, Public Company Accounting Oversight Board-Assigned Number:

925

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? ◉ Yes ○ No

Yes No

(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors? ◉ Yes ○ No

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

◉ Yes ○ No ○ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

Yes No

24. (a) Does the *private fund* use one or more prime brokers? ○ Yes ◉ No

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets? Yes: ◉ No: ○

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:
US BANK

(c) Primary business name of custodian:
US BANK

(d) The location of the custodian's office responsible for *custody* of the *private fund's* assets (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

(e) Is the custodian a *related person* of your firm? Yes: ○ No: ◉

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):
-
CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

26. (a) Does the *private fund* use an administrator other than your firm? Yes: ◉ No: ○

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:
HIGHGATE CONSULTING GROUP INC

(c) Location of administrator (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

(d) Is the administrator a *related person* of your firm? Yes: ○ No: ◉

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?
◉ Yes (provided to all investors) ○ Some (provided to some but not all investors) ○ No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

100%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

	Yes	No
28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?	○	◉

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:
   RAND PE FUND I, L.P.
   (b) *Private fund* identification number:
   (include the "805-" prefix also)
   805-7357834832

2. Under the laws of what state or country is the *private fund* organized:

State:	Country:
Delaware	United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director
RAND PE FUND MANAGEMENT, LLC

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):
   ☑ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940
   ☑ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

	Yes	No
6. (a) Is this a "master fund" in a master-feeder arrangement?	○	◉

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

	Yes	No
(c) Is this a "feeder fund" in a master-feeder arrangement?	○	◉

(d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?
Name of *private fund*:

Private fund identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

	Yes	No
8. (a) Is this *private fund* a "fund of funds"?	○	◉
NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.		
(b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?	○	○

	Yes	No
9. During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?	○	◉

10. What type of fund is the *private fund*?

○ hedge fund ○ liquidity fund ◉ private equity fund ○ real estate fund ○ securitized asset fund ○ venture capital fund ○ Other *private fund*:

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*:

$ 78,488

Ownership

12. Minimum investment commitment required of an investor in the *private fund*:

$ 500,000

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund's* beneficial owners:

3

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:

0%

15. (a) What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by funds of funds:

0%

	Yes	No
(b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to *qualified clients*?	◉	○

16. What is the approximate percentage of the *private fund* beneficially owned by non-*United States persons*:

100%

Your Advisory Services

	Yes	No
17. (a) Are you a subadviser to this *private fund*?	○	◉

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

Yes No

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*? ○ ◉

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund.* If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

Yes No

19. Are your *clients* solicited to invest in the *private fund*? ○ ◉

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

Yes No

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933? ◉ ○

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

Yes No

23. (a) (1) Are the *private fund's* financial statements subject to an annual audit? ◉ ○

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP? ◉ ○

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

COHEN & CO

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):

City:	State:	Country:
AKRON	Ohio	United States

Yes No

(d) Is the auditing firm an *independent public accountant*? ◉ ○

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board? ◉ ○

If yes, Public Company Accounting Oversight Board-Assigned Number:

925

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? ◉ ○

Yes No

(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors? ◉ ○

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

◉ Yes ○ No ○ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

Yes No

24. (a) Does the *private fund* use one or more prime brokers? ○ ◉

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

Yes No

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets? ◉ ○

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:
STATE STREET GLOBAL MARKETS, LLC

(c) Primary business name of custodian:
STATE STREET GLOBAL MARKETS, LLC

(d) The location of the custodian's office responsible for *custody* of the *private fund's* assets (city, state and country):

City:	State:	Country:
BOSTON	Massachusetts	United States

Yes No

(e) Is the custodian a *related person* of your firm? ○ ◉

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):
8 - 69862
CRD Number (if any):
285852

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

Yes No

26. (a) Does the *private fund* use an administrator other than your firm? ◉ ○

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:
HIGHGATE CONSULTING GROUP INC

(c) Location of administrator (city, state and country):

City:	State:	Country:
DALLAS	Texas	United States

Yes No

(d) Is the administrator a *related person* of your firm? ○ ◉

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?

(•) Yes (provided to all investors) ( ) Some (provided to some but not all investors) ( ) No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

100%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

	Yes	No
28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?	( )	(•)

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

Funds per Page: 15 Total Funds: 2

SECTION 7.B.(2) *Private Fund* Reporting

1. Name of the *private fund*:

RAND ADVISORS SERIES I INSURANCE FUND SERIES INTERESTS OF THE SALI MULTISERIES

2. *Private fund* identification number:
(include the "805-" prefix also)

805-9425927696

3. Name and SEC File number of adviser that provides information about this *private fund* in Section 7.B.(1) of Schedule D of its Form ADV filing

Name:

SALI FUND SERVICES

SEC File Number:

801 - 61702

	Yes	No
4. Are your *clients* solicited to invest in this *private fund*?	( )	(•)

In answering this question, disregard feeder funds' investment in a master fund. For purposes of this question, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients*' transactions. This information identifies additional areas in which conflicts of interest may occur between you and your *clients*. Newly-formed advisers should base responses to these questions on the types of participation and interest that you expect to engage in during the next year.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*, including foreign affiliates.

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	( )	(•)
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	(•)	( )

(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A.(1) or (2))? — Yes: ◉ No: ○

Sales Interest in *Client* Transactions

		Yes	No
B.	Do you or any *related person*:		
(1)	as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	○	◉
(2)	recommend to advisory *clients*, or act as a purchaser representative for advisory *clients* with respect to, the purchase of securities for which you or any *related person* serves as underwriter or general or managing partner?	◉	○
(3)	recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?	○	◉

Investment or Brokerage Discretion

		Yes	No
C.	Do you or any *related person* have *discretionary authority* to determine the:		
(1)	securities to be bought or sold for a *client's* account?	◉	○
(2)	amount of securities to be bought or sold for a *client's* account?	◉	○
(3)	broker or dealer to be used for a purchase or sale of securities for a *client's* account?	◉	○
(4)	commission rates to be paid to a broker or dealer for a *client's* securities transactions?	◉	○
D.	If you answer "yes" to C.(3) above, are any of the brokers or dealers *related persons*?	○	◉
E.	Do you or any *related person* recommend brokers or dealers to *clients*?	◉	○
F.	If you answer "yes" to E. above, are any of the brokers or dealers *related persons*?	○	◉
G. (1)	Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party ("soft dollar benefits") in connection with *client* securities transactions?	◉	○
(2)	If "yes" to G.(1) above, are all the "soft dollar benefits" you or any *related persons* receive eligible "research or brokerage services" under section 28(e) of the Securities Exchange Act of 1934?	◉	○
H. (1)	Do you or any *related person*, directly or indirectly, compensate any *person* that is not an *employee* for *client* referrals?	○	◉
(2)	Do you or any *related person*, directly or indirectly, provide any *employee* compensation that is specifically related to obtaining *clients* for the firm (cash or non-cash compensation in addition to the *employee's* regular salary)?	○	◉
I.	Do you or any *related person*, including any *employee*, directly or indirectly, receive compensation from any *person* (other than you or any *related person*) for *client* referrals?	○	◉

In your response to Item 8.I., do not include the regular salary you pay to an employee.

In responding to Items 8.H. and 8.I., consider all cash and non-cash compensation that you or a related person gave to (in answering Item 8.H.) or received from (in answering Item 8.I.) any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

		Yes	No
A. (1)	Do you have *custody* of any advisory *clients'*:		
(a)	cash or bank accounts?	◉	○
(b)	securities?	◉	○

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-2(d)(5)) from the related person.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $ 148,241,158	(b) 3

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and number of those clients in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:

	Yes	No
(a) cash or bank accounts?	○	◉
(b) securities?	○	◉

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $	(b)

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

(1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage. ☐

(2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools. ☑

(3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities. ☐

(4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities. ☐

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

	Yes	No
(1) you act as a qualified custodian	○	◉
(2) your *related person(s)* act as qualified custodian(s)	○	◉

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced:

F. If you or your *related persons* have *custody* of *client* funds or securities, how many *persons*, including, but not limited to, you and your *related persons*, act as qualified custodians for your *clients* in connection with advisory services you provide to *clients?*
1

SECTION 9.C. ***Independent Public Accountant***

No Information Filed

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you. If you are filing an *umbrella registration*, the information in Item 10 should be provided for the *filing adviser* only.

If you are submitting an initial application or report, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application or report, you must complete Schedule C.

	Yes	No
A. Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?	○	◉

If yes, complete Section 10.A. of Schedule D.

B. If any *person* named in Schedules A, B, or C or in Section 10.A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please complete Section 10.B. of Schedule D.

SECTION 10.A. ***Control Persons***

No Information Filed

SECTION 10.B. ***Control Person*** **Public Reporting Companies**

No Information Filed

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below. In accordance with General Instruction 5 to Form ADV, "you" and "your" include the *filing adviser* and all *relying advisers* under an *umbrella registration*.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC or if you are an exempt reporting adviser, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A.(1), 11.A.(2), 11.B.(1), 11.B.(2), 11.D.(4), and 11.H.(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

	Yes	No
Do any of the events below involve you or any of your *supervised persons*?	○	◉

For "yes" answers to the following questions, complete a Criminal Action DRP:

	Yes	No
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	○	◉
(2) been *charged* with any *felony*?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.A.(2) to charges that are currently pending.

	Yes	No
B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	○	◉
(2) been *charged* with a *misdemeanor* listed in Item 11.B.(1)?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.B.(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	Yes	No
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	○	◉
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	○	◉
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	○	◉

	Yes	No
D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	○	◉
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	○	◉
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	○	◉
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?	○	◉

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you or any *advisory affiliate* to have made a false statement or omission? ○ ◉

(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)? ○ ◉

(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ○ ◉

(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities? ○ ◉

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended? ○ ◉

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? ○ ◉

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

H. (1) Has any domestic or foreign court: **Yes No**

(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity? ○ ◉

(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations? ○ ◉

(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*? ○ ◉

(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H.(1)? ○ ◉

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC **and** you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- *Control* means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to *control* the other *person*.

Yes No

A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year? ○ ○

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) *control* another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year? ○ ○

(2) *control* another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year? ○ ○

C. Are you:

(1) *controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year? ○ ○

(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year? ○ ○

Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director, and any other individuals with similar status or functions;
   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

(d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

(e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? (•) Yes ( ) No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA - less than 5%; A - 5% but less than 10%; B - 10% but less than 25%; C - 25% but less than 50%; D - 50% but less than 75%; E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
RAND ADVISORS HOLDING CORP	DE	OWNER	08/2022	E	Y	N	
Patrick, Mark	I	CCO	08/2022	NA	Y	N	7626259

Schedule B

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

(a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

(c) in the case of an owner that is a trust, the trust and each trustee; and

(d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50%; D - 50% but less than 75%; E - 75% or more; F - Other (general partner, trustee, or elected manager)

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
CHARITABLE DAF FUND, L.P	FE	RAND ADVISORS HOLDING CORP	OWNER OF RAND ADVISORS HOLDING CORP	01/2022	E	Y	N	
CHARITABLE DAF HOLDCO LTD.	FE	CHARITABLE DAF FUND, L.P	OWNER OF CHARITABLE DAF FUND, L.P.	11/2011	E	Y	N	
CHARITABLE DAF GP, LLC	DE	CHARITABLE DAF FUND, L.P	GNEREAL PARTNER OF CHARITABLE DAF FUND, L.P	11/2011	F	Y	N	

Patrick, Mark	I	CHARITABLE DAF GP, LLC	MANAGING MEMBER AND SOLE OWNER OF CHARITABLE DAF GP, LLC	03/2021	E	Y	N	7626259

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

Schedule R

No Information Filed

DRP Pages

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

Part 2

Exemption from brochure delivery requirements for SEC-registered advisers

SEC rules exempt SEC-registered advisers from delivering a firm brochure to some kinds of clients. If these exemptions excuse you from delivering a brochure to *all* of your advisory clients, you do not have to prepare a brochure.

	Yes	No
Are you exempt from delivering a brochure to all of your clients under these rules?	○	◉

If no, complete the ADV Part 2 filing below.

Amend, retire or file new brochures:

Brochure ID	Brochure Name	Brochure Type(s)
372834	ADV PART 2A	Private funds or pools
376845	ADV PART 2A	Private funds or pools

Part 3

CRS	Type(s)	Affiliate Info	Retire

There are no CRS filings to display.

Execution Pages

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state

action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:
MARK PATRICK

Date: MM/DD/YYYY
02/15/2023

Printed Name:
MARK PATRICK

Title:
CCO

Adviser *CRD* Number:
172839

NON-RESIDENT **INVESTMENT ADVISER EXECUTION PAGE**

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser *CRD* Number:
172839

EXHIBIT 10

FORM ADV PART 2A

RAND ADVISORS, LLC

February 2023

2101 Cedar Springs Road, Suite 1200
Dallas, TX 75201
www.RANDADVISORS.com
(214) 288-9555

This brochure provides information about the qualifications and business practices of Rand Advisors, LLC. If you have any questions about the contents of this brochure, please contact us at mpatrick@randadvisors.com. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. Additional information about Rand Advisors, LLC is also available at the Securities and Exchange Commission's website www.adviserinfo.sec.gov. Our registration as an investment adviser does not imply any level of skill or training.

ITEM 2. MATERIAL CHANGES

As of our last annual amendment filing on March 29, 2022, we have made the following material changes to the business of the Adviser:

- Mark Patrick has taken over as CCO for John Honis;

We will ensure that you receive a summary of any material changes to this and subsequent brochures within 120 days of the close of our fiscal year, which is December 31st. We will provide other ongoing disclosure information about material changes as they occur. We will also provide you with information on how to obtain the complete brochure. Currently, our brochure may be requested at any time, without charge, by contacting Mark Patrick at (214) 288-9555.

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ITEM 4. ADVISORY BUSINESS

We are the sub-adviser to Rand Advisors Series I Insurance Fund (the "Rand Fund"), and adviser to the Rand PE Fund I, L.P. (the "Rand PE Fund") and Atlas IDF, LP (the "Atlas Fund") (all such entities shall collectively be referred to as the "Funds" or "Clients"), all of which are unregistered investment funds. The Rand Fund held its initial offering in October 2013. The Rand PE Fund and the Atlas Fund were funded in 2015.

OWNERSHIP

Rand Advisors, LLC ("Rand," "Adviser", "we" or "us") is owned 100% by Rand Advisors Holding Corp and was founded in 2013 by John Honis.

TYPES OF ADVISORY SERVICES

The Funds are our sole advisory clients at this time. The Funds seek to achieve their respective investment objectives primarily through the strategies described in "ITEM 8. METHODS OF ANALYSIS, INVESTMENT STRATEGIES, AND RISK OF LOSS" and in the Private Placement Memoranda (each, a "PPM") for each Fund.

REGULATORY ASSETS UNDER MANAGEMENT

As of December 31, 2022, the amount of our total discretionary regulatory assets under management was $148,241,158.

All assets are managed on a discretionary basis.

ITEM 5. FEES AND COMPENSATION

For providing investment advisory services, Rand typically charges the Client a management fee and other fees as necessary and agreed to (including, but not limited to, expenses related to servicing accounts, such as administration and legal services). Fees may be deducted directly from the Funds.

We have entered into a shared services agreement with Highgate Consulting Group Inc., d.b.a Skyview ("HCG or "Highgate"). Please refer to the PPM for each Fund for a list of services to be provided by HCG.

The Funds incur brokerage and other transaction costs associated with Rand's management of Client Accounts. Please see the section titled ITEM 12 Brokerage Practices of this ADV Part 2 for a discussion of Rand's brokerage practices.

FEE SCHEDULE

Please refer to the PPM or other applicable offering documents for each of the Funds for a detailed description of fees, expenses and use of proceeds.

UNREGISTERED INVESTMENT FUNDS

As compensation for our advisory services, each of the Funds typically pays Rand management fees based on each Fund's agreements. Management fees are based upon outstanding capital accounts or amounts of committed capital. In some cases, certain investors in one Fund may pay a different fee than others based on the terms of their agreement with Rand.

In addition to management fees, brokerage and transaction costs, investors in the Funds will indirectly bear the fees and expenses paid by the Funds, including custody fees, administration, legal, audit and tax preparation fees, overhead allocation, and certain other fees and expenses. Each of the Fund's PPM's or offering documents include more detailed information about the fees and expenses paid by each of the Funds.

OTHER COMPENSATION

Fund Accounts may hold significant positions, individually or collectively, in the securities issued by a company. Accordingly, Rand may have the right to appoint a board member or officer for such company. Rand may appoint an employee or a third party to such position as it sees fit in the best interest of Rand and the Funds. Employees are permitted to retain all compensation received for such positions except to the extent contrary to the governing documents for one or more Fund Accounts, in which case the proportion of such compensation related to such Fund Account(s) will be paid to those Account(s) (generally in proportion to relative assets of the Fund Account as of the date paid).

In addition, to the extent permitted by the offering and/or governing documents of the applicable advised accounts, Rand and/or its affiliates receive other fees for services provided to portfolio companies, provided such fees are on arms-length terms. See also ITEM 10 Other Financial Industry Activities and Affiliations.

We have established procedures designed to address possible conflicts of interest that such board or officer positions might present, including requiring authorization from the Chief Compliance Officer prior to an officer or employee serving as a board member. As a result of such activities, Rand may acquire confidential information, which may restrict Fund Accounts from transacting in certain securities. As a result, we may not initiate a transaction on behalf of Clients which we otherwise might have.

ITEM 6. PERFORMANCE-BASED FEES

At this time, we do not charge any performance-based or incentive-based fees or allocations. These are fees or allocations based on a share of capital gains on, or capital appreciation of, the assets of the client.

ITEM 7. TYPES OF CLIENTS

Our sole advisory clients are the Atlas IDF, Rand PE Fund 1 and the Rand Series 1 Fund, all being limited partnerships.

ITEM 8. METHODS OF ANALYSIS, INVESTMENT STRATEGIES, AND RISK OF LOSS

INVESTMENT STRATEGY

The items below are general descriptions of the types of investment strategies we currently utilize, although we may add or subtract from this list based on various factors including macro-economic conditions.

INVESTMENT STRATEGIES

The Rand Series 1 Fund

Bank Loan Strategy

Rand's bank loan strategy seeks to generate attractive absolute returns by opportunistically making investments across the capital structure, with a core focus in senior secured bank loans. The bank loan strategy is long-biased and U.S. focused.

Structured Finance Investments

Rand invests in various structured finance instruments, including collateralized loan obligations and collateralized debt obligations. The rate of return on the structured finance instrument may be determined by applying a multiplier to the rate of total return on the reference loan or loans. Application of a multiplier is comparable to the use of financial leverage, a speculative technique. Leverage magnifies the potential for gain and the risk of loss, because of a relatively small decline in the value of a reference loan could result in a relatively large loss for the value of a structured finance instrument.

Please see the PPM for the Rand Series 1 Fund for a complete description of the investment objectives and strategies of the fund.

The Rand PE Fund 1

The Rand PE Fund's strategy is to invest in small- to medium-sized companies that are involved in (or are the target of) acquisition attempts or tender offers, and/or in companies involved in work-outs, liquidations, spin-offs, reorganizations, bankruptcies or similar transactions.

Please see the PPM for the Rand Series 1 Fund for a complete description of the investment objectives and strategies of the fund.

The Atlas IDF Fund

> The Atlas Fund's strategy may include investing in long and short equity positions, arbitrage, bank loans, cash, fixed income securities, high yield bonds, derivative transactions, foreign investments, companies, money market instruments, collateralized loan obligations and currency hedging. Please see the PPM for the Rand PE Fund 1 for a complete description of the investment objectives and strategies of the fund.
>
> Please see the PPM for the Atlas IDF Fund for a complete description of the investment objectives and strategies of the fund.

METHOD OF ANALYSIS

The investment process used by Rand to evaluate potential investments employs a combination of rigorous qualitative (issuer, portfolio and legal considerations) and quantitative (structural, cash flow, collateral valuation and pricing/relative value) analysis. Rand uses a proprietary quantitative analytical tool and 3rd party software in connection with gathering information on investments. The sell discipline is largely enforced by ongoing monitoring of individual names.

Other sources of information include obtaining and reviewing due diligence packages prepared by debt issuers and underwriters of institutional private placements and meetings with management of issuers.

MATERIAL RISKS OF SIGNIFICANT STRATEGIES

Some, but not necessarily all, of the risks involved in the strategies used by Rand in order to meet the stated investment objectives in the Funds include:

- Credit
- Illiquid Securities
- Inflation
- Investment in Distressed Assets
- Investments in Structured Finance Instruments
- Investments in Senior Secured Loans
- Maturity
- Market or Interest Rates
- Valuation of Portfolio Holdings
- Competition
- Volatility
- Market Liquidity

- Over-the-Counter-Trading
- Leverage

MATERIAL RISKS OF METHODS OF ANALYSIS

Qualitative Analysis – The major risk involved with qualitative analysis is that it is subjective in nature; assigning probability and impacts to risks is a subjective exercise.

Quantitative Analysis – The major risk involved with the use of quantitative risk analysis is the limited availability of data. Therefore, any lack of data concerning the structure, cash flow, collateral valuation and pricing/relative value of the underlying investment can restrict the Adviser's ability to perform thorough research into the suitability of the investment for the Funds.

Please refer to the PPM or other offering documents for each Fund for a complete description of the risks involved with the investment strategies of the Funds.

ITEM 9. DISCIPLINARY INFORMATION

We do not have any information to disclose concerning the Adviser or John Honis, Mark Patrick or Shawn Raver. We adhere to high ethical standards.

ITEM 10. OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS

We have no industry activities or affiliations to disclose. Additional information regarding potential conflicts of interest is provided in Item 11 Code of Ethics, Participation or Interest in Client Transactions and Personal Trading and the Conflicts of Interest description in the PPM or offering documents for each of the Funds.

ITEM 11. CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING

We maintain a policy of strict compliance with the highest standards of ethical business conduct and the provisions of applicable federal securities laws, including rules and regulations promulgated by the SEC, and have adopted policies and procedures described in our Code of Ethics. The Code of Ethics applies to each of our "access persons" as defined in the U.S. Investment Advisers Act of 1940. It is designed to ensure compliance with legal requirements of our standard of business conduct.

A complete copy of our Code of Ethics is available to any client or prospective client upon request.

STANDARDS OF CONDUCT

We and our access persons are expected to comply with all applicable federal and state laws and regulations. Access persons are expected to adhere to the highest standards of ethical conduct and maintain confidentiality of all information obtained with respect to client matters and bring any risk issues, violations, or potential violations to the attention of our Chief Compliance Officer. Access persons are expected to deal with clients fairly and disclose any activity that may create an actual or potential conflict of interest between them and us or any client.

ETHICAL BUSINESS PRACTICES

Falsification or alteration of records or reports, also known as a prohibited financial practice, or knowingly approving such conduct is prohibited. Payments to government officials or employees are prohibited except for political contributions approved by our Chief Compliance Officer. We seek to outperform our competition fairly and honestly and seek competitive advantages through superior performance not illegal or unethical dealings. Access persons are strictly prohibited from (i) participating in online blogging and communication with the media, and (ii) spreading of false rumors pertaining to any publicly traded company.

CONFIDENTIALITY

Access persons must maintain the confidentiality of our proprietary and confidential information and that of our clients, and must not disclose that information unless the necessary approval is obtained. We have a particular duty and responsibility, as investment adviser, to safeguard client information. Information concerning the identity and transactions of investors is confidential, and such information will only be disclosed to those access persons and outside parties who need to know it in order to fulfill their responsibilities.

GIFT AND ENTERTAINMENT POLICY

Access persons are permitted, on occasion, to accept gifts and invitations to attend entertainment events. When doing so, however, employees should always act in our best interests and that of our clients and should avoid any activity that might create an actual or perceived conflict of interest or impropriety in the course of our business relationships. Under no circumstances may (i) gifts of cash or cash equivalents be accepted or (ii) any gifts be received in consideration or recognition of any services provided to, or transactions entered into by, Client Accounts.

PERSONAL TRADING

Personal Trading Policy

Access persons are allowed to trade reportable securities. Access persons are not permitted to trade any security of which we or a Client own any portion of the capital structure or that is on our restricted list without permission. Access persons who violate the personal trading policy are reprimanded in accordance with the sanctions provisions outlined in the Code of Ethics. Personal securities transactions are reviewed by the Chief Compliance Officer or his/her designee for compliance with the personal trading policy and applicable SEC rules and regulations.

Prohibition against Insider Trading

We forbid any access person from trading, either personally or on behalf of others, including the Funds, on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party. This conduct is frequently referred to as "insider trading". The concepts of material non-public information, penalties for insider trading, and processes for identifying insider trading are addressed in detail in the Compliance Manual and Code of Ethics.

Reporting Requirements

In compliance with SEC rules, access persons are required to disclose all of their reportable securities holdings within 10 days of becoming an access person, within 10 days of opening a new account, and annually thereafter. Additionally, at the end of each month after quarter-end, all access persons must report all transactions in reportable securities over which the access person had any direct or indirect beneficial ownership. Access persons are also required annually to affirm all reportable transactions from the prior year.

POTENTIAL CONFLICTS

Rand and its affiliates may engage in a broad range of activities, including activities for their own account and for the accounts of the Clients. This section describes various potential conflicts that may arise in respect of its business, as well as how Rand addresses such conflicts of interest. The discussion below does not describe all conflicts that may arise.

Any of the potential conflicts of interest will be discussed and resolved on a case by case basis. Rand's determination as to which factors are relevant, and the resolution of such conflicts, will be made using Rand's best judgment, but in its sole discretion. In resolving conflicts, Rand will take into consideration the interests of the relevant clients, the circumstances giving rise to the conflict and applicable laws.

Certain procedures for resolving specific conflicts of interest are set forth below. The following list is not all inclusive and for a complete description of the conflicts of interest for a particular Fund, please read the applicable PPM or offering documents.

Allocation of Investment Opportunities

Rand may act as investment adviser to clients that have similar investment objectives and pursue similar strategies. Certain investments identified by Rand may be appropriate for multiple clients. Investment decisions for such clients are made by Rand in its best judgment, but in its discretion, taking into account such factors as Rand believes relevant. Such factors may include investment objectives, regulatory restrictions, current holdings, availability of cash for investment, the size of investments generally, and limitations and restrictions on a Client's Account that are imposed by such client.

Conflicts Related to Investment Activities

Rand has an incentive to allocate assets into vehicles that produce the greatest fees for Rand. Each of these situations give rise to a potential conflict of interest in the allocation of investment opportunities. As previously described, Rand has adopted trade allocation policies and procedures that seek to ensure fair and equitable access to investment opportunities for all accounts.

Trade Aggregation

In some circumstances, Rand may seek to buy or sell the same securities contemporaneously for multiple client accounts. Rand may, in appropriate circumstances aggregate securities trades for a client with similar trades for other clients, but is not required to do so. In particular, Rand may determine not to aggregate transactions that relate to portfolio management decisions that are made independently for different accounts or if Rand and/or its affiliates determine that aggregation is not practicable, not required or inconsistent with client direction.

Errors

Rand's responsibility for its trade errors is set forth in the governing documents for the relevant Fund. No soft-dollars may be used to satisfy any trade errors. In addition, Rand may not use the securities in one client's account to settle the trade error in another client's account.

Conflicts Related to Valuation

Rand may have a role in determining asset values with respect to client accounts and may be required to price an asset when a market price is unavailable or unreliable. This may give rise to a conflict of interest because Rand may be paid an asset-based fee on certain client accounts. In order to mitigate these conflicts, Rand and its affiliates determine asset values in accordance with valuation procedures, which generally are set forth in Rand's Compliance Manual.

Other Potential Conflicts

Rand or its affiliates may invest (or recommend that one of the Funds invest) in securities issued by one of the Funds and may hedge derivative positions by buying or selling securities issued by one of the Funds. A potential conflict may arise in such circumstances because Rand may be incentivized to favor one Fund that issues securities over the Fund on whose behalf Rand is making the investment. In addition to the Funds, some of Rand's service providers are issuers of securities. Rand may determine that it is in the best interests of one of the Funds to purchase securities issued by one of these entities. Rand has adopted policies and procedures designed to address conflicts of interest arising from the foregoing activities. Furthermore, it is Rand's general policy not to take into account the fact that an issuer is a client, service provider or vendor when making investment decisions.

Certain qualified employees and affiliates may invest in the Funds either through general partner entities or as limited partners, shareholders or otherwise. Rand generally reduces or waives all or a portion of the management fee related to the investments by such persons.

Conflicts Related to Information Possessed by or Provided by Rand

Certain persons within Rand or its affiliates may receive or create information (*e.g.*, proprietary technical models) that is not generally available to the public. Rand has no obligation to provide such information to any of the Funds or effect transactions for any of the Funds on the basis of such information and in many cases Rand or its affiliates will be prohibited from trading for the Funds based on the information. Similarly, one Fund may have access to information regarding Rand's transactions or views that is not available to one of the other Funds, and may act on that information through accounts managed by persons other than Rand or its affiliates. Such

transactions may negatively impact other clients (*e.g.*, through market movements or decreasing availability or liquidity of securities).

ITEM 12. BROKERAGE PRACTICES

BROKER-DEALER SELECTION

Rand has an obligation to obtain "best execution" for Client transactions considering the execution price and overall commission costs paid and certain other factors. Our trading desk route orders to various broker-dealers for execution at their discretion. Where possible, we deal directly with the dealers who make a market in the securities involved, except in those circumstances where it believes better prices and execution are available elsewhere.

Factors involved in selecting brokerage firms include such factors as:

Broker Specific

- Size of broker
- Reputation
- Quality of service
- Experience
- Financial stability and creditworthiness
- Financial statements
- Regulatory filings
- Standing in financial community
- Ability to handle block trades
- Acceptable record of delivery and payment on past transactions
- Quality of research and investment information provided

Transaction Specific

- Best available execution
- Market knowledge regarding specific industries and securities
- Access to sources of supply or markets
- Nature of the market for the security

THE APPROVAL PROCESS

Rand's trading desk is only allowed to trade with approved broker-dealers.

If a Fund Account is under the custody of one brokerage firm and another brokerage firm is a selling group member for an underwriting syndicate, such a Client Account may not be able to participate in the purchase of securities in the underwriting because the custodial

brokerage firm was not a selling group member. In addition, to the extent that a Client directs brokerage trades to be placed with a particular broker, the allocation of securities transactions may be impacted.

DIRECTED BROKERAGE

Due to the nature of the Adviser's business, Rand does not currently allow directed brokerage.

TRADE AGGREGATION

Rand does not have any separately managed accounts. Please see Item 11 Code of Ethics, Participation or Interest in Client Transactions, and Personal Trading and the PPM and offering documents for each Fund for additional information regarding Rand's trade aggregation procedures.

ITEM 13. REVIEW OF ACCOUNTS

We provide reporting as agreed with each of our Clients. Please refer to the PPM or offering documents for each Fund for a description of the reporting practices for each Fund.

ITEM 14. CLIENT REFERRALS AND OTHER COMPENSATION

Rand may pay compensation to a third-party/broker-dealer who refer prospective investors to us. Prior to paying such referral fees, we will verify that the third party is appropriately registered to receive such compensation. Please refer to the PPM or offering documents for each of the Funds for information regarding client referrals.

ITEM 15. CUSTODY

Because the Advisor is under common control with the general partner of the Atlas IDF, Rand PE 1 and Rand Series 1 funds, we may be deemed to have custody of those Funds' assets. Assets for which we have custody are held only at qualified custodians and in accordance with applicable regulations. These regulations require us to maintain Fund assets with a qualified custodian in a separate account for each Fund under each Fund's name. The Funds' securities and other assets are held in the custody or US Bank and State Street.

ITEM 16. INVESTMENT DISCRETION

We intend to manage the Funds on a discretionary basis. For a description of limitations imposed on our discretionary authority to manage securities, please see Item 4 Advisory Business and the PPM or offering documents for each Fund.

All investors of the Funds must complete the subscription documentation we required in order to accept an investment, which may include a joinder to the applicable governing documents of the vehicle. This documentation includes an authorization granting us investment discretion for the Funds.

ITEM 17. VOTING CLIENT SECURITIES

SECURITIES HELD IN CLIENT ACCOUNTS

Rand's proxy voting policy ensures proxies are voted on behalf of each Fund Account's securities and in the best economic interests of such Fund Account, without regard to the interests of Rand or any other Fund under Rand's management. Rand evaluates the subject matter of each proxy and votes on behalf of the Fund Account in accordance to the guidelines set forth in our proxy voting policy.

If Rand determines that there is a potential material conflict of interest in voting a proxy, it will abstain from voting. Rand also may determine not to vote proxies with respect to securities of any issuer if it determines it would be in its Client's overall best interests not to vote.

OBTAINING A COPY OF THE POLICY

Clients and prospective clients can obtain a copy of the proxy voting policy or information on how we voted proxies by contacting our Chief Compliance Officer at mpatrick@randadvisors.com.

ITEM 18. FINANCIAL INFORMATION

We are required to provide you with certain financial information or disclosures about our financial condition. We have no financial commitment that would impair our ability to meet any contractual and fiduciary commitments to you, our client. We have not been the subject of any bankruptcy proceedings.

In no event shall we charge advisory fees that are both in excess of twelve hundred dollars and more than six months in advance of advisory services rendered.

EXHIBIT 11

1

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

4
IN RE:
5 CHAPTER 11
HIGHLAND CAPITAL
6 MANAGEMENT, L.P., CASE NO. 19-34054-SGI11
Debtor.
7 ___________________________/
HIGHLAND CAPITAL
8 MANAGEMENT, L.P.,
Plaintiff, ADVERSARY PROCEEDING
9 v. NO: 21-03000-SGI

10 HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS,
11 L.P.; NEXPOINT ADVISORS,
L.P.; HIGHLAND INCOME
12 FUND; NEXPOINT STRATEGIC
OPPORTUNITIES FUND;
13 NEXPOINT CAPITAL, INC.;
AND CLO HOLDCO, LTD.,
14 Defendants.
___________________________/
15

16
REMOTE VIDEOTAPED DEPOSITION
17
OF
18
NANCY DONDERO
19
Monday, October 18, 2021
20

21

22

23

24 Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR
25 JOB NO. 201194

1
2
3
4
5 October 18, 2021
6 10:30 a.m. (Central)
7
8 Remote videotaped deposition of
9 NANCY DONDERO, pursuant to Notice Rule
10 30(b)(6) and individually, before
11 Annette Arlequin, a Certified Court
12 Reporter, a Registered Professional
13 Reporter, a Certified Realtime
14 Reporter, and a Realtime Systems
15 Administrator and a Notary Public of
16 the State of New York, New Jersey and
17 Florida.
18
19
20
21
22
23
24
25

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5 Attorneys for Debtor
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9 - and -
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14 GREGORY DEMO, ESQ.
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17 STINSON
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19 3102 Oak Lawn Avenue
20 Dallas, Texas 75219
21 BY: DEBORAH DEITSCH-PEREZ, ESQ.
22 MICHAEL AIGEN, ESQ.
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25

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5 MUNSCH HARDT KOPF & HARR
6 Attorneys for Highland Capital Management
7 Fund Advisors, L.P. and NexPoint Advisors L.P.
8 500 N. Akard Street
9 Dallas, Texas 75201
10 BY: DAVOR RUKAVINA, ESQ.
11 THOMAS BERGHMAN, ESQ.
12
13
14 ALSO PRESENT:
15
16 AARON LAWRENCE, Clerk, Quinn Emanuel
17 LA ASIA CANTY, Paralegal from Pachulski
18 PAIGE MONTGOMERY, Litigation Trust Attorney
19 PATRICK DAUGHERTY (as noted)
20 DEBORAH NEWMAN
21 MANUEL GARCIA, Legal Videographer
22
23
24
25

1
2 IT IS HEREBY STIPULATED AND
3 AGREED by and between the attorneys for
4 the respective parties herein, that
5 filing and sealing be and the same are
6 hereby waived;
7 IT IS FURTHER STIPULATED AND
8 AGREED that all objections, except as
9 to the form of the question, shall be
10 reserved to the time of the trial;
11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may
13 be sworn to and signed before any
14 officer authorized to administer an
15 oath, with the same force and effect as
16 if signed and sworn to before the
17 Court.
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19 - o0o -
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23
24
25

1 N. Dondero
2 THE VIDEOGRAPHER: Good morning.
3 My name is Manuel Garcia. I'm a
4 certified legal videographer in
5 association with TSG Reporting, Inc.
6 Due to the severity of COVID-19,
7 and following the practice of social
8 distancing, I will not be in the same
9 room with the witness, but will record
10 the deposition remotely.
11 The reporter, Annette Arlequin,
12 also will not be in the same room and
13 will swear the witness remotely.
14 Do all parties stipulate to the
15 validity of this video recording and
16 remote swearing, and that it will be
17 admissible in the courtroom as if it
18 had been taken following Rule 30 of the
19 Federal Rules of Civil Procedures and
20 the State's rules where this case is
21 pending?
22 MR. MORRIS: Yes.
23 I would ask if anybody objects,
24 to speak up. If you don't object, then
25 we're going to go on negative notice

1 N. Dondero
2 here.
3 (No response.)
4 MR. MORRIS: Thank you very much.
5 And just to be clear, as I
6 communicated with Debra last evening,
7 the court reporter is not currently in
8 the State of Texas.
9 And I understand that counsel for
10 all defendants in the notes litigation
11 have waived any objection to the fact
12 that the oath is being administered
13 outside of the state.
14 If anybody disagrees or objects
15 to that, please speak up now.
16 Thank you very much.
17 Okay. You can swear the witness.
18 * * *
19 N A N C Y D O N D E R O, called as a
20 witness, having been duly sworn by a
21 Notary Public, was examined and
22 testified as follows:
23 THE WITNESS: Yes.
24 EXAMINATION BY
25 MR. MORRIS:

1 N. Dondero
2 Q. Okay. Can you please state your
3 name for the record?
4 A. Nancy Dondero.
5 Q. And where are you located right
6 now, Ms. Dondero?
7 A. In the law office of Deborah
8 Deitsch-Perez.
9 Q. Are you in Dallas?
10 A. I am.
11 Q. Is there anybody in the room with
12 you right now?
13 A. Yes.
14 Q. Who is in the room with you?
15 A. Deborah Deitsch-Perez and Dan
16 Elms.
17 Q. Is there anybody else in the room
18 with you right now?
19 A. Electronically is Douglas Draper.
20 Q. Okay. Thank you very much.
21 Do you have a telephone with you
22 right now?
23 A. My cellphone?
24 Q. Yes.
25 A. Yes. It's in my purse.

1 N. Dondero
2 Q. Is it turned off?
3 A. It is -- well, yes, um-hmm. It's
4 on silent.
5 Q. Okay. Thank you very much.
6 My name is John Morris. I'm an
7 attorney at Patchulski Stang Ziehl & Jones.
8 We represent the reorganized Highland
9 Capital Management LP, and we're here for
10 your deposition today.
11 Do you understand that?
12 A. I do.
13 Q. Okay. Do you understand that
14 this deposition is being videotaped?
15 A. Yes.
16 Q. And do you understand that I may
17 seek to use that videotape in a court of
18 law?
19 A. Yes.
20 Q. Do you understand that you're not
21 allowed to communicate with anybody
22 concerning the substance of your testimony
23 until the deposition is completed?
24 A. Yes.
25 Q. Is there anything that would

1 N. Dondero
2 prevent you from answering my questions
3 today?
4 A. No.
5 Q. Do you have any problems with
6 your memory?
7 A. No.
8 Q. Are you on any drugs or
9 medications that might impair your ability
10 to answer questions today?
11 A. No.
12 Q. Have you ever been deposed
13 before?
14 A. Once, a number of years ago.
15 Q. Do you recall the subject matter
16 of the testimony or the circumstances in
17 which you gave a deposition?
18 A. Personal injury.
19 Q. And were you a witness or were
20 you the plaintiff in that matter?
21 A. Plaintiff.
22 Q. Okay. So let me just give you
23 the general ground rules so that there's --
24 so that this can be efficient.
25 This is a very difficult process

1 N. Dondero
2 in normal times. It's particularly
3 difficult because we're doing this
4 remotely.
5 So it is very important that you
6 allow me to finish my question before you
7 begin your answer.
8 Is that fair?
9 A. Yes.
10 Q. And it's very important that I
11 allow you to finish your answers before I
12 begin the next question.
13 And if I fail to do that, will
14 you let me know?
15 A. I will.
16 Q. Okay. If there is anything that
17 I ask you that you don't understand, will
18 you let me know that?
19 A. Yes.
20 Q. Okay. From time to time, we're
21 going to put some documents on the screen.
22 It's not a -- you know, it's not intended
23 to be a test.
24 If you see a document on the
25 screen and you think that you need to see a

1 N. Dondero
2 different portion of the document to put
3 what I'm asking you about in context, will
4 you let me know that?
5 A. Yes.
6 Q. Okay. I sent down to your lawyer
7 last week 29 hard copies of certain
8 documents.
9 Do you have those handy?
10 A. The big binder?
11 Q. Yes.
12 A. Yes.
13 Q. Okay. All right. We may refer
14 to those --
15 MR. RUKAVINA: John, hold up for
16 a second. This is the Davor Rukavina.
17 I'm one of the attorneys defending two
18 of the defendants. I just -- we
19 haven't taken appearances, John. I
20 just want to make sure that the record
21 is clear that Deborah will be
22 objecting, Ms. Deitsch-Perez will be
23 objecting for me so that I don't have
24 you to object. In other words, when
25 she objects, consider it an objection

1 N. Dondero
2 on behalf of my clients NexPoint and
3 HCM Financial Advisors.
4 Is that acceptable, John?
5 MR. MORRIS: Yes.
6 MR. RUKAVINA: Thank you. Then
7 there is no need for me to speak.
8 MR. MORRIS: Okay. We'll miss
9 you.
10 BY MR. MORRIS:
11 Q. If you need a break at any time,
12 will you let me know that?
13 A. Yes.
14 Q. Okay. It's very important that
15 all of your responses to my questions be
16 verbal so that the court reporter can take
17 it down, okay?
18 A. Okay.
19 Q. And you do understand that the
20 court reporter is going to record and
21 transcribe every word that you and I say
22 today, okay?
23 A. Yes.
24 Q. Okay. From time to time, a
25 lawyer might object to one of my questions.

1 N. Dondero
2 That gives me the opportunity to think
3 about whether or not the answer to the
4 question would be admissible if I didn't
5 correct it.
6 I may ask you to just answer the
7 question because I don't think the
8 objection is going to be sustained. Just
9 let the lawyers do their thing. And unless
10 your lawyer directs you not to answer a
11 question, I would ask that you answer every
12 question that I ask, okay?
13 A. Yes.
14 Q. Thank you.
15 That's where you need to give the
16 verbal answer.
17 Just to go through a couple of
18 definitions so that I don't have to say
19 full names on certain things throughout the
20 day.
21 If I use the word "Dugaboy," will
22 you understand that I'm referring to The
23 Dugaboy Investment Trust?
24 A. Yes.
25 Q. If I use the word "Highland,"

1 N. Dondero
2 will you understand that I'm referring only
3 to the entity that was known as Highland
4 Capital Management LP, both before the
5 bankruptcy filing and after the bankruptcy
6 filing?
7 A. Okay.
8 Q. If I use the phrase "LP
9 agreement" -- withdrawn.
10 Are you familiar with the fourth
11 amended and restated limited partnership
12 agreement of Highland Capital Management
13 LP?
14 A. Yes.
15 Q. Okay. And if I refer to that
16 document as the "LP agreement," will you
17 understand what I'm referring to?
18 A. Yes.
19 Q. Do you understand that you're
20 here today both in your individual capacity
21 and in your capacity as the trustee or the
22 30 -- what's called the 30(b)(6)
23 representative for Dugaboy?
24 A. Yes.
25 Q. And have you done anything to

1 N. Dondero
2 prepare for today's deposition?
3 A. Yes.
4 Q. Can you tell me what you did to
5 prepare for today's deposition?
6 A. I met with my attorney. And I
7 reviewed your big binder.
8 Q. When did you meet with your
9 attorneys?
10 A. Yesterday.
11 Q. Is that the only time that you
12 conferred with your attorneys in
13 preparation for today's deposition?
14 A. In person, yes.
15 Q. Okay. And how long did you meet
16 in person yesterday?
17 A. Four hours, four and a half
18 hours.
19 Q. And where did you meet?
20 A. At Deborah's office.
21 Q. And was anybody present there
22 other than your attorneys?
23 A. No.
24 Q. Was anybody on speakerphone or
25 otherwise communicating during the meeting

1 N. Dondero
2 that was not one of your attorneys?
3 A. No.
4 Q. I think you mentioned, or you may
5 have implied, that you communicated with
6 your attorneys in preparation for today's
7 deposition but it wasn't in person.
8 Do I have that right?
9 A. Correct.
10 Q. Okay. Did you speak with them on
11 the phone?
12 A. Zoom meeting.
13 Q. And how many Zoom meetings did
14 you have in preparation for today's
15 deposition?
16 A. Three.
17 Q. Okay. And can you tell me when
18 those three Zoom meetings occurred?
19 A. Wednesday, Thursday, and Friday.
20 Q. And can you tell me how long each
21 of those meetings took place, each of those
22 Zoom meetings took place?
23 A. Approximately an hour.
24 Q. Did anybody other than your
25 attorneys participate in any of those three

1 N. Dondero
2 Zoom meetings?
3 A. No.
4 Q. Did you review any documents in
5 preparation for today's deposition other
6 than the documents that I provided?
7 A. No.
8 MS. DEITSCH-PEREZ: To be fair, I
9 think we did give her the Dugaboy
10 notice. I don't remember if it's in
11 your binder.
12 MR. MORRIS: Deborah, are you
13 referring to the 30(b)(6) notice?
14 MS. DEITSCH-PEREZ: Yes.
15 MR. MORRIS: I appreciate that.
16 It was not in the binder.
17 BY MR. MORRIS:
18 Q. Other than the 30(b)(6) notice
19 that was in the binder and the 29 documents
20 that I provided to you, did you review
21 anything else, Ms. Dondero, in preparation
22 for today's deposition?
23 A. Not that I'm aware of.
24 Q. Was your brother present or did
25 your brother participate in any of the four

1 N. Dondero
2 preparation meetings that you described?
3 A. No.
4 Q. Since the beginning of the year,
5 since January 1st, 2021, have you
6 communicated with your brother at any time
7 about the promissory notes that are the
8 subject of this litigation?
9 A. Not that I recall.
10 Q. You don't recall ever speaking to
11 your brother in 2021 about the promissory
12 notes that are the subject of the
13 litigation.
14 Do I have that right?
15 A. That's correct. I do not recall.
16 Q. Do you recall if you had any
17 conversations with your brother at any time
18 in 2021 about any of the defenses that he
19 is asserting in the litigation?
20 A. What do you -- can you be more
21 specific?
22 Q. Are you aware that your brother
23 is a defendant in the lawsuits in which --
24 withdrawn.
25 Are you aware that you are a

1 N. Dondero
2 defendant in certain lawsuits?
3 A. Yes.
4 Q. Are you aware that your brother
5 is also a defendant in certain lawsuits?
6 A. Yes.
7 Q. Are you aware that your brother
8 has asserted certain defenses to the claims
9 that are being asserted against him in
10 those lawsuits?
11 A. Yes.
12 Q. Did you ever discuss with your
13 brother at any time in 2021 any aspect of
14 the defenses that he is asserting in the
15 lawsuits?
16 A. No.
17 Q. Did you discuss with your brother
18 at any time in 2021 who would represent you
19 in connection with the lawsuits?
20 A. No, I don't believe so.
21 Q. Did you communicate with your --
22 and when I use the word "communication," I
23 want to be clear, I mean any form of
24 communication; either a meeting in public,
25 on the telephone, by email or text.

1 N. Dondero
2 Do you understand that?
3 A. Yes.
4 Q. Okay. Did you -- and did you
5 understand that when I asked the last few
6 questions about your communications with
7 your brother?
8 A. Yes, sir.
9 Q. Okay. In 2021, had you
10 communicated with your brother at any time
11 about who would represent Dugaboy?
12 A. Not that I remember.
13 Q. You're the trustee of Dugaboy.
14 Do I have that right?
15 A. Yes.
16 Q. Okay. And Mr. Draper represents
17 Dugaboy in Highland's bankruptcy case; is
18 that right?
19 A. Yes, sir.
20 Q. Your brother and people working
21 for him identified and selected Mr. Draper
22 to serve as Dugaboy's counsel, correct?
23 MS. DEITSCH-PEREZ: Object to the
24 form.
25 A. I'm sorry. Can you ask that

1 N. Dondero
2 again?
3 Q. Sure.
4 Your brother -- you didn't select
5 Mr. Draper to represent Dugaboy; is that
6 right?
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 A. I believe he was referred.
10 Q. And who was he referred to?
11 A. Me.
12 Q. Who referred Mr. Draper to you?
13 A. I do not remember.
14 Q. It's your testimony that
15 Mr. Draper was referred to you, and you
16 decided to retain Mr. Draper?
17 A. I don't -- I don't know.
18 Q. Do you know who decided to retain
19 Mr. Draper?
20 A. I do not.
21 Q. Do you know who identified
22 Mr. Draper as a possible attorney for
23 Dugaboy?
24 A. I do not know.
25 Q. Do you know when Mr. Draper was

1 N. Dondero
2 retained?
3 A. No.
4 Q. Do you recall when you first
5 spoke to Mr. Draper -- withdrawn.
6 Do you recall when you first
7 communicated with Mr. Draper?
8 A. A couple of months ago.
9 Q. Would it have been before or
10 after July 1st, 2021?
11 A. I don't know.
12 Q. It might have been before; it
13 might have been after.
14 Do I have that right?
15 A. Correct.
16 Q. Can you identify any matter that
17 Mr. Draper has handled in the Highland
18 bankruptcy other than his representation of
19 Dugaboy in these notes litigations?
20 A. I would have to look. I don't
21 know offhand.
22 MS. DEITSCH-PEREZ: Yeah, John, I
23 don't -- this isn't a topic on the
24 Dugaboy 30(b)(6). If you need her to
25 go back and check the engagement -- I

1 N. Dondero
2 mean, it's not something that I believe
3 she's been prepared on. And so I don't
4 think it's fair to have a memory test
5 on the dates of these things.
6 MR. MORRIS: Okay. I appreciate
7 that, Deborah. I'm asking -- so let's
8 clarify and say this was not a 30(b)(6)
9 topic. It's not something that she
10 should have prepared for. But I -- she
11 is here in her individual capacity, and
12 I'll stipulate that these particular
13 questions are in her individual
14 capacity.
15 MS. DEITSCH-PEREZ: Well, but in
16 her individual capacity, it's not the
17 subject of the notes litigation. And
18 then I would object that it's really
19 beyond the scope.
20 MR. MORRIS: Okay. There is no
21 scope because she's here in her
22 individual capacity. But the objection
23 is noted. Thank you very much.
24 MS. DEITSCH-PEREZ: Thank you.
25 BY MR. MORRIS:

1 N. Dondero
2 Q. Did you ever consider hiring an
3 attorney for Dugaboy other than Mr. Draper?
4 A. No.
5 Q. Did you ever spend any time
6 trying to identify an attorney who would
7 represent Dugaboy?
8 A. No.
9 Q. The Stinson firm represents you
10 personally in this litigation; is that
11 right?
12 A. That's incorrect.
13 Q. Who -- do you know the name of
14 Ms. Deitsch-Perez's law firm?
15 A. Her law firm is Stinson.
16 Q. And does that law firm represent
17 you in your individual capacity?
18 A. Okay.
19 Q. That's okay.
20 A. She represents -- okay. Dan is
21 here representing me personally.
22 Q. Okay. And Dan is with the
23 Stinson firm, correct?
24 A. That's incorrect.
25 Q. What firm --

1 N. Dondero
2 A. Dan is with Greenberg Traurig.
3 Q. Ah. And I appreciate that.
4 A. Sure.
5 Q. Is that Dan Elms?
6 A. Correct.
7 Q. When did you retain Mr. Elms?
8 A. Mid to late summer.
9 Q. How did you identify Mr. Elms as
10 your counsel?
11 A. He was referred by Deborah.
12 Q. And Deborah is Deborah
13 Deitsch-Perez, counsel for certain other
14 defendants in this lawsuit; is that right?
15 A. Correct.
16 Q. Okay. Did you consider hiring
17 anybody to represent you in this litigation
18 other than Mr. Elms?
19 A. No. I trusted Deborah's
20 referral.
21 Q. Had you worked with Deborah
22 before she referred Mr. Elms to you?
23 A. On this matter? Yes.
24 Q. On any other matters?
25 A. No.

1 N. Dondero
2 Q. When did you first communicate
3 with Ms. Deitsch-Perez?
4 A. Prior to this deposition being
5 scheduled in June.
6 Q. Was she your counsel at the time?
7 A. Yes.
8 Q. When did you retain her?
9 A. To the best of my recollection,
10 it had to be late April or May of this
11 year.
12 Q. So Ms. Deitsch-Perez was
13 representing you and your brother at the
14 same time? Do I have that right?
15 A. Yes.
16 Q. Do you have any agreements of any
17 kind with your brother concerning these
18 lawsuits?
19 Withdrawn. That wasn't a good
20 question.
21 Do you have any agreements or
22 understandings with your brother concerning
23 the defense of these lawsuits?
24 A. I'm sorry. I don't understand
25 the question.

1 N. Dondero
2 Q. Have you heard the word
3 "indemnification" before or "indemnity"?
4 A. Yes.
5 Q. Okay. Do you have an
6 understanding of what that means?
7 A. Generally.
8 Q. What's your general understanding
9 of the term "indemnity"?
10 A. That one forgives another
11 person's error.
12 Q. Okay. I'm going to try and give
13 you a little bit of a different definition
14 and see if you understand it.
15 Did your brother ever offer to
16 satisfy and pay any judgment that might be
17 entered against you in connection with
18 these litigations?
19 A. No.
20 Q. Do you have any agreement of any
21 kind or any understanding that he would be
22 responsible for the outcome of these
23 lawsuits?
24 A. Only what is written in the trust
25 agreement.

1 N. Dondero
2 Q. Do you know whether the trust
3 agreement protects you in your individual
4 capacity as opposed to your capacity as the
5 trustee of the Dugaboy trust?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. I'm sorry. Can you reask that
9 question, Mr. Morris?
10 Q. Sure.
11 Do you know whether the trust
12 agreement indemnifies you in your
13 individual capacity, or is it only in your
14 capacity as the trustee of the Dugaboy
15 trust?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 A. That's a legal question I don't
19 feel comfortable answering.
20 Q. All right. I appreciate that it
21 may have legal implications, but I just
22 want to know what is in your head as a
23 factual matter.
24 Is it your personal
25 understanding, whether it's right or wrong,

1 N. Dondero
2 that you are indemnified in your personal
3 capacity under the trust, under the Dugaboy
4 trust?
5 MS. DEITSCH-PEREZ: Object to the
6 form.
7 A. I would have to think about that.
8 Q. Okay. Did your brother ever
9 offer to pay any costs and expenses that
10 you incur in your personal capacity in
11 connection with this lawsuit?
12 A. I don't understand.
13 Q. Okay. So you're a defendant in
14 your individual capacity in four different
15 lawsuits.
16 Do you understand that?
17 A. Yes.
18 Q. And Dugaboy is also a defendant
19 in the same lawsuits, right?
20 A. Yes.
21 Q. Okay. So I'm asking you whether
22 your brother ever offered to pay any costs
23 or expenses that you incur in your
24 individual capacity in connection with
25 these lawsuits?

1 N. Dondero
2 A. No.
3 Q. Okay. Greenberg Traurig only
4 represents you in your individual capacity.
5 Do I have that right?
6 A. Yes.
7 Q. Okay. Do you have any agreement
8 with anybody as to who would pay the
9 invoices rendered by Greenberg Traurig?
10 A. Yes.
11 Q. And what agreement is that?
12 A. That Dugaboy will pay Greenberg
13 Traurig's expenses, bills.
14 Q. Okay. So pursuant to that
15 agreement, you won't have to pay any legal
16 expenses associated with the defense of
17 these lawsuits in your individual capacity.
18 Do I have that right?
19 A. Yes, sir.
20 Q. Okay. Let's just get some
21 background here.
22 Are you currently employed,
23 ma'am?
24 A. I am.
25 Q. By whom?

1 N. Dondero
2 A. Crescent Research Services.
3 Q. Do you have a direct or indirect
4 ownership in that entity?
5 A. I do.
6 Q. And what is the nature of your
7 interest?
8 A. I own the company.
9 Q. 100 percent; is that fair?
10 A. Yes.
11 Q. Okay. And what is the nature of
12 the business of Crescent Research?
13 A. It's an investigative firm.
14 Q. And do you oversee the day-to-day
15 operations of Crescent Research?
16 A. I do.
17 Q. And how many employees does
18 Crescent Research have?
19 A. I have an outside contractor at
20 certain times when the workload demands it.
21 Otherwise, it is just me.
22 Q. Okay. And how long have you
23 owned and operated Crescent Research?
24 A. Since 1997.
25 Q. Have you owned and operated

1 N. Dondero
2 Crescent Research on a continuous basis
3 since 1997 until today?
4 A. Correct.
5 Q. Have you had any other employment
6 since 1997 other than the work that you do
7 for Crescent Research?
8 A. No.
9 Q. Did you obtain a college degree?
10 A. I did.
11 Q. Where did you attend college?
12 A. Penn State.
13 Q. And you graduated from Penn
14 State?
15 A. Correct.
16 Q. And when was that?
17 A. 1987.
18 Q. What was your degree in?
19 A. Hotel restaurant management.
20 Q. Was it a BA or BS?
21 A. I believe it's a BS.
22 Q. Okay. Do you have any
23 postgraduate degrees?
24 A. No.
25 Q. Do you hold any licenses of any

1 N. Dondero
2 kind other than your driver's license?
3 A. I do.
4 Q. Can you describe for me every
5 license that you hold other than your
6 driver's license?
7 A. I'm a real estate agent. I am
8 notary. I have several professional
9 licenses. Asset recovery specialist.
10 Those are off the top of my head that I
11 remember.
12 Q. What is an asset recovery
13 specialist license?
14 A. It's licensed through -- I don't
15 remember the organization. You have to --
16 I'm not sure how to answer that,
17 Mr. Morris.
18 Q. Can you tell me what asset
19 recovery is generally in the context of
20 your license?
21 A. Certainly.
22 It's finding assets for companies
23 that have gone bankrupt.
24 Q. So do you typically get hired by
25 an estate fiduciary, a bankruptcy estate

1 N. Dondero
2 fiduciary?
3 A. I haven't done asset recovery in
4 a number of years.
5 Q. Okay. As opposed to licenses, do
6 you have any certifications of any kind?
7 A. Not that I recall.
8 Q. Can you tell me generally what
9 you did professionally between the time you
10 graduated from Penn State in 1987 and the
11 time you formed and began working for
12 Crescent Research?
13 A. Immediately out of college, I
14 worked for a company called Royal Schutt.
15 Is an investigative firm. I built up their
16 background division. The company closed.
17 I took the background division and opened
18 up a company called Info-Back Services. I
19 ran that for a number of years in New
20 Jersey.
21 When I moved to Florida, I
22 transferred that company and it became
23 Crescent Research Services.
24 We predominately do preemployment
25 background screening, tenant research, and

1 N. Dondero
2 I do a lot of trial prep for various
3 attorneys.
4 Q. All right. I think you mentioned
5 three things. The first was preemployment
6 background.
7 Do I have that right?
8 A. Yes.
9 Q. And can you just describe
10 generally what preemployment background
11 pertains to?
12 A. When people are applying for a
13 job, I do the screening on their
14 application prior to them being hired.
15 Q. Okay. And what was the second
16 piece?
17 A. I do tenant screening as well,
18 which is the equivalent for people renting
19 properties.
20 And the third component would be
21 trial prep.
22 Q. And what about trial prep? What
23 does that mean? Can you help me to
24 understand what investigative services you
25 provide in the area of trial prep?

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1 N. Dondero
2 A. Certainly.
3 I work for private attorneys. I
4 worked for the public defender's office.
5 I've worked to capital murder cases on
6 down. I look for discrepancies in
7 statements. I find witnesses, take
8 statements and so forth. I help the lawyer
9 prepare for trial.
10 Q. Okay. You're familiar with a
11 company, the company that we identified
12 earlier, called Highland Capital Management
13 LP?
14 Do I have that right?
15 A. Yes.
16 Q. Oh, by the way, did you ever hear
17 of a person named James P. Seery, Jr.?
18 A. In regards to this case, yes.
19 Q. Did you ever investigate
20 Mr. Seery?
21 A. No.
22 Q. Did you ever investigate any of
23 the independent directors who were
24 appointed at Strand Advisors?
25 A. Can you tell me who they are?

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1 N. Dondero
2 Q. Russell Nelms or John Dubel?
3 A. No.
4 Q. Have you undertaken any
5 investigation of any current or former
6 employee of Highland since October 19th,
7 2019?
8 A. No.
9 Q. Are you aware that Highland is
10 the company that your brother founded with
11 Mark Okada in the 1990s?
12 A. Yes.
13 Q. And you're aware that Highland
14 filed for bankruptcy, correct?
15 A. Yes.
16 Q. Do you know when that occurred?
17 A. October of '19, I believe.
18 Q. Okay. I'll tell you it is
19 October 19th, 2019. And if it's okay with
20 you, I'd like to refer to October 19th,
21 2019, as the petition date.
22 Is that okay?
23 A. Certainly.
24 Q. Okay. When did you find out that
25 Highland filed for bankruptcy?

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1 N. Dondero
2 A. It was either the day after --
3 when it appeared in the Dallas Morning
4 News.
5 Q. So you didn't have any advanced
6 notice that your brother was going to file
7 Highland for bankruptcy; is that right?
8 A. I did not.
9 Q. Did you speak to your brother
10 after learning that Highland filed for
11 bankruptcy?
12 A. I would imagine I called him,
13 sure.
14 Q. Do you have any recollection of
15 what was said in the phone call that you
16 imagine occurred?
17 A. No.
18 Q. Okay. Do you directly or
19 indirectly own any economic interest in
20 Highland today?
21 A. No.
22 Q. Do you understand that if I use
23 the phrase "directly or indirectly," I'm
24 asking whether you own it in your personal
25 name or through a company that you might

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1 N. Dondero
2 own, such as Crescent Research?
3 A. Okay.
4 Q. Do you understand the phrase
5 "directly or indirectly"?
6 A. No.
7 Can you elaborate, please?
8 Q. Sure.
9 A direct interest would be an
10 interest that you hold in your own name, in
11 the name of Nancy Dondero.
12 Do you understand that?
13 A. Okay.
14 Q. And an indirect interest is an
15 interest that you own through some other
16 vehicle, through some other entity in which
17 you also have an ownership interest.
18 Do you understand that?
19 A. Okay.
20 Q. Okay. So --
21 A. Yes. But are you referring to --
22 Q. Go ahead.
23 A. I'm just not clear.
24 Do you mean like Highland funds
25 or stock?

1 N. Dondero
2 Q. I'm only talking about Highland
3 Capital Management LP.
4 A. No, I have no interest.
5 Q. Have you ever directly or
6 indirectly owned any limited partnership
7 interests in Highland?
8 A. No.
9 Q. Have you ever directly or
10 indirectly owned any interest of any kind
11 in Highland?
12 A. No.
13 Q. Do you directly or indirectly
14 have any claims against Highland that you
15 know of?
16 MS. DEITSCH-PEREZ: And, again,
17 you are still talking about Nancy
18 Dondero?
19 MR. MORRIS: Yes, I am. Thank
20 you.
21 A. No, sir.
22 Q. Did you have an understanding of
23 the nature of Highland's business as of the
24 petition date?
25 A. Generally.

1 N. Dondero
2 Q. And what did you understand the
3 nature of Highland's business to be as of
4 the petition date?
5 A. A hedge fund.
6 Q. Do you have any understanding of
7 what a hedge fund is?
8 A. Not really.
9 Q. I appreciate that.
10 By the way, do you know if
11 Crescent Research has any claims against
12 Highland?
13 A. That's a very good question.
14 There may be -- I think I am creditor for a
15 very little bit of money, but I'm not
16 positive on that, if that was settled.
17 Q. Do you recall filing any claim
18 against Highland on behalf of Crescent
19 Research?
20 A. I can't say definitely one way or
21 the other, but...
22 Q. Okay. It's a matter of record.
23 I don't mean to test your memory. It's
24 okay.
25 So other than your understanding

1 N. Dondero
2 that Highland was a hedge fund, do you have
3 any understanding or did you have any
4 understanding as of the petition date
5 regarding the nature of Highland's
6 business?
7 A. Since the petition date?
8 Q. As of the petition date.
9 A. No.
10 Q. Do you have any -- I apologize.
11 A. I know obviously it's a financial
12 company, and it has funds and so forth.
13 Q. Have you learned anything about
14 the nature of Highland's business since the
15 petition date? Anything additional?
16 A. No.
17 Q. Okay. Do you have an
18 understanding of the industry that Highland
19 operates in or that Highland operated in
20 prior to the petition date?
21 A. Sure. Yes.
22 Q. What industry did you understand
23 Highland to be operating in prior to the
24 petition date?
25 A. The financial industry.

1 N. Dondero
2 Q. Were you ever employed by
3 Highland at any time?
4 A. No.
5 Q. Did you ever serve as an officer
6 or director of Highland at any time?
7 A. No.
8 Q. Have you ever heard of an entity
9 called Strand Advisors Inc.?
10 A. Yes.
11 Q. Can we refer to that entity as
12 "Strand"?
13 A. Yes, sir.
14 Q. Do you know if Strand has any
15 relationship to Highland?
16 A. General partner.
17 Q. Do you recall when you learned
18 that Strand was Highland's general partner?
19 A. A number of years ago, I believe.
20 Q. Do you recall how you learned
21 that Strand was Highland's general partner?
22 A. I do not.
23 Q. Do you recall if you read it or
24 if somebody told that to you?
25 A. I do not recall.

1 N. Dondero
2 Q. Do you recall the circumstances
3 under which you learned that Strand was
4 Highland's general partner?
5 A. No, sir.
6 Q. Have you done anything to try to
7 verify whether Strand was in fact
8 Highland's general partner?
9 A. No.
10 Q. Have you ever been employed by
11 Strand?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 BY MR. MORRIS:
15 Q. You can answer. That's one of
16 those situations your lawyer can object to
17 preserve the question. I think the
18 question is fine, so you can answer the
19 question.
20 MS. DEITSCH-PEREZ: Do you mean
21 technically like hired and worked as a
22 W-2 employee?
23 MR. MORRIS: Yes.
24 A. Okay. And that's a no, a W-2
25 employee.

1 N. Dondero
2 Q. Okay. Have you ever served as an
3 officer or director of Strand?
4 A. No, sir.
5 Q. Have you ever been employed by
6 any entity in which you believed your
7 brother had a direct or indirect ownership
8 interest?
9 A. No, sir.
10 Q. Have you ever served as an
11 officer or director for any entity in which
12 you believed your brother had a direct or
13 indirect ownership interest?
14 A. No, sir.
15 Q. Has Crescent Research ever
16 provided services to Highland?
17 A. Yes.
18 Q. When did Crescent Research first
19 provide services to Highland?
20 A. It's been a number of years. The
21 actual beginning, I don't know.
22 Q. And did you, in your capacity as
23 the owner of Crescent Research, run
24 individualized background checks on
25 prospective employees of Highland?

1 N. Dondero
2 A. Yes.
3 Q. Okay. Did Crescent Research
4 provide any services for Highland other
5 than that?
6 A. No, not that I'm aware of.
7 Q. Okay. Have you ever been
8 employed in the financial services
9 industry?
10 A. No, sir.
11 Q. Other than as it may relate to
12 this case, do you have any experience
13 making decisions in the area of executive
14 compensation?
15 A. No.
16 Q. Do you hold yourself out as an
17 expert in the area of executive
18 compensation?
19 A. No.
20 Q. Have you ever taken any classes
21 or courses concerning executive
22 compensation?
23 A. No.
24 Q. Have you ever been compensated
25 for services rendered by you in the area of

1 N. Dondero
2 executive compensation?
3 A. No.
4 Q. Have you ever conferred with
5 anybody who you believed to be an expert in
6 the area of executive compensation?
7 A. No, sir.
8 Q. Have you ever prepared any
9 analysis of any kind concerning executive
10 compensation?
11 A. No, sir.
12 Q. Have you ever asked anyone to
13 prepare any analysis of any kind in the
14 area of executive compensation?
15 A. No.
16 Q. Has anyone ever prepared an
17 analysis for you in the area of executive
18 compensation?
19 A. I'm sorry, sir. Can you repeat
20 that question?
21 Q. Sure.
22 Did anybody ever prepare any
23 analysis for you that covered the topic --
24 any topic concerning executive
25 compensation?

1 N. Dondero
2 A. No.
3 Q. Do you have any knowledge as to
4 how executives are compensated in the
5 financial industry?
6 A. Just a general awareness.
7 Q. And what is the basis, what is
8 the foundation of your general awareness?
9 A. Obviously the better a company
10 does, probably the more the CEO is paid.
11 Q. Do you have any understanding of
12 how executives are compensated in the
13 financial industry other than that?
14 A. No, sir.
15 Q. All right. So now I'm going to
16 ask you the same questions in your capacity
17 as the trustee of Dugaboy.
18 Did Dugaboy ever prepare any
19 written analysis concerning executive
20 compensation?
21 A. No, sir.
22 Q. Has Dugaboy ever asked anybody to
23 prepare any analysis on any issue
24 concerning executive compensation?
25 A. No.

1 N. Dondero
2 Q. Have you in your capacity as the
3 trustee of Dugaboy ever prepared any
4 analysis on the issue of executive
5 compensation?
6 A. No.
7 Q. Have you ever done any analysis
8 of the compensation that your brother
9 received from Highland over time?
10 A. Not that I am aware of.
11 Q. Do you have any information that
12 you can share with me concerning the
13 compensation that you your brother received
14 from Highland at any moment in time?
15 A. In general terms, sure.
16 Q. What can you share with me in
17 general terms?
18 A. I know Jim was not highly paid.
19 I know for the last couple of years, his
20 salary has been roughly less than a
21 million, 500, 700,000, somewhere in that
22 ballpark.
23 Q. Did you play any role in the
24 setting of his salary?
25 A. I'm sorry?

1 N. Dondero
2 Q. Did you personally ever play any
3 role in the setting of Mr. Dondero's
4 salary?
5 A. In the salary that we are talking
6 about, no, I did not.
7 Q. Thank you.
8 Did Dugaboy play any role in the
9 setting of Mr. Dondero's salary?
10 MS. DEITSCH-PEREZ: Do you mean
11 setting or approving, John?
12 BY MR. MORRIS:
13 Q. Let's go with setting first.
14 A. Okay. No.
15 Q. Did Dugaboy play any role in
16 approving Mr. Dondero's salary?
17 A. It has that right, but I don't
18 believe it did in the salary that he had at
19 the time.
20 Q. Okay. I just want to nail this
21 down.
22 To the best of your recollection,
23 Dugaboy never played a role in approving
24 Mr. Dondero's salary.
25 Do I have that right?

1 N. Dondero
2 A. Can you rephrase that so I
3 understand?
4 Q. Sure.
5 Can you think of any year in
6 which Dugaboy approved of Mr. Dondero's
7 salary from Highland?
8 A. His actual salary?
9 Q. Correct.
10 A. Not -- we are not talking about
11 the notes now; you are talking about
12 salary?
13 Q. Yes.
14 A. No -- yes, okay, not to my
15 recollection.
16 Q. Do you know what Mr. Dondero's
17 total compensation was in the year 2017?
18 A. His total compensation, no.
19 Q. Did you ever ask anybody what his
20 compensation was in the year 2017?
21 A. Not that I recall.
22 Q. Do you know what Mr. Dondero's
23 total compensation was in 2018?
24 A. When you're saying "total," you
25 mean just from Highland or from any entity?

1 N. Dondero
2 Q. I'm just talking about Highland.
3 A. Okay. Didn't we talk about those
4 numbers?
5 Q. We talked about salary before.
6 A. Right.
7 Q. And now I'm asking you about
8 total compensation.
9 Do you understand that.
10 A. No, I don't.
11 Q. Let me try again. Thank you for
12 letting me know that. And I encourage you
13 to let me know if you don't understand a
14 question.
15 Do you know what Mr. Dondero's
16 total compensation was from Highland in
17 2017?
18 A. No, I do not.
19 Q. Did you ever ask anybody what
20 Mr. Dondero's total compensation from
21 Highland was in 2017?
22 A. No. Other than the figures that
23 we are talking about. Because I'm still
24 not understanding, John. I'm sorry.
25 Q. Well, do you understand that

1 N. Dondero
2 salary is just one component of
3 Mr. Dondero's compensation?
4 A. That's correct.
5 Q. Okay.
6 A. Um-hmm. That, I understand.
7 Q. Okay. And so do you understand
8 that I'm moving from salary to total
9 compensation, and I'm asking for the value
10 of any benefits he received from Highland
11 when I use the word "compensation"?
12 A. Okay. And --
13 Q. So with that understanding, I'm
14 going to start again.
15 Do you know what Mr. Dondero's
16 total compensation was in 2017?
17 A. I do not know.
18 Q. Did you ever ask anybody what
19 Mr. Dondero's total compensation was in
20 2017?
21 A. No.
22 Q. Did Dugaboy know what
23 Mr. Dondero's compensation was in 2017?
24 A. I do not believe so.
25 Q. To the best of your knowledge,

1 N. Dondero
2 did anybody on behalf of Dugaboy ever try
3 to ascertain what Mr. Dondero's total
4 compensation was in 2017?
5 A. To the best of my knowledge, no.
6 Q. Do you know what Mr. Dondero's
7 total compensation from Highland was in
8 2018?
9 A. No.
10 Q. Did you ever ask anybody what
11 Mr. Dondero's total compensation was in
12 2018?
13 A. I don't believe so.
14 Q. Did Dugaboy know what
15 Mr. Dondero's total compensation was for
16 2018?
17 A. I don't think so.
18 Q. To the best of your knowledge,
19 did anybody ever ask on behalf of Dugaboy
20 what Mr. Dondero's total compensation from
21 Highland was in 2018?
22 A. I don't recall. I don't know.
23 Q. Do you know what Mr. Dondero's
24 total compensation was in 2019?
25 A. No.

1 N. Dondero
2 Q. Did you ever ask anybody what
3 Mr. Dondero's total compensation was in
4 2019?
5 A. Not that I remember.
6 Q. Did Dugaboy know what
7 Mr. Dondero's total compensation from
8 Highland was in 2019?
9 A. I don't believe so.
10 Q. Do you know whether Dugaboy ever
11 asked anybody what Mr. Dondero's total
12 compensation was from Highland in 2019?
13 A. I don't think so.
14 THE WITNESS: Would it be okay if
15 we take a break?
16 MR. MORRIS: Just a couple more
17 questions, Deborah.
18 You know what, I apologize. Of
19 course, of course we can take a break.
20 MR. DRAPER: John, this is
21 Douglas. Let me raise an issue with
22 you.
23 MR. MORRIS: Do you want to do
24 this on the record?
25 MR. DRAPER: Well, we can do it

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1 N. Dondero
2 off the record. But I just noticed on
3 the participants you have Page
4 Montgomery and Deborah Newman, who are
5 not parties to this litigation, and I
6 would request that you ask them to get
7 off the line.
8 MR. MORRIS: Okay. I'll take it
9 under advisement, Douglas, but I will
10 point out that there have always been
11 people who have -- they actually have
12 an interest in this litigation, so I'm
13 not even going to address that. They
14 have an interest in the litigation,
15 okay?
16 MR. DRAPER: John --
17 MR. MORRIS: Let's go off the
18 record, please.
19 THE VIDEOGRAPHER: The time is
20 10:30. We are going off the record.
21 (Recess is taken.)
22 THE VIDEOGRAPHER: The time is
23 10:51. Back on the record.
24 BY MR. MORRIS:
25 Q. Ms. Dondero, can you hear me?

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1 N. Dondero
2 A. I can.
3 Q. Okay. Did you communicate with
4 anybody during the break about any of the
5 questions that I asked?
6 A. No.
7 Q. Did you communicate with anybody
8 on the break regarding any answers you gave
9 to any of the questions that I asked?
10 A. No.
11 Q. Did you communicate with anybody
12 on the break about any questions that I
13 might ask in the future?
14 A. No.
15 Q. Did you communicate with anybody
16 on the break about any answers you might
17 give in the future?
18 A. No.
19 Q. I believe you testified earlier
20 that you learned that your brother received
21 less than a million dollars in salary.
22 Do I have that right?
23 A. Yes.
24 Q. Can you tell me when you learned
25 that?

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1 N. Dondero
2 A. I don't remember.
3 Q. Do you remember how you learned
4 it?
5 A. No.
6 Q. Did you ever know that your
7 brother received a salary of a million
8 dollars from Highland?
9 A. A million dollars even?
10 Q. Yes.
11 A. No.
12 Q. Did you ever learn that your
13 brother had his salary increased to
14 two-and-a-half million dollars from
15 Highland?
16 A. When?
17 Q. I'm just asking if you ever
18 learned it.
19 A. Oh, no.
20 Q. Did you ever learn that somebody
21 made a decision to allocate the
22 two-and-a-half million dollars between and
23 among different entities that your brother
24 owned and controlled?
25 A. I have no idea.

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1 N. Dondero
2 Q. Did you have any conversation at
3 any time with your brother about why he was
4 receiving less than a million dollars from
5 Highland?
6 A. Why he was?
7 Q. Yes.
8 A. No.
9 Q. Did you ever learn at any time
10 how your brother's salary was established?
11 A. Not that I recall.
12 Q. Did you ever learn at any time as
13 to who made the decision to set your
14 brother's salary?
15 A. Set his salary? No.
16 Q. Are you aware your brother has
17 retained experts in this case?
18 A. I was not aware.
19 Q. So is it fair to say that you've
20 never spoken with any expert retained by
21 your brother?
22 A. Not that I'm aware of.
23 Q. Let's talk about access to
24 financial information.
25 Do you have an understanding of

1 N. Dondero
2 the term "financial statements"?
3 A. Yes.
4 Q. And what's your understanding of
5 the term "financial statements"?
6 A. Balance sheets, bank statements.
7 Q. Would it include profit and loss
8 statements?
9 A. Certainly.
10 Q. Would it include statements of
11 operations?
12 A. I would imagine, yes.
13 Q. Using a definition of the term
14 financial statements that incorporates each
15 of the items that we just discussed, did
16 you ever review Highland's financial
17 statements prior to the petition date?
18 A. No, I haven't reviewed Highland's
19 financials.
20 Q. Is it fair to say that you never
21 reviewed Highland's balance sheet prior to
22 the petition date?
23 A. That's fair. Correct.
24 Q. Did you ever see Highland's
25 audited financial statements prior to the

1 N. Dondero
2 petition date?
3 A. Not that I remember, no.
4 Q. Did you ever ask anybody to see
5 Highland's financial statements?
6 A. Not that I recall.
7 Q. Did you ever have access to
8 Highland's financial statements?
9 A. No.
10 Q. Did you know anything about
11 Highland's financial condition prior to the
12 petition date?
13 A. No, I was not aware.
14 Q. Have you ever heard of the term
15 "portfolio company" in relation to
16 Highland?
17 A. I have.
18 Q. Do you have an understanding of
19 the term "portfolio company" as it relates
20 to Highland?
21 A. Yes, generally.
22 Q. What is your general
23 understanding of the term "portfolio
24 company" as it relates to Highland?
25 A. As I understand it, they're

1 N. Dondero
2 companies owned by Highland under their
3 umbrella.
4 Q. And how did you form that
5 understanding?
6 A. I don't know.
7 Q. Do you recall when you first came
8 to the understanding that you have
9 concerning the term "portfolio company" as
10 it relates to Highland?
11 A. No.
12 Q. Based on your understanding of
13 the term "portfolio company," do you know
14 how many portfolio companies Highland had
15 prior to the petition date?
16 A. Several.
17 Q. Can you give me an approximate
18 number, to the best of your understanding?
19 A. More than -- I would imagine more
20 than three.
21 Q. And why do you imagine it's more
22 than three?
23 A. Because I'm aware of three.
24 Q. Are you aware of any others,
25 other than the three that you have in your

1 N. Dondero
2 head?
3 A. Not off the top of my head, no.
4 Q. Can you identify any of the three
5 portfolio companies that you have in your
6 head?
7 A. Certainly.
8 Q. Okay. Can you please identify
9 them?
10 A. Trussway, Cornerstone, MGM.
11 Q. And you believe that Highland had
12 a -- withdrawn.
13 And your understanding was that
14 Highland directly or indirectly owned each
15 of those three companies?
16 A. That was my understanding.
17 Q. And what was the basis for that
18 understanding?
19 A. The basis of that understanding
20 has to do with the forgiveness of the note.
21 Q. So how did you learn that
22 Highland had a direct or indirect economic
23 interest in each of the three portfolio
24 companies that you identified?
25 A. I believe it was from Jim.

1 N. Dondero
2 Q. Do you recall any source of
3 information other than Jim?
4 A. Not that I recall.
5 Q. Prior to the petition date, were
6 you aware of the price that Highland paid
7 to acquire its interest in each of the
8 three portfolio companies that you
9 identified?
10 A. Not that I am aware of.
11 Q. Did you ever ask for any
12 information concerning the price that
13 Highland paid to acquire its interest in
14 each of the three portfolio companies that
15 you identified?
16 A. No.
17 Q. Prior to the petition date, did
18 you have access to any information
19 concerning the value of any of the three
20 portfolio companies that you identified?
21 A. Not that I am aware of.
22 Q. Prior to the petition date --
23 well, let's talk about them individually.
24 You referred to MGM.
25 Do I have that right?

1 N. Dondero
2 A. Yes, sir.
3 Q. And your understanding is that
4 MGM was a Highland portfolio company; is
5 that right?
6 A. Yes.
7 Q. Do you have any knowledge about
8 the nature of Highland's interest in MGM?
9 A. No.
10 Q. Do you know if Highland owns debt
11 or equity in MGM?
12 A. I couldn't be sure.
13 Q. Do you know when Highland
14 acquired its interest in MGM?
15 A. A number of years ago.
16 MR. MORRIS: I just want the
17 record to be clear and I want counsel
18 to be clear, these questions that I'm
19 asking now are going to be in
20 Ms. Dondero's capacity as a 30(b)(6)
21 witness for Dugaboy.
22 BY MR. MORRIS:
23 Q. So I'm going to ask a couple of
24 questions.
25 Again, at any time prior to the

1 N. Dondero
2 petition date, did Dugaboy have an
3 understanding of the nature of Highland's
4 interest in MGM?
5 A. Not that I'm aware of. Well,
6 wait, I'm sorry. Can you -- wait. Ask
7 that again, John. Say that again.
8 Q. Sure.
9 At any time prior to the petition
10 date --
11 A. Right.
12 Q. -- did Dugaboy have an
13 understanding as to the nature of
14 Highland's interest in MGM?
15 A. I knew that they had an interest
16 in MGM prior to the petition date.
17 Q. Okay. Did you or Dugaboy know
18 the nature of that interest, in what form
19 it held?
20 A. Not specifically, John.
21 Q. Did you or Dugaboy make any
22 effort prior to the petition date to learn
23 about the nature and extent of Highland's
24 interest in MGM?
25 A. Not that I recall.

1 N. Dondero
2 Q. Did you or Dugaboy know what
3 Highland's cost was to acquire its interest
4 in MGM?
5 A. No.
6 Q. Did you or Dugaboy ever make any
7 effort to try to determine what Highland's
8 cost was to acquire its interest in MGM?
9 A. No.
10 Q. Did you ever ask for any
11 information -- withdrawn.
12 Did you or Dugaboy ever ask
13 anybody for any information concerning
14 Highland's cost to acquire its interest in
15 MGM?
16 A. No.
17 Q. Did you or Dugaboy ever obtain
18 any information concerning the value of
19 Highland's interest in MGM?
20 A. Not that I recall.
21 Q. Do you recall the value of
22 Highland's interest in MGM as you sit here
23 today?
24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 N. Dondero
2 A. I'm sorry, John, the question?
3 Q. Sure.
4 I'm going to ask a different
5 question. It was a fine objection.
6 Do you recall the value of
7 Highland's interest in MGM at any time
8 prior to the petition date?
9 A. I do not recall.
10 Q. Did you or Dugaboy ever know the
11 value of Highland's interest in MGM at any
12 time prior to the petition date?
13 A. No.
14 Q. Did you or Dugaboy ever ask for
15 any information concerning the value of
16 Highland's interest in MGM at any time
17 prior to the petition date?
18 A. Not that I remember.
19 Q. Prior to the petition date, did
20 you or Dugaboy ever make any determination
21 as to whether the value of Highland's
22 interest in MGM exceeded its cost?
23 A. I'm sorry. Can you repeat that,
24 John?
25 Q. Sure.

1 N. Dondero
2 At any time prior to the petition
3 date, did you or Dugaboy ever know whether
4 the value of Highland's interest in MGM
5 exceeded the cost that it paid to acquire
6 that interest?
7 A. We didn't know.
8 Q. Did you or Dugaboy ever ask
9 anybody prior to the petition date whether
10 Highland's cost to acquire its interest in
11 MGM was more or less than the value?
12 A. No, we never made that inquiry.
13 Q. Now do you know the nature of the
14 MGM business?
15 A. The movie theater and video
16 library, that type.
17 Q. Do you know anything else about
18 the nature of MGM's business other than
19 that?
20 A. No.
21 Q. At any time prior to the petition
22 date, did you or Dugaboy do any due
23 diligence to try to ascertain the value of
24 MGM?
25 A. Prior to the petition date?

1 N. Dondero
2 Q. Yes.
3 A. No.
4 Q. All right. I'm going to ask
5 similar questions with respect to
6 Cornerstone.
7 Cornerstone is one of the
8 portfolio companies that you identified
9 earlier, correct?
10 A. Yes.
11 Q. And did you learn from Jim that
12 Cornerstone was one of Highland's portfolio
13 companies prior to the petition date?
14 A. I believe that is correct.
15 Q. Do you have any other source of
16 information for that other than your
17 brother?
18 A. Not that I remember.
19 Q. At any time prior to the petition
20 date, did you or Dugaboy have an
21 understanding as to the nature of
22 Highland's interest in Cornerstone?
23 A. No.
24 Q. At any time prior to the petition
25 date, did you or Dugaboy ask anybody what

1 N. Dondero
2 the nature of Highland's interest was in
3 Cornerstone?
4 A. Not that I recall.
5 Q. Prior to the petition date, did
6 you or Dugaboy make any effort to try to
7 ascertain the nature of Highland's interest
8 in Cornerstone?
9 A. Not that I remember.
10 Q. Prior to the petition date, did
11 you or Dugaboy know how much Highland paid
12 to acquire its interest in Cornerstone?
13 A. No.
14 Q. Prior to the petition date, did
15 you or Dugaboy ever ask anybody what
16 Highland's cost was to acquire its interest
17 in Cornerstone?
18 A. Not that I remember.
19 Q. Prior to the petition date, did
20 you or Dugaboy ever make any effort to try
21 to ascertain how much Highland paid to
22 acquire its interest in Cornerstone?
23 A. No.
24 Q. Do you know what Cornerstone --
25 do you know the nature of Cornerstone's

1 N. Dondero
2 business?
3 A. I do not.
4 Q. Did you ever ask anybody what the
5 nature of Cornerstone's business was?
6 A. No.
7 Q. Did you ever make any effort --
8 withdrawn.
9 Did you or Dugaboy ever make any
10 effort to try to determine the nature of
11 Cornerstone's business?
12 A. Not that I recall.
13 Q. Did you or Dugaboy know the value
14 of Highland's interest in Cornerstone prior
15 to the petition date?
16 A. We did not.
17 Q. Did you or Dugaboy ever ask
18 anybody prior to the petition date what the
19 value of Highland's interest in Cornerstone
20 was?
21 A. Not that I remember.
22 Q. Do you remember whether you or
23 Dugaboy made any effort prior to the
24 petition date to try to ascertain the value
25 of Highland's interest in Cornerstone?

1 N. Dondero
2 A. I don't believe so.
3 Q. Have you heard of a company
4 called Trussway?
5 A. Yes.
6 Q. Do you know the nature of
7 Trussway's business?
8 A. I do not.
9 Q. Did you ever ask anybody what the
10 nature of Trussway's business was?
11 A. No, sir.
12 Q. Did you or Dugaboy make any
13 effort at any time prior to the petition
14 date to try to understand the nature of
15 Trussway's business?
16 A. I don't believe so.
17 Q. Did you or Dugaboy make any
18 effort prior to the petition date to
19 understand the financial condition of MGM?
20 A. Of MGM? I'm sorry. I thought we
21 were talking about Trussway. We're going
22 back to MGM?
23 Q. We were. I'm sorry. It's a new
24 question. I'm just going to tick the box.
25 A. Oh, okay. I'm sorry. I was a

1 N. Dondero
2 little slow on the switch.
3 Q. That's okay.
4 A. Can you repeat the question?
5 Q. Sure.
6 Did you or Dugaboy make any
7 effort prior to the petition date to assess
8 MGM's financial condition?
9 A. Not that I recall.
10 Q. Did you or Dugaboy make any
11 effort prior to the petition date to try to
12 understand the financial condition of
13 Cornerstone?
14 A. Not that I recall.
15 Q. Did you or Dugaboy prior to the
16 petition date make any effort to try to
17 understand the financial condition of
18 Trussway?
19 A. No, not that I recall.
20 Q. Is it your understanding that
21 Trussway was one of the portfolio
22 companies, as you defined it earlier?
23 A. Yes.
24 Q. And is that understanding based
25 solely on information that you received

1 N. Dondero
2 from your brother?
3 A. Yes. Yes.
4 Q. Okay. At any time prior to the
5 petition date, did you or Dugaboy have an
6 understanding as to the nature of
7 Highland's interest in Trussway?
8 A. I don't know.
9 Q. Do you recall whether you or
10 Dugaboy ever had an understanding prior to
11 the petition date concerning the nature of
12 Highland's interest in Trussway?
13 A. I don't know.
14 Q. Do you recall that either you or
15 Dugaboy ever asked anybody what the nature
16 of Highland's interest in Trussway was
17 prior to the petition date?
18 A. I don't believe so.
19 Q. Prior to the petition date, did
20 you or Dugaboy make any effort to try to
21 determine the nature of Highland's interest
22 in Trussway?
23 A. I don't believe so.
24 Q. Prior to the petition date, did
25 you or Dugaboy know Highland's cost to

1 N. Dondero
2 acquire its interest in Trussway?
3 A. We did not.
4 Q. Prior to the petition date, did
5 you or Dugaboy ever ask anybody what
6 Highland's cost was to acquire its interest
7 in Trussway?
8 A. Not that I recall.
9 Q. Prior to the petition date, did
10 you or Dugaboy make any effort to try to
11 ascertain what Highland's cost was to
12 acquire its interest in Trussway?
13 A. Not that I remember.
14 Q. Did you or Dugaboy know the value
15 of Highland's interest in Trussway prior to
16 the petition date?
17 A. Not that I am aware of.
18 Q. Prior to the petition date, did
19 you or Dugaboy ever ask anybody what the
20 value of Highland's interest was in
21 Trussway?
22 A. I don't think so.
23 Q. Do you know whether you or
24 Dugaboy prior to the petition date made any
25 effort to try to ascertain the value of

1 N. Dondero
2 Highland's interest in Trussway?
3 A. I don't believe so.
4 Q. Did you or Dugaboy know prior to
5 the petition date whether the value of
6 Highland's interest in Trussway was more or
7 less than its cost?
8 A. I do not know.
9 Q. Did you ever ask anybody --
10 withdrawn.
11 Did you or Dugaboy ever ask
12 anybody prior to the petition date whether
13 the value of Highland's interest in
14 Trussway was more or less than its cost?
15 A. I don't think so.
16 Q. Did you or Dugaboy make any
17 attempt prior to the petition date to
18 determine whether the value of Highland's
19 interest in Trussway was more or less than
20 its cost?
21 A. I don't think so.
22 Q. Okay. I apologize if I asked
23 these questions already. I think I may
24 have forgotten them, but I'm just going to
25 ask just those last couple of questions --

1 N. Dondero
2 MS. DEITSCH-PEREZ: All of them.
3 BY MR. MORRIS:
4 Q. -- related to Cornerstone.
5 A. Okay.
6 Q. Did you or Dugaboy know prior to
7 the petition date whether the value of
8 Highland's interest in Cornerstone was more
9 or less than its cost?
10 A. I don't know if we knew.
11 Q. Did you or Dugaboy ask anybody
12 prior to the petition date whether the
13 value of Highland's interest in Cornerstone
14 was more or less than its cost?
15 A. I don't recall.
16 Q. Do you know whether you or
17 Dugaboy made any effort prior to the
18 petition date to determine whether
19 Highland's -- whether the value of
20 Highland's interest in Cornerstone was more
21 or less than its cost?
22 A. I don't remember.
23 Q. Okay. I'm going to shift gears
24 now to talk about loans.
25 A. Okay.

1 N. Dondero
2 Q. All right. You're aware that
3 from time to time, Highland provided loans
4 to certain of its officers and employees,
5 right?
6 A. I am.
7 Q. And you're aware that in exchange
8 for the loans from Highland, the officers
9 and employees gave Highland promissory
10 notes?
11 A. Correct.
12 Q. Are you aware of any loan that
13 Highland ever gave to an officer or
14 employee where the officer or employee
15 failed to give a promissory note in return?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 A. John, I'm sorry. Can you repeat
19 the question, please?
20 Q. Yeah.
21 I just want to know if you are
22 aware of any instance where Highland gave a
23 loan to an officer or an employee where the
24 officer or employee failed to give Highland
25 a promissory note in exchange?

1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 BY MR. MORRIS:
5 Q. You can answer.
6 A. I am not aware of any.
7 Q. Okay. Do you have a general
8 understanding of what a promissory note is?
9 A. A promise to pay.
10 Q. Okay. Is it a promise to pay a
11 sum certain?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 MR. MORRIS: Withdrawn.
15 BY MR. MORRIS:
16 Q. Do you understand that a
17 promissory note is a promise to pay a
18 specified amount at some point in the
19 future?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 BY MR. MORRIS:
23 Q. You can answer.
24 A. That was my understanding, John.
25 Q. Okay. Prior to the petition

1 N. Dondero
2 date, did you ever see any promissory note
3 that was signed by an officer or employee
4 of Highland?
5 A. I'm not sure.
6 Q. Do you have any recollection --
7 do you have any recollection, as you sit
8 here right now, of having seen a promissory
9 note that was signed by an officer or
10 employee of Highland prior to the petition
11 date?
12 Withdrawn. That is not a good
13 question?
14 Prior to the petition date, did
15 you see any promissory note that was signed
16 by any officer or employee of Highland?
17 A. I don't remember.
18 Q. You don't have any recollection
19 of that; is that fair?
20 A. That's fair.
21 Q. Do you know whether Dugaboy ever
22 saw any promissory note prior to the
23 petition date that had been signed by an
24 officer or employee of Highland?
25 A. I don't know.

1 N. Dondero
2 Q. Prior to the petition date, did
3 you or Dugaboy ever ask to see any
4 promissory note that was executed by an
5 officer or employee of Highland?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. I don't remember, John.
9 Q. Okay. Do you know if Highland
10 ever forgave any obligations under any
11 promissory note that was issued by any
12 Highland employee or officer?
13 MS. DEITSCH-PEREZ: Objection.
14 No foundation.
15 A. I am not aware.
16 Q. You're not aware of Highland ever
17 forgiving any loan that it made to any
18 officer or employee.
19 Do I have that right?
20 MS. DEITSCH-PEREZ: Object. No
21 foundation.
22 A. I'm not sure, John. I'm not
23 sure.
24 Q. Does Dugaboy have any knowledge
25 concerning any loan that was given by

1 N. Dondero
2 Highland to any of its officers or
3 employees that was forgiven in whole or in
4 part?
5 A. I don't know.
6 Q. Did you or Dugaboy ever ask
7 anybody prior to the petition date whether
8 Highland had ever forgiven any loan that it
9 made to any officer or employee?
10 A. I don't think so.
11 Q. Did you or Dugaboy make any
12 effort at any time prior to the petition
13 date to determine whether Highland had ever
14 forgiven in whole or in part any loan that
15 it made to any of its officers or
16 employees?
17 A. Did I make any inquiries? Is
18 that what you're asking?
19 Q. Did you make any effort to try to
20 answer -- to try to figure that out?
21 A. To determine one way or the
22 other?
23 Q. Correct.
24 A. Not that I recall, no.
25 Q. Did anybody ever tell you --

1 N. Dondero
2 withdrawn.
3 Did anybody ever give you or
4 Dugaboy any information concerning any loan
5 that Highland ever made to any of its
6 employees or officers that was forgiven in
7 whole or in part?
8 A. I was aware that that was a
9 common practice at Highland.
10 Q. Okay. And how did you become
11 aware of that common practice?
12 A. In conversations with Jim.
13 Q. Was there any other source of
14 information concerning that common practice
15 that he described for you -- withdrawn.
16 Did you have any other source of
17 information concerning the common practice
18 that you just mentioned?
19 A. Did I have any --
20 Q. Any other source -- yeah.
21 Did you have any other source of
22 information other than your brother
23 concerning the common practice that you
24 just described?
25 A. I'm not sure if I spoke to other

1 N. Dondero
2 people in addition to Jim. I don't know.
3 Q. Can you identify anybody that you
4 recall speaking to concerning the practice
5 that your brother told you that Highland
6 had of forgiving loans to employees and
7 officers?
8 A. I don't remember who it was at
9 Highland that I have spoken to about that
10 or overheard a conversation.
11 Q. Do you recall when the
12 conversation took place?
13 A. No, I don't.
14 Q. Do you recall where the
15 conversation took place?
16 A. No, no, I don't. I believe it
17 was a phone conversation.
18 Q. Can you identify any person who
19 participated in the phone conversation?
20 A. Jim was one of the parties.
21 Q. Do you recall anybody else?
22 A. I do not.
23 Q. Do you recall if the conversation
24 took place before or after the petition
25 date?

1 N. Dondero
2 A. I don't know.
3 Q. So it might have happened before;
4 it might have happened after.
5 Is that fair?
6 A. Correct.
7 Q. Do you remember the substance of
8 the conversation at all?
9 A. Not in detail.
10 Q. Can you describe for me
11 everything you recall about the
12 conversation you have in your mind
13 concerning the practice that Highland had
14 of forgiving loans to officers and
15 employees?
16 A. I am aware that it was common
17 practice, or at least I believed it was
18 common practice at Highland.
19 Q. Do you have any other information
20 that you can share with me that you learned
21 concerning the practice other than the fact
22 that it existed?
23 A. Not at this time.
24 Q. Can you identify a single officer
25 or employee who had a loan forgiven?

1 N. Dondero
2 A. Not off the top of my head, no.
3 Q. Did you or Dugaboy ever know the
4 identity of any officer or employee of
5 Highland who had a loan forgiven?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. Again, John, not off the top of
9 my head.
10 Q. Did you ever see anything in
11 writing that concerned or related to the
12 practice that your brother described for
13 you?
14 A. Not that I remember, no.
15 Q. Did you ever ask to see any
16 documents that concerned or related to the
17 practice that your brother described for
18 you?
19 A. Again, I don't recall, John.
20 Q. Did Dugaboy ever ask for
21 information concerning Highland's practice
22 of forgiving loans?
23 A. No, I don't believe so.
24 Q. Did you or Highland ever know
25 about the number of loans that Highland

1 N. Dondero
2 made to employees or officers that Highland
3 forgave?
4 A. I'm sorry, did me or Highland
5 know?
6 Q. I apologize. If that's what I
7 said, I'm mistaken. Thank you.
8 Did you or Dugaboy -- did you or
9 Dugaboy ever know how many loans were
10 forgiven?
11 A. A specific number, no.
12 Q. Did you or Dugaboy know -- ever
13 know the amount, the face amount of the
14 loans that were forgiven?
15 A. No, not that I recall.
16 Q. Did you or Dugaboy ever know the
17 year in which Highland ever forgave any
18 loan to any officer or employee?
19 A. Not that I recall.
20 Q. Okay. Do you know Mark Okada?
21 A. I do.
22 Q. Have you ever met him?
23 A. I have.
24 Q. Okay. Do you know whether
25 Highland ever gave a loan to Mr. Okada that

1 N. Dondero
2 was the subject of a promissory note?
3 A. Specifically, no.
4 Q. Did you ever ask anybody whether
5 Highland had ever made a loan to Mr. Okada
6 that was backed by a promissory note?
7 A. I never asked.
8 Q. Do you or Dugaboy know whether
9 Highland ever forgave any loan that was
10 ever made to Mr. Okada?
11 A. I am not aware.
12 Q. Did you or Dugaboy ever ask
13 anybody whether Highland had ever made a
14 loan to Mr. Okada that Highland forgave?
15 A. No.
16 Q. Did you or Dugaboy ever make any
17 effort to ascertain whether Highland had
18 ever forgiven any loan that it had made to
19 Mr. Okada?
20 A. I'm sorry. The beginning part of
21 that, John? Did I --
22 Q. Sure.
23 Did you or Dugaboy ever make any
24 effort to figure out if Highland had ever
25 forgiven any loan that it had made to

1 N. Dondero
2 Mr. Okada?
3 A. No, sir.
4 Q. You're aware that Highland loaned
5 money to your brother, correct?
6 A. Correct.
7 Q. Do you know how many loans
8 Highland made to your brother?
9 A. Over what period of time, John?
10 Q. From the time the company was
11 formed.
12 A. Okay. There's more -- I'm not
13 sure how to answer that, John.
14 Q. Okay. That's fair.
15 A. Can you be more specific with the
16 time frame, please?
17 Q. You bet.
18 Let's take it for the ten years
19 prior to the petition date. So let's go
20 back to 2009.
21 From 2009 to 2019 --
22 A. Okay.
23 Q. -- do you know how many loans
24 Highland made to your brother?
25 A. To just Jim or to Jim and his

1 N. Dondero
2 entities?
3 Q. Just to Jim.
4 A. I don't know a specific number,
5 no.
6 Q. Did you or Dugaboy ever ask
7 anybody how many loans Highland made to Jim
8 in the ten-year period prior to the
9 petition date?
10 A. No. We never asked.
11 Q. Did you or Dugaboy ever ask
12 anybody how many loans Highland made to Jim
13 during any time period?
14 A. No, I don't believe so.
15 Q. Did you or Dugaboy ever make any
16 effort to try to ascertain the number of
17 loans that Highland made to your brother
18 during any particular time period?
19 A. Not that I recall.
20 Q. Do you know if your brother ever
21 paid Highland back the principal amount
22 due, plus interest under any loan that he
23 had obtained from Highland?
24 A. In its entirety?
25 Q. Yes.

1 N. Dondero
2 A. Or a portion?
3 What are you speaking of?
4 Q. Let's start with the entirety,
5 and I'll ask the question again.
6 Are you and Dugaboy aware of any
7 loan that your brother obtained from
8 Highland that he paid back in full, plus
9 interest?
10 A. I am not sure.
11 Q. Did you or Dugaboy ever ask
12 anybody whether your brother had ever
13 obtained a loan from Highland that he paid
14 back in full, plus interest?
15 A. I don't think so.
16 Q. Did you or Dugaboy ever make any
17 effort prior to the petition date to
18 determine whether or not Highland had --
19 withdrawn.
20 Did you and Dugaboy make any
21 effort prior to the petition date to
22 determine whether your brother had ever
23 paid back all principal and interest due on
24 any loan that he had obtained from
25 Highland?

1 N. Dondero
2 A. Not that I recall, John.
3 Q. Prior to the petition date, did
4 you or Dugaboy ever see any promissory note
5 that your brother signed?
6 A. I'm not sure. I don't know.
7 Q. Prior to the petition date, did
8 you or Dugaboy ever ask anybody to see any
9 promissory note that your brother had
10 signed in favor of Highland?
11 A. I don't believe we asked.
12 Q. Prior to the petition date, did
13 you or Dugaboy ever make any effort to try
14 to obtain any promissory note that your
15 brother signed in favor of Highland?
16 A. No, I don't think so.
17 Q. Do you know how many promissory
18 notes your brother signed in favor of
19 Highland?
20 A. Totally? No.
21 Q. Okay. I am going to ask similar
22 questions now regarding the corporate
23 entities.
24 Do you understand that Highland
25 has what are referred to as affiliates?

1 N. Dondero
2 A. Yes.
3 Q. Okay. And do you have an
4 understanding of the term "affiliates" as
5 it relates to Highland?
6 A. Yes.
7 Q. What's your understanding of the
8 term "affiliates" as it relates to
9 Highland?
10 A. Companies that are associated
11 with Highland.
12 Q. And what does it mean to be
13 associated with Highland?
14 MS. DEITSCH-PEREZ: Object to the
15 form.
16 MR. MORRIS: Withdrawn.
17 BY MR. MORRIS:
18 Q. What do you mean when you say
19 that affiliated companies are those that
20 are associated with Highland?
21 A. They're under the Highland
22 umbrella.
23 Q. Is it your understanding that
24 affiliated companies are controlled by your
25 brother?

1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 A. I'm sorry, John?
5 MS. DEITSCH-PEREZ: There's some
6 noise. We can hear somebody talking.
7 Someone probably needs to mute.
8 MR. MORRIS: Give me one second.
9 It might be me. We'll see.
10 I apologize for that if it was me
11 anyway.
12 Can I have last question read
13 back please.
14 THE REPORTER: Sure.
15 (Question was read back as
16 follows:
17 "QUESTION: Is it your
18 understanding that affiliated companies
19 are controlled by your brother?")
20 A. Yes.
21 Q. Okay. And are you aware -- with
22 that understanding of the term if
23 "affiliates," are you aware that from time
24 to time, Highland provided loans to certain
25 of its affiliates?

1 N. Dondero
2 A. I'm not sure. Of Highland loans?
3 Okay. I'm not sure, John.
4 Q. Prior to the petition date, did
5 you or Dugaboy know whether Highland ever
6 made a loan to an affiliate, as you've
7 defined it?
8 A. Yes, there were loans made.
9 Q. Okay. And how did you learn that
10 there were loans made by Highland to its
11 affiliates?
12 A. Jim and I had discussed the loans
13 that were made.
14 Are we talking about certain
15 ones, John?
16 Q. I'm just talking generally at the
17 moment.
18 How did you learn whatever
19 information you have, and we'll get into
20 the details, but how did you learn that
21 Highland made loans to affiliates?
22 A. From Jim.
23 Q. Okay. Did you have any source of
24 information other than your brother on the
25 question of whether Highland made loans to

1 N. Dondero
2 affiliates?
3 A. Not that I'm aware of.
4 Q. Were you and Dugaboy generally
5 aware that when Highland made loans to its
6 affiliates, the affiliates gave Highland
7 promissory notes in return?
8 A. Yes.
9 Q. Okay. And how did you learn
10 that?
11 A. In conversation.
12 Q. And would those be conversations
13 that you had with Jim?
14 A. Correct.
15 Q. Did you have conversations with
16 anybody else on the topic of whether or not
17 the affiliates gave Highland promissory
18 notes in exchange for loans?
19 A. Not that I recall.
20 Q. Prior to the petition date, did
21 you or Dugaboy ever see a promissory note
22 that was signed on behalf of any affiliate?
23 A. I don't recall.
24 Q. Prior to the petition date, did
25 you or Dugaboy ever ask anybody to see any

1 N. Dondero
2 promissory note that was signed in favor of
3 Highland by one of its affiliates?
4 A. Not that I recall, John.
5 Q. Prior to the petition date, did
6 you or Dugaboy make any effort to try to
7 obtain any promissory note that was
8 executed by a Highland affiliate in favor
9 of Highland?
10 A. I don't believe so.
11 Q. Do you know if Highland ever
12 forgave any obligations under any
13 promissory note that was signed on behalf
14 of any affiliate?
15 A. I have no idea.
16 Q. Did you or Dugaboy ever ask
17 anybody whether Highland had ever forgiven
18 any loan that was given to an affiliate?
19 A. Did we -- I'm sorry, John, can
20 you repeat the question, please?
21 Q. Yes.
22 Did you or Dugaboy ever ask
23 anybody prior to the petition date whether
24 Highland had ever forgiven in whole or in
25 part any loan that it made to an affiliate?

1 N. Dondero
2 A. No, because it was my assumption
3 that that was common practice.
4 Q. Okay. And what was that
5 assumption based on?
6 A. Conversations that I either had
7 with Jim or overheard.
8 Q. Okay. Do you have anything to
9 add about the practice that you haven't
10 already testified to?
11 Withdrawn.
12 Does the practice that you're
13 referring to, is that the same practice
14 that you have identified earlier with
15 respect to loans that were made to officers
16 and employees?
17 A. That's correct, John.
18 Q. Okay. So did you have any source
19 of information other than your brother that
20 you can identify right now concerning the
21 practice of forgiving loans to affiliates?
22 A. Not at this time.
23 Q. Can you identify any loan that
24 Highland ever made to an affiliate that was
25 forgiven?

1 N. Dondero
2 A. Not that I recall.
3 Q. Did you or Dugaboy ever ask
4 anybody to identify any loan that it ever
5 made to an affiliate that was forgiven in
6 whole or in part?
7 A. Can you restate that, John?
8 Q. Sure.
9 Did you or Dugaboy ever ask
10 anybody to identify a loan that was made by
11 Highland to an affiliate that was forgiven
12 in whole or in part?
13 A. Not that I remember.
14 Q. Can you or Dugaboy identify today
15 any affiliate that obtained a loan from
16 Highland that Highland forgave?
17 A. Not that I know of.
18 Q. Did you or Dugaboy ever take any
19 steps to confirm what your brother told you
20 about the practice of forgiving loans?
21 A. Did we take any steps?
22 Q. Did you do anything?
23 A. Not that I am aware of, no.
24 Q. Did you ever see any document
25 that concerned or related to the practice

1 N. Dondero
2 your brother described for you whereby
3 Highland forgave loans to affiliates?
4 A. I do not recall, John, no.
5 Q. Did you ever ask to see any
6 documents that reflected the practice your
7 brother described?
8 A. I never asked.
9 Q. Give me one second.
10 Have you ever heard of an entity
11 called Highland Capital Management Services
12 Inc.?
13 A. Yes.
14 Q. Can we refer to that entity as
15 HCMS?
16 A. Okay.
17 Q. Is HCMS an affiliate --
18 withdrawn.
19 Did you and Dugaboy understand
20 that HCMS was an affiliate of Highland's
21 prior to the petition date?
22 A. Yes.
23 Q. And how did you come to
24 understand that HCMS was an affiliate of
25 Highland prior to the petition date?

1 N. Dondero
2 A. Because it's another one of Jim's
3 companies.
4 Q. And how did you learn that that
5 was another one of Jim's companies?
6 A. I don't remember how I learned
7 it. It's under the Highland umbrella.
8 Q. And when you say that it's one of
9 "Jim's companies," what do you mean by
10 that?
11 A. The beneficial owner.
12 Q. And how did you learn that your
13 brother was the beneficial owner of HCMS?
14 MS. DEITSCH-PEREZ: Object to the
15 form. That's not what she said. She
16 said he is a beneficiary owner --
17 MR. MORRIS: You can object to
18 the question. I appreciate it.
19 BY MR. MORRIS:
20 Q. And you can answer it.
21 MS. DEITSCH-PEREZ: Don't
22 misstate what she said, please.
23 MR. MORRIS: All you do is get to
24 object to the question, please. Don't
25 coach the witness.

1 N. Dondero
2 MS. DEITSCH-PEREZ: I'm not
3 coaching the witness.
4 You want to have the court
5 reporter read it back.
6 BY MR. MORRIS:
7 Q. Can you please answer my
8 question, please?
9 A. How did I learn that Jim was a
10 beneficial owner --
11 Q. Sure.
12 A. -- of the company?
13 I would assume from Jim.
14 Q. Okay. Do you have any reason to
15 believe your source of information was
16 anybody other than Jim?
17 A. I don't know, John.
18 Q. Okay. Do you know the nature of
19 HCMS's business?
20 A. No.
21 Q. Did you or Dugaboy ever ask
22 anybody what the nature of HCMS's business
23 was?
24 A. No, not that I recall.
25 Q. Did you or Dugaboy ever make any

1 N. Dondero
2 effort to determine what HCMS's business
3 was?
4 A. Not that I recall.
5 Q. Did you or Dugaboy ever know --
6 withdrawn.
7 Did you or Dugaboy ever have any
8 information concerning HCMS's financial
9 condition?
10 A. No, not that I'm aware of.
11 Q. Did you or Dugaboy ever ask
12 anybody for information concerning HCMS's
13 financial condition?
14 A. No.
15 Q. Did you or Dugaboy ever make any
16 independent effort to try to determine what
17 HCMS's financial condition was?
18 A. Not that I recall.
19 Q. Do you or Dugaboy know whether
20 any agreements exist between HCMS and
21 Highland other than any promissory notes?
22 A. I don't know.
23 Q. Did you or Dugaboy ever ask
24 anybody whether any agreements existed
25 between Highland and HCMS other than

1 N. Dondero
2 promissory notes?
3 A. I don't know. No, I don't
4 believe so.
5 Q. I appreciate your patience. I
6 do.
7 A. That's okay.
8 Q. Did you or Dugaboy ever make any
9 effort to try to learn whether any
10 agreements existed between Highland and
11 HCMS other than promissory notes?
12 A. I don't believe so.
13 Q. Did you or Dugaboy know prior to
14 the petition date whether Highland ever
15 provided any services to HCMS?
16 A. I don't know.
17 Q. Did you or Dugaboy ever ask
18 anybody prior to the petition date whether
19 Highland ever provided any services to
20 HCMS?
21 A. I don't believe it was asked.
22 Q. Did you or Dugaboy ever made any
23 effort prior to the petition date to learn
24 whether Highland provided any services to
25 HCMS?

1 N. Dondero
2 A. Not that I am aware of, John.
3 Q. Do you know if HCMS -- withdrawn.
4 Did you or Dug -- withdrawn.
5 Did you or Dugaboy know prior to
6 the petition date whether HCMS ever
7 rendered any services to Highland?
8 A. I wouldn't --
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. I wouldn't know.
12 MR. MORRIS: Can I have the
13 question read back?
14 THE REPORTER: Sure.
15 (Question was read back as
16 follows:
17 "QUESTION: Did you or Dugaboy
18 know prior to the petition date whether
19 HCMS ever rendered any services to
20 Highland?"
21 "ANSWER: I wouldn't know.")
22 BY MR. MORRIS:
23 Q. Did you or Dugaboy ever ask
24 anybody prior to the petition date whether
25 HCMS ever rendered any services to

1 N. Dondero
2 Highland?
3 A. I don't believe so, John.
4 Q. Did you or Dugaboy make any
5 effort prior to the petition date to
6 determine whether HCMS ever rendered any
7 services to Highland?
8 A. I don't think so.
9 Q. Do you know if Highland ever
10 loaned any money to HCMS?
11 MS. DEITSCH-PEREZ: Asked and
12 answered.
13 MR. MORRIS: You can answer.
14 A. Oh, answer it again?
15 Q. If I asked it, I apologize, but
16 go ahead, yeah.
17 MS. DEITSCH-PEREZ: I thought you
18 asked about promissory notes. If I'm
19 wrong, I apologize.
20 MR. MORRIS: That's okay.
21 A. Yeah, I'm sorry. Okay. So not
22 including any notes?
23 Q. Yeah, let me ask a different
24 question. I'm not asking about promissory
25 notes.

1 N. Dondero
2 A. Okay.
3 Q. I'm asking whether prior to the
4 petition date, you or Dugaboy were aware of
5 any loans that Highland made to HCMS?
6 A. Okay. I'm aware of the ones that
7 are in question.
8 Are you speaking of others?
9 Q. I am asking broadly at this time.
10 Are you generally aware that
11 Highland loaned --
12 A. Yes.
13 Q. -- money to HCMS prior to the
14 petition date?
15 A. Yes, I am generally aware.
16 Q. Okay. Did you and Dugaboy know
17 how many loans Highland made to HCMS prior
18 to the petition date?
19 A. Yes, I believe.
20 Q. And how many loans did Highland
21 make to HCMS prior to the petition date, to
22 the best of your knowledge?
23 A. At least five.
24 Q. And are those the loans that are
25 reflected in the five promissory notes that

1 N. Dondero
2 are the subject of the lawsuit against
3 HCMS?
4 A. Correct.
5 Q. Okay. Are you aware of any loans
6 that Highland ever made to HCMS that are
7 not subject to the lawsuit?
8 A. I'm not -- I'm not aware, John.
9 Q. Did you ever ask -- withdrawn.
10 Did you or Dugaboy ask at any
11 time whether Highland had ever made any
12 loans to HCMS that weren't reflected in the
13 promissory notes that are the subject of
14 the lawsuits?
15 A. I don't believe we ever asked.
16 Q. Do you know who authorized
17 Highland to make the loans to HCMS that
18 you're aware of?
19 A. Okay. I'm sorry, once again,
20 John, the question?
21 Q. Did you or Dugaboy know prior to
22 the petition date who authorized Highland
23 to make the loans to HCMS that are the
24 subject of the promissory notes that you
25 referred to?

1 N. Dondero
2 A. Who authorized?
3 Q. Yes.
4 A. I don't know.
5 Q. Do you recall if you or Dugaboy
6 asked anybody at any time prior to the
7 petition date who authorized Highland to
8 make the loans to HCMS?
9 A. I don't believe that was asked.
10 Q. Okay. Do you have any
11 information as to whether HCMS intended to
12 pay back each of the loans that are the
13 subject of the promissory notes at the time
14 the loans were given to them by Highland?
15 MS. DEITSCH-PEREZ: Objection.
16 No foundation.
17 A. John, can you just say the
18 question again, please?
19 Q. Sure.
20 Did you or Dugaboy have any
21 information prior to the petition date as
22 to whether HCMS intended to repay the loans
23 that are the subject of the promissory
24 notes that you identified?
25 A. No.

1 N. Dondero
2 Q. Okay. Did you or Dugaboy ever
3 ask anybody prior to the petition date
4 whether HCMS had intended to repay the
5 loans at the time and times that it
6 obtained them from Highland?
7 A. Okay, John, can you ask that
8 again?
9 Q. Sure.
10 Did you or Dugaboy ever ask
11 anybody whether HCMS intended to repay the
12 loans at the time HCMS obtained them from
13 Highland?
14 A. I don't believe we asked their
15 intent.
16 Q. Okay.
17 MS. DEITSCH-PEREZ: Whenever --
18 we've been going about another hour.
19 So whenever is good for you, John.
20 MR. MORRIS: Okay. I'm going to
21 finish up this section here.
22 BY MR. MORRIS:
23 Q. Do you or Dugaboy have any
24 knowledge as to why Highland made the loans
25 to HCMS?

1 N. Dondero
2 A. Only assumptions.
3 Q. Okay. I don't want assumptions.
4 I want information.
5 A. Then I don't -- then I don't
6 know.
7 Q. Okay. Do you or Dugaboy ever ask
8 anybody why Highland made the loans to HCMS
9 that are the subject of the promissory
10 notes you referred to?
11 A. No.
12 Q. Did you or Dugaboy ever make any
13 effort to try to determine why Highland
14 made the loans to HCMS?
15 A. No, not that I remember.
16 Q. Did you or Dugaboy know prior to
17 the petition date what HCMS did with the
18 proceeds of the loans that it obtained from
19 Highland?
20 A. I don't know, John.
21 Q. Did you or Dugaboy ever ask
22 anybody at any time prior to the petition
23 date what HCMS did with the proceeds of the
24 loans that it obtained from Highland?
25 A. No.

1 N. Dondero
2 Q. Did you or Dugaboy ever make any
3 effort to determine what HCMS did with the
4 proceeds of the loans that it obtained from
5 Highland?
6 A. No.
7 Q. You're aware that HCMS issued
8 promissory notes in favor of Highland in
9 exchange for the loans, correct?
10 A. Correct.
11 Q. Prior to the petition date, did
12 you ever see any promissory note that was
13 issued by HCMS in favor of Highland?
14 A. Prior to October of '19?
15 Q. Correct.
16 A. I don't recall.
17 Q. Do you recall whether you or
18 Dugaboy asked at any time prior to the
19 petition date to see promissory notes that
20 were executed on behalf of HCMS in favor of
21 Highland?
22 A. I don't know.
23 Q. Do you recall whether you or
24 Dugaboy made any effort at any time prior
25 to the petition date to obtain copies of

1 N. Dondero
2 promissory notes that were issued by HCMS
3 in favor of Highland?
4 A. I don't believe so.
5 Q. Prior to the petition date, were
6 you and Dugaboy aware of the terms of the
7 promissory notes that HCMS issued in favor
8 of Highland?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. Can you be more specific? Just
12 the terms of the loan, John?
13 Q. Yes.
14 Did you and Dugaboy know the
15 terms of the loans that were reflected in
16 the promissory notes?
17 A. I believe so, yes.
18 Q. Okay. And who gave you the
19 information regarding the terms of the
20 loans that HCMS obtained from Highland?
21 A. Jim.
22 Q. Do you remember anything about
23 the terms of the loans that HCMS obtained
24 from Highland?
25 A. Regarding -- you mean the term?

1 N. Dondero
2 There's 30-year. There's demand.
3 Q. You tell me.
4 You described five promissory
5 notes, I think, that were executed by HCMS
6 in favor of Highland, right?
7 A. That's correct.
8 Q. Okay. And I believe you
9 testified that you didn't see those notes
10 prior to the petition date, correct?
11 A. Right. Well, yeah, I'm a little
12 vague on the date; but, yes, I don't
13 believe I saw them prior to -- so right,
14 prior to the petition date, correct.
15 Um-hmm.
16 Q. But did you or Dugaboy --
17 withdrawn.
18 Did you and Dugaboy have an
19 understanding of the terms of the notes
20 prior to the petition date?
21 A. Yes. From what I understand, my
22 recollection is several of them were
23 demand, and one was 30-year.
24 Q. And do you have an understanding
25 of what it means -- of what a demand notice

1 N. Dondero
2 is?
3 MS. DEITSCH-PEREZ: Object to the
4 form.
5 A. Payable upon demand.
6 Q. Okay. So you knew prior to the
7 petition date that certain of the notes
8 issued by HCMS to Highland were demand
9 notes; is that right?
10 A. Yes.
11 Q. Okay.
12 MR. MORRIS: All right. I'm
13 happy to take a break now. Hopefully
14 it won't be as long as the last one.
15 But we can go off the record.
16 THE VIDEOGRAPHER: The time is
17 12:00 p.m. We are going off the
18 record.
19 (Recess is taken.)
20 (Patrick Daugherty not in
21 attendance at this time.)
22 THE VIDEOGRAPHER: The time is
23 12:16. Back on the record.
24 BY MR. MORRIS:
25 Q. Ms. Dondero, did you communicate

1 N. Dondero
2 with anybody during your break regarding
3 any aspect of your testimony?
4 A. No, sir.
5 Q. Okay. Have you ever heard of an
6 entity called HCRE Partners LLC?
7 A. Yes, sir.
8 Q. Do you understand that HCRE is an
9 affiliate of Highland?
10 A. I do.
11 Q. Okay. And what was the -- what
12 is the basis of your understanding that
13 HCRE -- withdrawn. I should have put a
14 time frame on this.
15 Is it your understanding that
16 HCRE was an affiliate of Highland prior to
17 the petition date?
18 A. Yes, sir.
19 Q. And what is the basis for your
20 understanding?
21 A. They were under the Highland
22 umbrella prior to October of '19.
23 Q. And to the best of your
24 knowledge, does HCRE fit the definition of
25 affiliate that you provided earlier today?

1 N. Dondero
2 MS. DEITSCH-PEREZ: Objection.
3 A. Yes.
4 Q. Do you know the nature of HCRE's
5 business?
6 A. I believe it's real estate.
7 Q. Do you or Dugaboy have any
8 information about the nature of HCRE's
9 business other than it's real estate?
10 A. No.
11 Q. Did you or Dugaboy ever ask
12 anybody what the nature of HCRE's business
13 was?
14 A. No.
15 Q. Did you or Dugaboy ever make any
16 effort to ascertain the nature of HCRE's
17 business?
18 A. Not that I recall.
19 Q. Did you or Dugaboy know whether
20 HCRE had any agreements with Highland prior
21 to the petition date?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 MR. MORRIS: Withdrawn.
25 BY MR. MORRIS:

1 N. Dondero
2 Q. Do you or Dugaboy know whether
3 HCRE had any agreements with Highland prior
4 to the petition date other than the
5 promissory notes?
6 A. Other than the promissory notes,
7 no.
8 Q. Did you or Dugaboy ever ask
9 anybody at any time prior to the petition
10 date whether HCRE had any agreements with
11 Highland other than the promissory notes?
12 A. No.
13 Q. Did you or Dugaboy make any
14 effort prior to the petition date to
15 ascertain whether any agreements existed
16 between Highland and HCRE other than the
17 promissory notes?
18 A. Not that I recall.
19 Q. Do you know -- withdrawn.
20 Did you or Dugaboy know prior to
21 the petition date whether HCRE had ever
22 rendered any services to Highland?
23 MS. DEITSCH-PEREZ: Object to the
24 form.
25 A. I don't know.

1 N. Dondero
2 Q. Did you or Dugaboy ever ask
3 anybody prior to the petition date whether
4 HCRE ever rendered any services to
5 Highland?
6 A. I don't believe so.
7 Q. Did you or Dugaboy make any
8 effort to ascertain prior to the petition
9 date whether HCRE ever rendered any
10 services to Highland?
11 MS. DEITSCH-PEREZ: Object to the
12 form.
13 A. I'm sorry, John, can you repeat
14 that, please, the question?
15 Q. Did you or Dugaboy make any
16 effort prior to the petition date to
17 determine whether or not HCRE had ever
18 provided any services to Highland?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I don't believe so.
22 Q. Are you aware -- withdrawn.
23 Did you or Dugaboy know prior to
24 the petition date whether Highland had ever
25 loaned any money to HCRE?

1 N. Dondero
2 A. Yes.
3 Q. And were the loans that you're
4 aware of reflected in promissory notes?
5 A. Correct.
6 Q. And are those the promissory
7 notes that are the subject of one of the
8 litigations?
9 A. Yes, sir.
10 Q. Are you aware of any loans that
11 Highland ever made to HCRE that are not the
12 subject of one of the promissory notes in
13 the lawsuits?
14 A. I'm not aware of any.
15 Q. Did you ever ask anybody whether
16 Highland had ever made any loans to HCRE
17 that were not reflected in the promissory
18 notes that are the subject of the lawsuit?
19 A. Not that I recall.
20 Q. Did you or Dugaboy know prior to
21 the petition date who authorized Highland
22 to make the loans to HCRE?
23 MS. DEITSCH-PEREZ: Object to the
24 form.
25 A. Sorry, John, could you say the

1 N. Dondero
2 question again, please?
3 Q. Sure.
4 Did you or Dugaboy know prior to
5 the petition date who authorized Highland
6 to make the loans to HCRE?
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 A. I don't know.
10 Q. Did you or Dugaboy ever ask
11 anybody prior to the petition date who
12 authorized Highland to make the loans to
13 HCRE that are reflected in the promissory
14 notes you referred to?
15 MS. DEITSCH-PEREZ: Object to the
16 form.
17 A. No.
18 Q. Did you or Dugaboy ever make any
19 effort to ascertain who had authorized
20 Highland to make the loans to HCRE that are
21 reflected in the promissory notes you
22 referred to?
23 A. Not that I recall.
24 Q. Did you or Dugaboy have any
25 information prior to the petition date as

1 N. Dondero
2 to whether HCRE intended to repay the loans
3 that are reflected in the promissory notes
4 at the time the loans were made?
5 MS. DEITSCH-PEREZ: Object to the
6 form.
7 A. John, I'm sorry, did I have any
8 information if they intended to pay their
9 loans?
10 Q. At the time that they obtained
11 the loans, yes.
12 A. I have no reason to think they
13 wouldn't pay their loans --
14 Q. Okay.
15 A. -- at the time they were made,
16 correct.
17 Q. You're not aware of any facts
18 that suggest that HCRE didn't intend to
19 repay the loans at the time they obtained
20 them, right?
21 A. Correct.
22 Q. Prior to the petition date, did
23 you or Dugaboy have any information in
24 regard to the purpose of the loans that
25 Highland gave to HCRE that were reflected

1 N. Dondero
2 in the promissory notes?
3 A. No, no idea.
4 Q. Did you or Dugaboy attempt to
5 obtain prior to the petition date any
6 information concerning the purpose of the
7 loans that were made by Highland to HCRE
8 that were reflected in the promissory
9 notes?
10 A. I don't believe so.
11 Q. Did you or Dugaboy make any
12 effort to ascertain the purpose of the
13 loans that Highland made to HCRE?
14 A. I don't believe so.
15 Q. Did you or Dugaboy know prior to
16 the petition date what HCRE did with the
17 proceeds of the loans that it obtained from
18 Highland in exchange for the promissory
19 notes?
20 A. We don't know.
21 Q. Did you or Dugaboy ever ask
22 anybody what HCRE did with the proceeds of
23 the loans that it obtained from Highland in
24 exchanged from the promissory notes?
25 A. I don't believe we did.

1 N. Dondero
2 Q. Did you or Dugaboy ever make any
3 effort prior to the petition date to
4 ascertain what HCRE did with the proceeds
5 of the loans that it obtained from Highland
6 that are reflected in the promissory notes?
7 A. No.
8 Q. Did you ever see -- withdrawn.
9 Did you or Dugaboy ever see prior
10 to the petition -- withdrawn. Not good.
11 Too many questions.
12 Did you or Dugaboy -- withdrawn.
13 Prior to the petition date, did
14 you or Dugaboy ever see any promissory note
15 that was executed by HCRE in favor of
16 Highland?
17 A. Not that I recall.
18 Q. Prior to the petition date, did
19 you or Dugaboy ever ask anybody to see any
20 promissory note that was issued by HCRE in
21 favor of Highland?
22 A. Not that I recall.
23 Q. Prior to the petition date, did
24 you or Dugaboy make any effort to try to
25 obtain any promissory note that was ever

1 N. Dondero
2 executed on behalf of HCRE in favor of
3 Highland?
4 A. No.
5 Q. Prior to the petition date, did
6 you and Dugaboy know the terms of any of
7 the promissory notes that were issued by
8 HCRE to Highland?
9 A. Yes.
10 Q. And how did you learn of the
11 terms of the notes?
12 A. From Jim.
13 Q. And what did Jim tell you about
14 the terms of the notes that were issued by
15 HCRE to Highland?
16 A. He mentioned the 30-year demand,
17 the dates, the amounts.
18 Q. Okay. Did you do -- withdrawn.
19 Did you or Dugaboy take any steps
20 to try to corroborate what your brother
21 told you concerning the terms of the notes
22 that were issued by HCRE to Highland?
23 A. Not that I recall.
24 Q. Okay. Did you have any source of
25 information for the terms of the notes

1 N. Dondero
2 other than what your brother gave to you?
3 A. I don't believe so.
4 Q. Okay. Last one. NexPoint.
5 Are you familiar with an entity
6 called NexPoint Advisors LP?
7 A. Yes.
8 Q. Can we refer to that entity as
9 NexPoint?
10 A. Yes.
11 Q. Is it your understanding that
12 NexPoint was an affiliate of Highland's
13 prior to the petition date, as you've used
14 the term "affiliate"?
15 A. Um-hmm. Yes.
16 Q. And what's the basis for your
17 understanding that prior to the petition
18 date, NexPoint was an affiliate of
19 Highland?
20 A. Because Jim is a beneficial
21 owner.
22 Q. Is it your understanding that Jim
23 is a beneficial owner of all of the
24 defendants in each of the promissory note
25 lawsuits?

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1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 THE WITNESS: Can I answer?
5 BY MR. MORRIS:
6 Q. Yes.
7 A. Yes, that is my belief, John.
8 Q. Do you have any reason to believe
9 Jim is not a beneficial owner of any
10 corporate defendant in any of the lawsuits?
11 A. No, I have no reason to believe
12 that.
13 Q. Prior to the petition date, did
14 you or Dugaboy know the nature of
15 NexPoint's business?
16 A. I'm not really sure.
17 Q. Do you know the nature of
18 NexPoint's business today?
19 A. I'm not sure.
20 Q. Did you or Dugaboy ever ask
21 anybody at any time what the nature of
22 NexPoint's business was?
23 A. I don't believe we did.
24 Q. Did you or Dugaboy make any
25 effort at any time to try to learn what the

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1 N. Dondero
2 nature of NexPoint's business was?
3 A. Not that I recall.
4 Q. Did you or Dugaboy know prior to
5 the petition date whether NexPoint had any
6 agreements with Highland?
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 MR. MORRIS: I apologize. I'll
10 make the same qualification.
11 BY MR. MORRIS:
12 Q. Did you and Dugaboy know prior to
13 the petition date whether NexPoint and
14 Highland had any agreements together other
15 than the promissory notes?
16 A. I'm not aware of any.
17 Q. Okay. Did you or Dugaboy ask
18 anybody at any time prior to the petition
19 date whether any agreements existed between
20 NexPoint and Highland other than the
21 promissory notes?
22 A. No, not that I'm aware of.
23 Q. Did you or Dugaboy ever make any
24 effort prior to the petition date to
25 determine whether any agreements existed

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1 N. Dondero
2 between Highland and NexPoint other than
3 the promissory notes?
4 A. Not that I'm aware of.
5 Q. Did you or Dugaboy know prior to
6 the petition date whether NexPoint ever
7 rendered any services to Highland?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 A. I don't know.
11 Q. Did you or Dugaboy ever ask
12 anybody at any time prior to the petition
13 date whether NexPoint had ever rendered any
14 services to Highland?
15 MS. DEITSCH-PEREZ: Object to the
16 form.
17 A. I'm sorry, John. Can you repeat
18 the question, please?
19 Q. Sure.
20 Did you and Dugaboy ask anybody
21 at any time prior to the petition date
22 whether NexPoint had ever rendered any
23 services to Highland?
24 A. Not that I'm aware of.
25 Q. Did you and Dugaboy make any

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1 N. Dondero
2 effort prior to the petition date to
3 determine whether or not NexPoint had ever
4 rendered any services to Highland?
5 A. Not that I'm aware of.
6 Q. Are you aware that Highland made
7 loans to NexPoint from time to time?
8 A. I don't know.
9 Q. Did you ever see any -- do you
10 know whether -- withdrawn.
11 Prior to the petition date, were
12 you and Dugaboy aware of any promissory
13 notes that NexPoint had issued in favor of
14 Highland?
15 MS. DEITSCH-PEREZ: You mean
16 other than what's at issue here? Just
17 generally?
18 MR. MORRIS: I'm starting with
19 the general, yeah.
20 A. I'm not aware of.
21 Q. Are you aware of any promissory
22 notes that NexPoint ever issued in favor of
23 Highland?
24 A. I'm not aware of any.
25 Q. Do you know whether there are any

1 N. Dondero
2 promissory notes that NexPoint issued that
3 are the subject of this lawsuit?
4 A. Yeah. John, can we back up a
5 question?
6 Q. Absolutely.
7 A. Are you talking about the notes
8 -- yeah, please.
9 Are you talking about the notes,
10 part of this proceeding or are you not?
11 Q. I'm starting -- that's okay. Let
12 me --
13 A. Because obviously there is the
14 NexPoint promissory note that we are
15 talking about. When I answered the way I
16 did, it was regarding others that I'm not
17 aware of. I'm aware of the one obviously
18 in this proceeding.
19 Q. Okay. Thank you for the --
20 A. Does that clarify?
21 Q. It does. It is helpful. Thank
22 you very much.
23 Other than the one -- how many
24 NexPoint notes do you understand are the
25 subject of these litigations?

1 N. Dondero
2 A. One.
3 Q. Okay. Other than that one note,
4 are you aware of any other promissory notes
5 that NexPoint ever issued in favor of
6 Highland?
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 A. No, I'm not aware of any other.
10 Q. Did you ask anybody -- withdrawn.
11 Did you or Dugaboy ask anybody
12 prior to the petition date whether NexPoint
13 had issued any other promissory notes in
14 favor of Highland other than the one that's
15 the subject of the lawsuit?
16 A. I don't believe so.
17 Q. Did you or Dugaboy know prior to
18 the petition date whether Highland had made
19 any loan to NexPoint other than the loan
20 that's reflected in the promissory note?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 A. I'm not aware of any.
24 Q. Do you know how much the
25 promissory -- do you know the principal

1 N. Dondero
2 amount of -- withdrawn.
3 Do you know the -- withdrawn.
4 Did you and Dugaboy know the
5 principal amount of NexPoint's promissory
6 note prior to the petition date?
7 A. Yes.
8 Q. And how did you learn that?
9 A. From Jim.
10 Q. And what did Jim tell you that
11 you can recall?
12 A. 30 million thereabouts, in that
13 neighborhood.
14 Q. Do you know how many principal
15 was owed as of the petition date?
16 A. It's paid down by, oh, about a
17 third, so it's somewhere 22, 23 million, I
18 believe, in that ballpark.
19 Q. Okay. And how did you learn that
20 NexPoint had paid down the principal to
21 that ballpark?
22 A. I'm not sure.
23 Q. Do you recall when you learned
24 that NexPoint had paid down the principal
25 to that ballpark?

1 N. Dondero
2 A. Not exactly.
3 Q. Okay. But you are aware that
4 NexPoint paid approximately 7 to 8 million
5 dollars in principal on the note that's the
6 subject of the lawsuit, correct?
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 A. Yes, it was somewhere in that
10 ballpark. Sure.
11 Q. Okay. Did you and Dugaboy know
12 prior to the petition date who authorized
13 Highland to make the loan to NexPoint?
14 MS. DEITSCH-PEREZ: Object to the
15 form.
16 A. No, I don't know.
17 Q. Did you or Dugaboy prior to the
18 petition date ask anybody who had
19 authorized Highland to make the $30 million
20 loan to NexPoint?
21 A. Not that I recall.
22 Q. Did you or Dugaboy make any
23 effort prior to the petition date to
24 determine who had authorized Highland to
25 make the $30 million loan to NexPoint?

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1 N. Dondero
2 A. Not that I recall.
3 Q. Do you have any reason to believe
4 that NexPoint did not intend to pay all
5 principal and interest due under the
6 promissory note at the time that it
7 obtained the loan from Highland?
8 A. I have no reason to believe they
9 weren't intending to pay.
10 Q. Did you have any reason to
11 believe -- withdrawn.
12 Do you or Dugaboy have any reason
13 to believe that Highland wasn't not
14 expecting to get repaid all principal and
15 interest due under the loan at the time it
16 made the loan?
17 MS. DEITSCH-PEREZ: Object to the
18 form. Actually, can somebody --
19 Annette, could you read that
20 back? There were a double negative or
21 two.
22 MR. MORRIS: Okay. Let me
23 rephrase the question. That's fine.
24 That's fine.
25 BY MR. MORRIS:

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1 N. Dondero
2 Q. Do you have any reason to believe
3 that Highland didn't intend to get repaid
4 all principal and interest due under the
5 NexPoint note at the time it made the loan?
6 A. I have no reason to believe that
7 I didn't think that they weren't to get
8 repaid at the time the notes were
9 initiated.
10 Q. Okay. Did you or Dugaboy know
11 prior to the petition date what the purpose
12 of the $30 million loan was?
13 A. I don't know.
14 Q. Did you or Dugaboy ever ask
15 anybody prior to the petition date what the
16 purpose of the $30 million loan was?
17 A. I don't believe so.
18 Q. Did you or Dugaboy make any
19 effort prior to the petition date to
20 ascertain what the purpose of the $30
21 million loan was?
22 A. I don't believe so.
23 Q. Do you or Dugaboy -- withdrawn.
24 Did you or Dugaboy know prior to
25 the petition date what NexPoint did with

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1 N. Dondero
2 the proceeds of the loan?
3 A. No, I don't know.
4 Q. Did you or Dugaboy ever ask
5 anybody prior to the petition date what
6 NexPoint did with the proceeds of the loan?
7 A. We did not.
8 Q. Did you or Dugaboy know prior to
9 the petition date that the $30 million loan
10 was a rollup of previously existing loans
11 that Highland had made to NexPoint?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 A. I was not aware of that.
15 Q. Are you aware today that the $30
16 million loan was a roll up of previously
17 existing notes?
18 A. I didn't, no.
19 Q. Did you ever see the promissory
20 note that was issued by NexPoint in favor
21 of Highland that's the subject of one of
22 these notes -- litigations?
23 A. I don't remember. That was in
24 '17, correct, John?
25 Q. I'm just asking if -- let me ask

Page 141

1 N. Dondero
2 a different question.
3 A. Yeah, I don't --
4 Q. Okay. Did you or Dugaboy see the
5 promissory note prior to the
6 commencement -- no.
7 Did you or Dugaboy prior to the
8 petition date ever see the promissory note
9 that NexPoint issued in favor of Highland
10 in the principal amount of approximately
11 $30 million?
12 A. I don't recall.
13 Q. Do you recall if you or Dugaboy
14 ever asked anybody prior to the petition
15 date to see the $30 million promissory note
16 that NexPoint issued in favor of Highland?
17 A. I don't believe so.
18 Q. Did you or Dugaboy make any
19 effort prior to the petition date to obtain
20 a copy of the $30 million promissory note
21 that NexPoint issued in favor of Highland?
22 A. I don't recall.
23 Q. Were you and Dugaboy aware at any
24 time prior to the petition date of the
25 terms of the promissory note that NexPoint

1 N. Dondero
2 issued in favor of Highland?
3 A. 30-year.
4 Q. It was a 30-year note?
5 A. Um-hmm.
6 Q. Do you recall anything else about
7 that note?
8 A. I believe it was 2017.
9 Q. Okay.
10 A. And the amounts we already
11 discussed.
12 Q. Do you know who determined that
13 the promissory note would be a 30-year
14 term?
15 A. I do not.
16 Q. Do you know who on behalf of
17 Highland agreed to accept a 30-year note
18 from NexPoint?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I don't know, John.
22 Q. Did you or Dugaboy make an effort
23 at any time prior to the petition date to
24 determine whether or not a 30-year term was
25 appropriate?

1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 A. No.
5 Q. Did you or Dugaboy ask anybody at
6 any time prior to the petition date whether
7 a 30-year term was appropriate?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 A. Not that I recall.
11 Q. Did you or Dugaboy know prior to
12 the petition date whether the $30 million
13 note was the subject of any negotiation
14 between NexPoint and Highland?
15 MS. DEITSCH-PEREZ: Object to the
16 form.
17 A. I didn't know.
18 Q. Did you or Dugaboy ask anybody at
19 any time prior to the petition date whether
20 the $30 million note was subject to
21 negotiation?
22 A. Subject to negotiation? Can you
23 elaborate? What negotiation?
24 Q. Are you aware of anybody on
25 behalf of Highland suggesting that the term

1 N. Dondero
2 of the note should be something other than
3 30 years?
4 A. No. Changing that term, no, I'm
5 not familiar.
6 Q. Okay. Let's switch topics and
7 I'll cover this topic and then we can take
8 a lunch break.
9 I'd like to turn now to the
10 limited partnership agreement, the LP
11 agreement as I think we've defined it. And
12 I'm going to ask my colleague to put up on
13 the screen -- I don't think it's in the
14 binder that I gave you.
15 MS. DEITSCH-PEREZ: Yes, it is.
16 MR. MORRIS: Oh, is it?
17 MS. DEITSCH-PEREZ: It is?
18 MR. MORRIS: What number is it?
19 MS. DEITSCH-PEREZ: It is number
20 2, it looks like.
21 MR. MORRIS: So we'll put it up
22 on the screen and then you can look at
23 the hard copy.
24 MS. DEITSCH-PEREZ: Okay. Is
25 there a particular page you want to

1 N. Dondero
2 turn to?
3 MR. MORRIS: Let's just start
4 with this.
5 BY MR. MORRIS:
6 Q. Do you understand --
7 MS. DEITSCH-PEREZ: Hang on a
8 minute. One second.
9 Okay. We're good. We've got it.
10 BY MR. MORRIS:
11 Q. Okay. Are you looking at the
12 document that is Exhibit 4 that's attached
13 to the document that's been denoted as
14 number 2?
15 MS. DEITSCH-PEREZ: Yes.
16 Turn to the page before the one
17 that says --
18 THE WITNESS: Oh, okay.
19 A. So page 4 of 37?
20 Q. Yes.
21 (Document review.)
22 A. Okay.
23 Q. All right.
24 A. Okay. Go ahead.
25 Q. At the top, do you see it says

1 N. Dondero
2 Document 63-4 in the middle?
3 A. Yes, I do.
4 Q. And you're at page 2 of 37,
5 correct?
6 A. Correct.
7 Q. Okay. Do you understand that
8 this is the document we defined earlier as
9 the LP agreement?
10 A. Yes, sir.
11 Q. Have you seen this document
12 before now?
13 A. Yes.
14 Q. Do you recall when you saw this
15 document for the first time?
16 A. Shortly after it was made, when I
17 was trustee.
18 Q. Okay. Do you recall the
19 circumstances under which you saw the LP
20 agreement for the first time?
21 A. No, I don't remember the
22 circumstance.
23 Q. Do you have a copy of the LP
24 agreement in your personal possession?
25 Like other than right now, did you have it

1 N. Dondero
2 before today or before I sent it?
3 A. Yes.
4 Q. Okay. Do you recall when you
5 first obtained a copy of the LP agreement?
6 A. The very first time?
7 Q. Yeah.
8 A. I don't know specifically, John.
9 Q. Can we go to the document -- the
10 page that's marked 32 of 37?
11 MS. DEITSCH-PEREZ: 2 of 37?
12 THE WITNESS: 32 of 7 -- 32 of
13 37.
14 MS. DEITSCH-PEREZ: Thank you.
15 (Document review.)
16 BY MR. MORRIS:
17 Q. And is that your signature there?
18 MR. MORRIS: If we can get page
19 32 of 37 up on the screen.
20 (Document review.)
21 BY MR. MORRIS:
22 Q. And is that your signature there,
23 ma'am?
24 A. Well, on the paper copy, it is.
25 Oh, there it is. Yes.

1 N. Dondero
2 Q. Okay.
3 MR. MORRIS: And I apologize La
4 Asia, but can we go now to Section
5 3.10?
6 We're going to mark it. This one
7 is Exhibit 2. Don't worry that we are
8 going out of order. They're premarked.
9 So this document we're going to mark as
10 Exhibit 2.
11 (N. Dondero Exhibit 2, Amended
12 Complaint for (1) Breach of Contract,
13 (II) Turnover of Property, (III)
14 Fraudulent Transfer, and (IV) Breach of
15 Fiduciary Duty, marked for
16 identification, as of this date.)
17 MS. DEITSCH-PEREZ: Did I miss
18 Exhibit 1?
19 MR. MORRIS: No.
20 MS. DEITSCH-PEREZ: Okay.
21 BY MR. MORRIS:
22 Q. Do you see Section 3.10? Do you
23 have that in front of you?
24 A. Yes.
25 Q. Have you seen that provision of

1 N. Dondero
2 the LP agreement before?
3 A. Yes.
4 Q. Do you recall when you first read
5 or you first saw Section 3.10?
6 A. On the day I probably signed it.
7 Q. All right. I don't want you to
8 speculate. I want you to search your
9 memory.
10 A. Okay.
11 Q. Do you recall when you saw
12 Section 3.10 for the first time?
13 A. The first time I saw the
14 document.
15 Q. Okay. Do you recall the
16 circumstances under which you reviewed
17 Section 3.10?
18 A. Prior to signing the document.
19 Q. Do you see there is a reference
20 in the document in Section 3.10 to majority
21 interest?
22 A. Yes, sir.
23 Q. Do you have an understanding of
24 what that term means?
25 A. Class A shareholders -- limited

1 N. Dondero
2 partners. I apologize.
3 Q. And what is the basis for that
4 understanding?
5 A. Because the class A limited
6 partners is the majority interest. Holds
7 -- I'm sorry, holds the majority interest.
8 Q. And did you ever discuss that
9 with anybody at any time?
10 MS. DEITSCH-PEREZ: And I'm going
11 to direct her to ask exclude any
12 discussions with lawyers. So other --
13 MR. MORRIS: Let me rephrase the
14 question. Let me rephrase the
15 question.
16 BY MR. MORRIS:
17 Q. Did you ever discuss the
18 definition of majority interest with
19 anybody at any time prior to the petition
20 date?
21 A. I don't recall.
22 Q. Do you believe that Dugaboy holds
23 a majority interest, as that term is used
24 in Section 3.10?
25 A. Yes, I do believe that.

1 N. Dondero
2 Q. And did you believe that prior to
3 the petition date?
4 A. Yes.
5 Q. What was the basis for your
6 belief prior to the petition date that
7 Dugaboy held a majority interest?
8 A. I was told that Dugaboy held the
9 majority interest.
10 Q. And who told you that Dugaboy
11 held the majority interest?
12 A. Melissa Schroth.
13 Q. Do you recall when Ms. Schroth
14 told you that?
15 A. Shortly after I became trustee.
16 Q. And can you tell me who Melissa
17 Schroth is?
18 A. Melissa is a financial assistant
19 with Jim.
20 Q. And you communicated with
21 Ms. Schroth on a regular basis prior to the
22 petition date; is that fair?
23 A. Correct.
24 Q. Do you know, is Ms. Schroth a
25 lawyer?

1 N. Dondero
2 A. I don't believe so.
3 Q. Do you know anything about her
4 background or expertise?
5 A. Accounting, I believe.
6 Q. Did you ever do anything to
7 corroborate what Ms. Schroth told you about
8 Dugaboy being a majority interest?
9 A. I had no reason to disbelieve
10 her.
11 Q. But you didn't do anything to
12 corroborate that; is that right?
13 A. I did not, sir.
14 Q. Did you seek any advice from
15 anybody to ascertain whether what
16 Ms. Schroth told you was accurate?
17 A. I don't recall.
18 Q. Okay. Do you see at the end of
19 Section 3.10, there is a reference to NAV
20 trigger period?
21 A. Yes.
22 Q. Do you have an understanding --
23 withdrawn.
24 Did you have an understanding
25 prior to the petition date of what a NAV

1 N. Dondero
2 trigger period was?
3 A. No.
4 Q. Did you ever ask anybody prior to
5 the petition date what a NAV trigger period
6 was?
7 A. I don't believe so.
8 Q. Did you or Dugaboy make any
9 effort prior to the petition date to
10 ascertain whether a NAV trigger period had
11 occurred?
12 A. I don't believe so.
13 Q. Did you or Dugaboy ever know
14 prior to the petition date whether in fact
15 a NAV trigger period had ever occurred?
16 A. I don't think so.
17 Q. All right.
18 MR. MORRIS: I think if it's okay
19 with you guys, now might be a nice time
20 to take a lunch break.
21 I prefer that it not be too
22 extended. Would it be okay if we came
23 back at the bottom of the hour?
24 THE WITNESS: 1:30, would that be
25 okay?

1 N. Dondero
2 MR. MORRIS: Yeah, 1:30 Central.
3 Is that good?
4 THE WITNESS: That would be
5 great. Thank you.
6 MR. MORRIS: Thanks so much.
7 THE VIDEOGRAPHER: The time is
8 12:54. We're going off the record.
9 (Recess is taken.)
10
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1 N. Dondero
2 A F T E R N O O N S E S S I O N
3 (Time noted: 1:35 p.m.)
4 THE VIDEOGRAPHER: The time is
5 1:35. We are back on the record.
6 * * *
7 N A N C Y D O N D E R O, resumed and
8 testified as follows:
9 EXAMINATION BY (Cont'd.)
10 MR. MORRIS:
11 Q. Ms. Dondero, are you ready to
12 proceed?
13 A. I am.
14 MR. MORRIS: Are you Deborah?
15 MS. DEITSCH-PEREZ: (Nodding.)
16 MR. MORRIS: Okay. Thank you.
17 BY MR. MORRIS:
18 Q. Can you hear me okay?
19 A. Yes, sir.
20 Q. Okay. I've switched from my
21 phone to my computer. Somehow it worked.
22 Now I wanted to make sure you can hear me.
23 Ms. Dondero, did you speak to
24 anybody during the break about the
25 substance of your testimony?

1 N. Dondero
2 A. No, sir.
3 Q. Did you speak to anybody during
4 the break regarding the substance of this
5 deposition in any way?
6 A. No, sir.
7 Q. Okay. When we left, we had just
8 looked at Section 3.10 of the LP agreement.
9 Do you remember that?
10 A. Yes.
11 Q. Is there anything about the LP
12 agreement that you -- withdrawn.
13 Is there anything that you or
14 Dugaboy don't understand about Section 3.10
15 of the LP agreement?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 BY MR. MORRIS:
19 Q. You can answer.
20 A. No.
21 Q. Is there any aspect of Section
22 3.10 that you and Dugaboy thinks is
23 ambiguous?
24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 N. Dondero
2 A. No.
3 Q. Let's switch gears now and let's
4 talk about the oral agreement that's been
5 referred to in this litigation.
6 I'd like to put up on the screen
7 a document that you don't have a hard copy
8 of, or at least I didn't give it to you,
9 and that would be the Amended Complaint
10 that was served by Highland against you and
11 your brother and Dugaboy.
12 MR. MORRIS: And that document
13 we're marking for purposes of the
14 deposition as Exhibit No. 31.
15 (N. Dondero Exhibit 31, Defendant
16 James Donder's Answer to Amended
17 Complaint, marked for identification,
18 as of this date.)
19 MR. MORRIS: Can we put that on
20 the screen, please, and turn to
21 paragraph 82?
22 Actually, stop right there.
23 BY MR. MORRIS:
24 Q. Ms. Dondero, have you ever seen,
25 if we can scroll up -- and, again, this is

1 N. Dondero
2 consistent with what I explained to you at
3 the beginning of the deposition.
4 I don't mean to rush you. I
5 think you should take all the time you need
6 to look at this document if you want to,
7 but my first question is simply whether you
8 have ever seen this document before. And
9 if you need to see more of it, just let me
10 know.
11 (Document review.)
12 A. Can you scroll to the next page,
13 John, please?
14 Q. Sure.
15 (Document review.)
16 MS. DEITSCH-PEREZ: I have a hard
17 copy here I could give the witness.
18 Do you want me to do that?
19 MR. MORRIS: Sure.
20 BY MR. MORRIS:
21 Q. And just for clarity,
22 Ms. Dondero, this is the Amended Complaint
23 that Highland served to collect on the
24 notes that were issued by your brother.
25 A. Okay.

1 N. Dondero
2 MS. CANTY: John, I'm sorry. 31
3 is actually the answer to the Amended
4 Complaint.
5 MR. MORRIS: I'm sorry. I
6 apologize that. Let me restate that.
7 Exhibit 31 is the answer,
8 Mr. Dondero's answer to the Amended
9 Complaint.
10 MS. DEITSCH-PEREZ: All right.
11 So what are you asking if she has seen?
12 I was going to hand her the complaint.
13 MR. MORRIS: It's my mistake,
14 Deborah. If we can go back to -- if we
15 can go back to the top.
16 Let me start this over.
17 BY MR. MORRIS:
18 Q. Do you see, Ms. Dondero, that
19 this is defendant James Dondero's answer to
20 Amended Complaint?
21 A. Yes, I see that.
22 Q. Have you ever seen your brother's
23 answer to the Amended Complaint?
24 A. I don't remember if I've seen
25 this or not. Deborah just gave me a hard

1 N. Dondero
2 copy. Can I have a quick minute to glance
3 over it?
4 Q. Sure. Take your time. And let
5 me know at the top of it, what the docket
6 number is.
7 A. Certainly.
8 Docket No. DOC 83 --
9 Q. Okay. Perfect.
10 A. -- filed on December 3rd.
11 Is that it?
12 Q. Yes. So we are looking at the
13 same thing.
14 MR. MORRIS: And this document is
15 going to be marked as Exhibit 31.
16 A. Okay.
17 Q. All right. Have you seen this
18 document before?
19 A. I think so.
20 Q. Okay.
21 MR. MORRIS: I'm going to ask, La
22 Asia go to paragraph 82.
23 A. Okay.
24 Q. Do you seep paragraph 82 is up on
25 the screen?

1 N. Dondero
2 A. Yes, sir.
3 Q. So I'm going to read a portion of
4 it to you beginning at the very top, okay?
5 I just want you to follow along
6 with me.
7 Paragraph 82 says in part,
8 "Plaintiff's claims are barred in whole or
9 in part because prior to the demands for
10 payment, plaintiff agreed that it would not
11 collect the notes upon fulfillment of
12 condition subsequent. Specifically,
13 sometime between December of the year in
14 which each note was made and February the
15 following year, Defendant Nancy Dondero, as
16 representative for a majority of the Class
17 A shareholders of plaintiff agreed that
18 plaintiff would forgive the notes if
19 certain portfolio companies were sold for
20 greater than cost or on a basis outside of
21 defendant James Dondero's control. The
22 purpose of this agreement was to provide
23 compensation to defendant James Dondero,
24 who was otherwise underpaid compared to
25 reasonable compensation levels in the

1 N. Dondero
2 industry through the use of forgivable
3 loans, a practice that was standard at
4 HCMLP and in the industry."
5 Have I read that correctly?
6 A. Um-hmm, yes.
7 Q. Okay. To the best of your
8 knowledge, is the portion of paragraph 82
9 that I just read true and accurate?
10 A. Yes. Correct.
11 Q. Are you aware, as Dugaboy's
12 30(b)(6) witness, that HCRE, HCMS, and
13 NexPoint all make the same allegation in
14 defense?
15 A. Yes.
16 Q. So is it your testimony that the
17 statement that I just read from paragraph
18 82 applies to the promissory notes issued
19 by HCRE, HCMS, and NexPoint, and that are
20 the subject of the lawsuits?
21 A. Yes.
22 Q. So it's your testimony that you
23 entered into oral agreements with your
24 brother between December and the year each
25 note was made, and February of the

1 N. Dondero
2 following year, pursuant to which plaintiff
3 agreed that plaintiff would forgive the
4 notes if certain portfolio companies were
5 sold for greater than cost or on a basis
6 outside of James Dondero's control,
7 correct?
8 A. That is correct.
9 Q. Can we refer to each of the oral
10 agreements that you entered into with your
11 brother concerning the promissory notes
12 that are described in paragraph 82 as an
13 agreement and collectively as the
14 agreements?
15 A. Certainly.
16 MS. DEITSCH-PEREZ: Okay. And
17 just, John, just so I don't have to
18 object each time, when you say "you,"
19 you're talking about Dugaboy?
20 MR. MORRIS: I'm talking about
21 both unless I say otherwise. But thank
22 you for pointing that out.
23 MS. DEITSCH-PEREZ: Okay.
24 MR. DRAPER: John, just so you
25 know, to the extent that -- hold on.

1 N. Dondero
2 I'm muted.
3 To the extent Deborah raises an
4 objection for the "you," Nancy, as a
5 trustee, I'm not going to say anything,
6 but my objection is a follow-on for the
7 same thing, for the same reasons.
8 MR. MORRIS: Okay. I appreciate
9 that, Douglas.
10 So I'm going to ask the question
11 again.
12 BY MR. MORRIS:
13 Q. Is it your testimony that you, as
14 the trustee of The Dugaboy Investment
15 Trust, entered into oral agreements with
16 your brother between December and the year
17 each note was made and February of the
18 following year, pursuant to which plaintiff
19 agreed that plaintiff would forgive the
20 notes if certain portfolio companies were
21 sold for greater than cost or on a basis
22 outside of James Dondero's control?
23 A. That is correct.
24 Q. Okay. And can we refer to each
25 of the oral agreements that are the subject

1 N. Dondero
2 of paragraph 82 individually as an
3 agreement and collectively as the
4 agreements?
5 A. Um-hmm. Yes.
6 Q. Is that a yes?
7 A. Yes. That is a yes. Sorry.
8 Q. And do you and Dugaboy understand
9 that the phrase "plaintiff" in paragraph 82
10 refers to Highland?
11 A. Yes.
12 Q. And do you and Dugaboy understand
13 that Dugaboy, as the representative of a
14 majority of the Class A shareholders of
15 Highland is the actual entity that entered
16 into the agreements on behalf of Highland?
17 A. Yes.
18 Q. And you are the trustee of
19 Dugaboy today, correct?
20 A. Correct.
21 Q. And you were the trustee of
22 Dugaboy at the time each of the agreements
23 referred to in paragraph 82 was entered
24 into, correct?
25 A. Correct.

1 N. Dondero
2 Q. And you personally caused Dugaboy
3 to enter into each agreement that is
4 referred to in paragraph 82, correct?
5 MS. DEITSCH-PEREZ: Object to the
6 form.
7 BY MR. MORRIS:
8 Q. You can answer.
9 MS. DEITSCH-PEREZ: I'm sorry,
10 John, can you repeat the question,
11 please?
12 BY MR. MORRIS:
13 Q. You personally caused Dugaboy to
14 enter into each of the agreements that's
15 referred to in paragraph 82, correct?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 A. Correct.
19 Q. What is Dugaboy?
20 A. The trust, the living
21 maintenance, education, and health trust.
22 Q. Do you know when it was formed?
23 A. 2010.
24 Q. Have you been the trustee of the
25 Dugaboy Trust since the time it was

1 N. Dondero
2 created?
3 A. No.
4 Q. Who preceded you as trustee, to
5 the best of your knowledge?
6 A. I don't know.
7 Q. Did you ever ask anybody who
8 preceded you as trustee of The Dugaboy
9 Investment Trust?
10 A. Did I ever ask who was the
11 trustee prior to --
12 Q. Yes.
13 A. I did not.
14 Q. Okay. Do you recall when you
15 became the trustee of the Dugaboy Trust?
16 A. October 2015.
17 Q. Did somebody appoint you to be
18 trustee of the Dugaboy Trust?
19 A. By "appoint," do you mean asked
20 me to be?
21 Q. Okay. Let me restate the
22 question.
23 A. Sorry.
24 Q. Do you know how you became the
25 trustee of the Dugaboy Trust?

1 N. Dondero
2 A. Jim had asked me to.
3 Q. Did Jim ask you to be the Dugaboy
4 trustee at around the same time that you
5 became the trustee?
6 A. That's correct.
7 Q. Prior to accepting Jim's --
8 withdrawn.
9 Did you agree to become the
10 trustee at the Dugaboy Trust in response to
11 Jim's request?
12 A. Yes, sir.
13 Q. Okay. Before you accepted the
14 appointment as trustee of the Dugaboy
15 Trust, did you obtain any information about
16 the purpose of the Dugaboy Trust?
17 A. Yes.
18 Q. What information do you recall
19 obtaining before you agreed to serve as the
20 trustee at the Dugaboy Trust?
21 A. The purpose of the trust is to
22 provide health, education, maintenance,
23 lifestyle for the beneficiaries, who is my
24 brother, for as long as he lives and then
25 his children and subsequent generations.

1 N. Dondero
2 Q. Is your brother the sole
3 beneficiary of the Dugaboy Trust during his
4 lifetime?
5 A. Yes.
6 Q. Did you make any independent
7 decisions with respect to the Dugaboy
8 Trust?
9 A. Of course.
10 Q. Do you know if the Dugaboy Trust
11 owned an interest in Highland at the time
12 Dugaboy entered into each of the agreements
13 referred to in paragraph 82?
14 A. Okay. I'm sorry. Say that
15 again, John.
16 Q. Do you know whether Dugaboy owned
17 an interest in Highland at the time each
18 agreement was entered into?
19 MS. DEITSCH-PEREZ: Other than
20 what she's already testified to?
21 A. Other than it being a major Class
22 A shareholder, John? A limited partner.
23 Q. I'm sorry, it's a little bit of a
24 different question.
25 A. Okay.

1 N. Dondero
2 Q. You entered into more than one
3 agreement with your brother; is that right?
4 A. That's correct.
5 Q. How many agreements did you enter
6 into with him?
7 A. Okay. How many notes or how many
8 agreements -- you mean, per -- one per year
9 for three years covering 13 notes.
10 Q. So there's three annual
11 agreements that you recall? Do I have that
12 right?
13 A. Correct.
14 Q. And was Dugaboy's interest in
15 Highland the same at each moment that you
16 entered into each of the three agreements?
17 A. I'm sorry?
18 Q. Do you know whether -- do you
19 know whether Dugaboy's interest in Highland
20 changed at all between the time that you
21 entered into each of the three agreements
22 that you just referred to?
23 A. I don't know. I don't think so.
24 Q. Did you ever ask anybody at any
25 time prior to the petition date if

1 N. Dondero
2 Dugaboy's interest in Highland changed at
3 any time during the period in which you
4 were entering into these agreements on
5 behalf of Dugaboy?
6 A. No.
7 And, John, can I back up for a
8 second?
9 Q. Sure.
10 A. Just in answer to one of my
11 questions when I said that I had three
12 conversations with Jim. That pertained to
13 this procedure. That's my answer for this
14 scope.
15 Q. Right.
16 A. Okay. Just so we're on the same
17 page. Okay. Okay.
18 Q. And do you recall -- we'll get to
19 it.
20 All right. So you entered into
21 three agreements.
22 Do I have that right?
23 A. Correct.
24 Q. And do you recall when you
25 entered into each one of the three

1 N. Dondero
2 agreements?
3 A. To the best of my recollection,
4 it was around the holidays.
5 Q. Do you remember the year you
6 entered into the first agreement?
7 A. It would have been either been
8 the tail end of '17, beginning of '18.
9 Q. And would the second agreement be
10 the tail of '18, the beginning of '19?
11 A. Correct, sir.
12 Q. And would the third one be the
13 tail of '19 and the beginning of '20?
14 A. Either/or. Correct. Um-hmm.
15 Q. Okay. And when we say late in
16 each year, is paragraph 82 correct, to the
17 best of your knowledge, that it was either
18 December of the year or the following
19 January or February?
20 A. Correct.
21 Q. So it's your recollection that as
22 the trustee of The Dugaboy Investment
23 Trust, you entered into an agreement
24 pursuant to 3.10 of the LP agreement in
25 either December 2019 or January or February

1 N. Dondero
2 of 2020?
3 A. Yes.
4 Q. Okay. So you entered into that
5 third agreement after the petition date.
6 Do I have that right?
7 A. That's correct.
8 Q. Do you recall that there came a
9 time in January of 2020 when your brother
10 relinquished control of Highland in favor
11 of an independent board?
12 A. January of '20, yes. Um-hmm.
13 Q. Do you recall if the agreement
14 that you entered into in late 2019 or early
15 2020 occurred before or after your brother
16 surrendered control of Highland?
17 A. I believe it was before.
18 Q. So sometime in December of 2019
19 or prior to the date in January when your
20 brother surrendered control, you and your
21 brother entered into the third in the
22 series of three oral agreements that are
23 referred to in paragraph 82, correct?
24 A. Correct.
25 Q. Okay. Do you recall what the

1 N. Dondero
2 terms of each of the oral agreements was?
3 A. They were all the same, the
4 agreements. Obviously for different notes.
5 But the terms were that the notes would be
6 forgiven if any of the three portfolio
7 companies that we discussed earlier,
8 Trussway, Cornerstone, MGM, would monetize
9 at a higher value, and then the notes would
10 be forgiven and considered deferred
11 compensation.
12 Q. And when you say a higher value,
13 did you understand at the time you entered
14 into the agreements what higher value
15 meant?
16 A. Yes.
17 Q. Okay. What does higher value
18 mean in the context of the agreements that
19 you entered into with your brother?
20 A. Higher than the purchase price.
21 Q. So do I have this correct that if
22 one of the three portfolio companies was
23 sold for a value that exceeded the cost by
24 at least one dollar, then all of the notes
25 that were subject to the agreements would

1 N. Dondero
2 be forgiven?
3 A. That's correct.
4 Q. Okay. Can you identify the
5 promissory notes that were the subject of
6 each of the three agreements?
7 A. I don't understand by identified,
8 John. In your book or --
9 Q. Are you able to list for me the
10 promissory notes --
11 A. Sure --
12 Q. Let me finish the question,
13 please.
14 Are you able to list for me the
15 promissory notes that were the subject of
16 each of the three agreements?
17 A. In 2017, there were four notes:
18 One to NexPoint, two to HCRE, I believe,
19 and one to HCMS. I don't have specifics,
20 but I believe the four of them originally
21 totaled somewhere near 60 million, in that
22 ballpark, when they were originally set up.
23 That was 2017.
24 MS. DEITSCH-PEREZ: John, we have
25 a list.

1 N. Dondero
2 Do you want her to do this from
3 memory or do you want her to look --
4 MR. MORRIS: I don't. I'm going
5 to try it a different way, Deborah.
6 MS. DEITSCH-PEREZ: Okay.
7 BY MR. MORRIS:
8 Q. Is there -- did the three oral
9 agreements with your brother --
10 A. Yes?
11 Q. -- cover all of the promissory
12 notes that are subject of the lawsuits in
13 which are a defendant?
14 A. Yes.
15 Q. Do you know if any of the three
16 agreements you entered into with your
17 brother cover any promissory notes that are
18 not the subject of the lawsuits in which
19 you are a defendant?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 A. I don't believe they do.
23 Q. Okay. So to the best of your
24 knowledge, as the person who caused Dugaboy
25 to enter into these agreements on behalf of

1 N. Dondero
2 Highland, you do not believe that your
3 agreements covered any promissory note that
4 is the subject of the lawsuits that have
5 been commenced against you, correct?
6 MS. DEITSCH-PEREZ: Wait. Can
7 you -- I think you -- can you have the
8 court reporter read it back so you can
9 hear it? Because either I heard it
10 wrong or you misspoke, I think.
11 THE REPORTER: I can read it
12 back, if you'd like.
13 MR. MORRIS: Sure.
14 MS. DEITSCH-PEREZ: Yeah,
15 Annette, can you read it back?
16 THE REPORTER: Sure.
17 (Question was read back as
18 follows:
19 "QUESTION: Okay. So to the best
20 of your knowledge, as the person who
21 caused Dugaboy to enter into these
22 agreements on behalf of Highland, you
23 do not believe that your agreements
24 covered any promissory note that is the
25 subject of the lawsuits that have been

1 N. Dondero
2 commenced against you, correct?")
3 MR. MORRIS: All right. Let me
4 ask the question again. Let me ask the
5 question again.
6 MS. DEITSCH-PEREZ: Okay.
7 BY MR. MORRIS:
8 Q. Ms. Dondero, as the person who
9 caused Dugaboy to enter into the agreements
10 described in paragraph 82 on behalf of
11 Highland, do you have any reason to believe
12 that those agreements related to any
13 promissory notes that are not the subject
14 of the lawsuits that have been commenced
15 against you and Dugaboy?
16 A. No.
17 Q. Okay.
18 A. I believe they include the notes
19 that we've been referring to, that we've
20 been talking to about all day, John.
21 Q. Okay. Did you or Dugaboy ever
22 make a list of the promissory notes that
23 were the subject of each agreement --
24 withdrawn.
25 Prior to the petition date, did

1 N. Dondero
2 you or Dugaboy ever make a list of the
3 promissory notes that were the subject of
4 each agreement?
5 MS. DEITSCH-PEREZ: Object to the
6 form.
7 A. I don't recall.
8 Q. You have no recollection of you
9 or Dugaboy ever writing down the promissory
10 notes that were the subject of any of the
11 three oral agreements that Dugaboy entered
12 into with your brother, correct?
13 A. I don't believe I did.
14 Q. And you don't believe Dugaboy did
15 either, right?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 A. Correct.
19 Q. Are you or Dugaboy aware of
20 anything in writing that identifies --
21 withdrawn.
22 Are you and Dugaboy aware of
23 anything that was written prior to the
24 petition date that identified the
25 promissory notes that were the subject of

1 N. Dondero
2 each agreement that was entered into?
3 A. Am I aware of anything that was
4 written down not by me?
5 Q. Right.
6 A. Nothing that I can recall at this
7 time.
8 Q. How do you know that the
9 promissory notes that are the subject of
10 the lawsuits against you were all subject
11 to the oral agreements that you entered
12 into on behalf of Dugaboy with your
13 brother?
14 A. Of the 13 notes in total, we
15 discussed 4 and 17; 6 and 18; and 3 in 19,
16 and that's total, if I'm not mistaken, the
17 13 notes in question.
18 Q. Okay. Now neither you nor
19 Dugaboy ever saw any of the notes prior to
20 the petition date, correct?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 A. That's correct.
24 Q. And neither you nor Dugaboy are
25 aware of any writing that was created prior

1 N. Dondero
2 to the petition date that identified the
3 promissory notes that were the subject of
4 the agreements between Dugaboy and your
5 brother, correct?
6 A. That is correct.
7 Q. So are you basing your belief
8 that the agreements covered only the
9 promissory notes that are the subject of
10 the lawsuits on your memory or on anything
11 else?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 MR. MORRIS: Withdrawn.
15 BY MR. MORRIS:
16 Q. What is the basis for your belief
17 that the agreements covered the promissory
18 notes that are the subject of each -- of
19 the lawsuits against you and Dugaboy?
20 A. Because I remember what we
21 discussed.
22 Q. So you have a memory. You
23 remember that three to four years ago, you
24 can remember the promissory notes that were
25 the subject of your first agreement even

1 N. Dondero
2 though you never saw the notes? Do I have
3 that right?
4 A. I remember the amount. I don't
5 remember all the specifics from that many
6 years ago, John, but I do remember the
7 amount per each year, and I knew that there
8 were 13 in total.
9 Q. Who identified the notes that
10 would be the subject of the agreements? Do
11 you recall?
12 A. In what context who identified
13 them?
14 Q. Well, the agreement was entered
15 into twin in your capacity as the trustee
16 of Dugaboy and your brother, correct?
17 A. Correct.
18 Q. As between you and your brother,
19 did one of you identify the notes that
20 would be the subject of the agreements?
21 A. Yes, that would be --
22 Q. And who identified -- okay. And
23 who was that?
24 A. Jim.
25 Q. And during these three

1 N. Dondero
2 conversations, did he describe for you the
3 notes that were going to be the subject of
4 the conversation?
5 A. Yes.
6 Q. I apologize. I withdraw the
7 question.
8 Did your brother describe for you
9 the notes that were going to be the subject
10 of each agreement?
11 A. Yes.
12 Q. Do you have any basis for knowing
13 which agreements -- no. Withdrawn.
14 Do you have any basis for knowing
15 which notes are the subject of the
16 agreements other than what your brother
17 told you in the three -- in the
18 conversations that led to the three
19 agreements?
20 A. No, I don't believe so.
21 Q. Did your brother explain to you
22 why he selected these notes that are the
23 subject of the lawsuits for inclusion in
24 the agreements?
25 A. Not that I recall.

1 N. Dondero
2 MR. MORRIS: I'd like to put up
3 on the screen a document that's been
4 marked as Exhibit 43.
5 (N. Dondero Exhibit 43,
6 Promissory Note, Bates-stamped
7 D-CNL000550 through 551, marked for
8 identification, as of this date.)
9 BY MR. MORRIS:
10 Q. And do you see, Ms. Dondero, that
11 this is a promissory note dated January 18,
12 2018, in the amount of $7,900,000?
13 MR. MORRIS: And if we can scroll
14 to the bottom so we could see the
15 signature.
16 BY MR. MORRIS:
17 Q. Do you see that that's been
18 signed by your brother?
19 A. I see that.
20 Q. Have you ever seen this
21 particular promissory note before?
22 MR. MORRIS: And we can go back
23 to the top.
24 (Document review.)
25 A. It doesn't look familiar, John.

1 N. Dondero
2 Q. This note is not a note that's
3 subject to your agreement with your
4 brother, correct?
5 A. Correct.
6 Q. Do you know why?
7 A. I do not.
8 Q. And Highland has not sued anybody
9 to collect under this note, to the best of
10 your knowledge, correct?
11 MS. DEITSCH-PEREZ: Object to the
12 form.
13 A. I --
14 BY MR. MORRIS:
15 Q. Withdrawn.
16 Are you aware of any lawsuit that
17 has been commenced by Highland to collect
18 under this note?
19 A. I am not aware of any.
20 Q. When you entered into these
21 agreements, did you have any understanding
22 that the agreement would cover all of the
23 notes that were executed by your brother or
24 by other entities under the Highland
25 umbrella?

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1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 A. John, can you repeat the
5 question, please?
6 Q. Sure.
7 At the time that you entered into
8 the agreements, did you have any
9 understanding that the agreements would
10 cover all notes executed by your brother,
11 NexPoint, HCRE and HCMS?
12 A. Yes.
13 Q. Okay. Was it your understanding
14 that all promissory notes would be covered?
15 MS. DEITSCH-PEREZ: Do you mean
16 all of the ones at issue here or all,
17 like, including --
18 MR. MORRIS: No.
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 MR. MORRIS: I thought I was
22 clear, but I'll try it one more time.
23 MS. DEITSCH-PEREZ: Please.
24 BY MR. MORRIS:
25 Q. Was it your understanding that

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1 N. Dondero
2 when you entered into each of these
3 agreements, that the agreements would cover
4 every promissory note that was executed by
5 your brother, by NexPoint, by HCMS, and by
6 HCRE, irrespective of whether it wound up
7 being part of the lawsuit?
8 A. My understanding for the
9 agreement I had with Jim is just for these
10 13 notes.
11 Q. Okay. So there may be other
12 notes that Jim or NexPoint or HCRE or HCMS,
13 there may be other notes that they
14 executed, but if there are, they were not
15 the subject of any of your agreements with
16 your brother, correct?
17 MS. DEITSCH-PEREZ: Object to the
18 form.
19 You mean any of the agreements
20 that she's been testifying here today?
21 MR. MORRIS: Yes. We've defined
22 agreements, so unless there is a
23 question, unless somebody wants to
24 revisit the definition, we've defined
25 it.

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1 N. Dondero
2 MS. DEITSCH-PEREZ: Okay. Got
3 it. No.
4 A. Um-hmm.
5 Q. When you say "um-hmm," what could
6 you mean?
7 A. I'm sorry, John. The
8 conversation got me away from the question.
9 I'm sorry. I'm sorry.
10 MS. DEITSCH-PEREZ: It's my
11 fault.
12 THE WITNESS: I'm sorry.
13 A. Go ahead, John.
14 MR. MORRIS: Can I have the last
15 question read back, please.
16 THE REPORTER: Sure.
17 (Question was read back as
18 follows:
19 "QUESTION: Okay. So there may
20 be other notes that Jim or NexPoint or
21 HCRE or HCMS, there may be other notes
22 that they executed, but if there are,
23 they were not the subject of any of
24 your agreements with your brother,
25 correct?")

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1 N. Dondero
2 A. Correct.
3 Q. Okay.
4 A. I'm only speaking for these 13.
5 Q. Okay. Do you recall whose idea
6 it was to enter into each of the
7 agreements?
8 A. It was Jim's suggestion.
9 Q. Okay. And did he call you to
10 make the suggestion?
11 A. Yes. At least one, if not two of
12 the agreements were verbal or at least
13 started verbally. And one I remember was
14 in person.
15 Q. Okay. Did you ever have any
16 concerns that your brother might have a
17 conflict of interest since he controlled
18 both the borrower and the lender under each
19 of these transactions?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 A. No.
23 Q. Did it ever occur to you that
24 your brother might have a conflict of
25 interest since he controlled both the

1 N. Dondero
2 borrower and the lender in each of these
3 transactions?
4 MS. DEITSCH-PEREZ: Object to the
5 form.
6 A. I'm sorry, I thought I answered.
7 No.
8 Q. Yeah, the first question was
9 whether you had any concerns. And the
10 second question was did it ever occur to
11 you.
12 Did you understand that?
13 A. I did.
14 It didn't occur to me, and I
15 didn't have any concern.
16 Q. Okay. And I think you just
17 mentioned that your recollection is that
18 two of the agreements were reached on the
19 telephone, and one was reached in person;
20 is that right?
21 A. That's correct.
22 Q. Okay. The agreement that was
23 reached in person, where were you?
24 A. Florida.
25 Q. Where at?

1 N. Dondero
2 A. My house in Vero Beach.
3 Q. Was anybody else present during
4 this discussion?
5 A. Jim's kids, underage. My father,
6 who's elderly. Family.
7 Q. Do you have any reason to believe
8 that anybody was aware of the substance of
9 the discussion that you had with your
10 brother concerning the agreement?
11 A. No.
12 Q. The two other conversations that
13 you had on the phone, do you recall whether
14 any person participated in those
15 discussions other than your brother and
16 yourself?
17 A. No one else participated.
18 Q. Out of the three agreements that
19 you entered into, do you recall whether it
20 was the first, second, or third that was
21 entered into during a face-to-face meeting?
22 A. To the best of my recollection,
23 it would have been the end of '18,
24 beginning of '19.
25 Q. Were there any conversations --

1 N. Dondero
2 withdrawn.
3 So there were three agreements;
4 is that correct?
5 A. Through this discussion?
6 Q. Yes.
7 A. There are three agreements, yes.
8 Q. And all three agreements are oral
9 agreements, correct?
10 A. They're all oral. One in person
11 and two on the phone, yes.
12 Q. Okay. Were there any
13 communications concerning the scope or term
14 or terms of the proposed agreement that
15 took place before the day on which the
16 agreements were entered into?
17 MS. DEITSCH-PEREZ: Object to the
18 form.
19 BY MR. MORRIS:
20 Q. I just want to know if there were
21 any conversations or communications that
22 occurred prior to the entry of the three
23 agreements.
24 A. There could have been, John.
25 Q. I know there could have been.

1 N. Dondero
2 I'm asking what you remember.
3 A. I don't -- at this time, I don't
4 know.
5 Q. Okay. Do you have any reason to
6 believe, as you sit here right now, that
7 there were any communications that occurred
8 prior to the three days in which you
9 entered into the three oral agreements?
10 A. There could have been.
11 Q. I appreciate that. I'm asking if
12 you have any recollection of any such
13 communications.
14 A. I'm not sure at this time, John.
15 Q. Were any of the oral agreements
16 ever the subject of negotiation?
17 A. I don't understand what you're
18 asking.
19 Q. Why don't you tell me what the
20 conversations were that led to each of the
21 agreements to the best that you can recall.
22 A. The conversations with my brother
23 that took place towards the end of each of
24 the years that we're discussing, they
25 started as general conversations about

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1 N. Dondero
2 business, about work. And Jim would bring
3 up the loans that were done earlier in the
4 year.
5 He had stated in the conversation
6 that he thought he was undercompensated for
7 the work that he does and the time that he
8 puts in. And he wanted those loans to be
9 forgiven if any of the three portfolio
10 companies that we talked about monetized at
11 a higher value.
12 Q. And you agreed with that?
13 A. Well, it was -- yes, I did agree
14 with that proposal. I thought it was a
15 win-win for everybody.
16 Q. Did you ever propose any
17 alternative to the proposal that your
18 brother made that you just described?
19 A. I did not.
20 Q. Can you identify any provision of
21 any of the agreements that you negotiated
22 with your brother?
23 A. I didn't negotiate, but Jim had
24 concern, and rightfully so, that he would
25 put in the work and the time and the effort

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1 N. Dondero
2 to increase the value of any of those
3 portfolio companies and that factors that
4 you mention you beyond his control might
5 cause them to be sold at a value under the
6 price that was paid for them and this deal
7 would not happen.
8 So hence, that part of the deal
9 came up, but I don't know if I'd consider
10 it a negotiation.
11 MR. MORRIS: Okay. I'm going to
12 move to strike.
13 BY MR. MORRIS:
14 Q. And I'm just going to ask you if
15 you can identify any provision of any of
16 the agreements that you recall being the
17 subject of negotiation?
18 A. I don't recall any part being a
19 negotiation.
20 Q. Who identified the portfolio
21 companies that were the subject of each
22 agreement?
23 A. Jim.
24 Q. Did you ask your brother why he
25 selected those companies?

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1 N. Dondero
2 A. No.
3 Q. Do you know why your brother
4 selected those companies?
5 A. I do not.
6 Q. Did you ever suggest that
7 different portfolio companies should be
8 used?
9 A. I did not.
10 Q. Did you ask him if Highland had
11 any other portfolio companies?
12 A. I don't know.
13 Q. And your brother is the person
14 who proposed that all of the notes would be
15 forgiven if one of the three portfolio
16 companies was sold for greater than cost;
17 is that right?
18 A. That's correct.
19 Q. Do you know whether your brother
20 had a duty to maximize value at the time
21 that you entered into the agreements with
22 him?
23 A. I don't know.
24 Q. Did you ever ask anybody prior to
25 entering into any of the agreements whether

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1 N. Dondero
2 your brother already had a duty to maximize
3 value?
4 A. I did not.
5 Q. Did you ever make a
6 counterproposal to the term of the
7 agreement that said all of the notes would
8 be forgiven if one of the portfolio
9 companies was sold for greater than cost?
10 A. I'm sorry, John. Once again, the
11 question, please?
12 Q. Sure.
13 Did you or Dugaboy ever make a
14 counterproposal to the provision in the
15 agreements that all of the notes would be
16 forgiven if one of the portfolio companies
17 was sold above cost?
18 A. Wasn't that his proposal? Jim's
19 proposal?
20 Q. It was his proposal. I think
21 you've testified to that. And I'm asking
22 you if you or Dugaboy ever made a
23 counterproposal with respect to that
24 particular provision?
25 A. No.

1 N. Dondero
2 Q. Did you ever consider requiring a
3 higher threshold other than having a sale
4 above cost for the triggering of the
5 condition subsequent?
6 A. No.
7 Q. Was there any part of your
8 brother's proposal that you rejected?
9 A. No.
10 Q. Was there any part of your
11 brother's proposal that Dugaboy rejected?
12 A. No.
13 Q. Is there any aspect of any of the
14 agreements that incorporates a proposal or
15 idea that you or Dugaboy made?
16 MS. DEITSCH-PEREZ: Object to the
17 form.
18 A. No.
19 Q. Now do you recall that paragraph
20 82 also provides that all of the notes
21 would be forgiven if any of the portfolio
22 companies was sold on a basis out of Jim
23 Dondero's control?
24 A. Yes.
25 Q. Whose idea was it to include that

1 N. Dondero
2 provision in the agreement?
3 A. I thought I already stated that.
4 That Jim had concerns. That was Jim's
5 proposal.
6 Q. Okay. Did you or Dugaboy reject
7 that proposal?
8 A. We did not.
9 Q. Did you push back on that
10 proposal at all?
11 A. No.
12 Q. Did either you or Dugaboy make
13 any counterproposal to that aspect of the
14 agreement?
15 A. No.
16 Q. Do you understand that James
17 Seery is in control of the portfolio
18 companies subject to the agreement?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I didn't know that.
22 Q. Are you aware that your brother
23 no longer controls the portfolio companies
24 that were the subject of the agreement?
25 A. Yes.

1 N. Dondero
2 Q. So you're aware that somebody
3 other than your brother may sell Highland's
4 interest in the portfolio companies; is
5 that right?
6 A. Correct.
7 Q. So under the agreements that you
8 caused Dugaboy to enter into on behalf of
9 Highland, all of the notes that were
10 subject to the agreements will be forgiven
11 at the moment somebody other than your
12 brother sells one of the portfolio
13 companies.
14 Do I have that right?
15 A. I'm sorry, John. Once again?
16 Q. Okay. I just want to understand,
17 you know, the import of the agreements that
18 you've described. So let me try again.
19 Under the agreements that you
20 caused Dugaboy to enter into on behalf of
21 Highland, all of the notes that are subject
22 to the agreements will be forgiven the
23 moment that any of those three portfolio
24 companies are sold.
25 Do I have that right?

1 N. Dondero
2 A. Correct, you have that right.
3 Q. Why did you agree, as the trustee
4 of Dugaboy, that all of the notes subject
5 to the agreements would be forgiven if any
6 of the subject portfolio companies was sold
7 on a basis outside of your brother's
8 control?
9 A. I agreed to that provision of the
10 agreement because -- and I believe I stated
11 this -- Jim had concerns about doing the
12 work and the effort and putting the time in
13 to build up any one of those three
14 portfolio companies and then having
15 somebody outside of his control sell it for
16 less than a monetized value that would
17 allow the notes to be forgiven.
18 Q. But there's no component of the
19 agreement that will avoid the forgiveness
20 of the notes depending on the price at
21 which the assets were sold, correct?
22 A. John, there's no provision of the
23 agreement what?
24 Q. If somebody were to sell the
25 portfolio assets for a substantial price

1 N. Dondero
2 above cost --
3 A. Above cost?
4 Q. Above cost.
5 -- would the notes still be
6 forgiven?
7 A. Yes, of course.
8 Q. And if the portfolio companies
9 are sold at a price substantially below
10 cost, will the notes still be forgiven?
11 A. They will if they're sold by
12 somebody that's not my brother, that's not
13 Jim.
14 Q. Okay.
15 A. If somebody comes in or -- who
16 did you say, that gentleman that now has
17 control of them, if he decides to sell them
18 below cost, the notes are still forgiven.
19 Q. And if he decides to sell them
20 above cost, the notes are forgiven, right?
21 A. That is correct, but Highland
22 would benefit.
23 Q. How does Highland benefit because
24 some third party sells the assets?
25 A. Okay. That's not what I said.

1 N. Dondero
2 But to answer your question, they
3 wouldn't -- if it got sold for less than
4 the value of them, then Highland wouldn't
5 benefit. But that wouldn't be in Jim's
6 control.
7 Q. Did you expect Highland to
8 benefit if the portfolio companies were
9 sold on a basis outside of Mr. Dondero's
10 control?
11 A. I have no idea, John.
12 Q. Did you have any idea -- did you
13 or Dugaboy have any idea when you entered
14 into the agreement if Highland would
15 benefit from the sale of the portfolio
16 companies on a basis outside of
17 Mr. Dondero's control?
18 A. I wouldn't know that.
19 Q. Okay. Now if Jim sold one of
20 those portfolio companies for a dollar
21 above cost, all of the notes would have
22 been forgiven, correct?
23 A. Correct.
24 Q. And did he have the ability to
25 sell any of the portfolio companies at the

1 N. Dondero
2 time you entered into the agreements?
3 MS. DEITSCH-PEREZ: Object to the
4 form.
5 MR. MORRIS: Withdrawn.
6 BY MR. MORRIS:
7 Q. Did you and Dugaboy understand
8 that Mr. Dondero had the ability to sell
9 any of the portfolio companies at the time
10 you entered into the agreements?
11 A. Yes.
12 Q. Okay. If your brother --
13 A. That was my understanding.
14 Q. Okay. And if your brother sold
15 one of those portfolio companies for a
16 dollar above cost, what benefit would
17 Highland receive if the consequence of that
18 was the forgiveness of more than $60
19 million in principal amount of promissory
20 notes?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 A. John?
24 Q. Yes?
25 A. Oh.

1 N. Dondero
2 Q. You can answer.
3 A. That hasn't happened in a
4 hypothetical. I don't have an opinion on
5 that.
6 Q. Well, you entered into the
7 agreements, did you not?
8 A. I did.
9 Q. And you agreed on behalf of
10 Dugaboy on behalf of the plaintiff that if
11 Jim sold one of the portfolio companies at
12 a dollar above cost, all of the notes would
13 be forgiven, correct?
14 A. I entered into the agreement for
15 Dugaboy that if, you're right, any of the
16 portfolio companies monetized higher,
17 right, the notes would be forgiven. But --
18 and I thought about your scenario, but I
19 also thought about it could be $100
20 million. We don't know. This is all
21 hypothetical.
22 Q. It's actually not hypothetical
23 because the term of your agreement was that
24 he could have sold any of the three
25 portfolio companies at a dollar above cost

1 N. Dondero
2 and received in return the forgiveness of
3 all of these notes, right?
4 A. Correct.
5 Q. Okay. As the trustee of Dugaboy
6 who entered into the agreement on behalf of
7 Highland, what benefit would there be to
8 Highland if the portfolio companies were
9 sold at any price less than the aggregate
10 principal amount of the notes?
11 A. Less than?
12 Q. Let's say it was sold for $50
13 million above cost, then Highland would
14 have had to forgiven more than $60 million
15 of notes, correct?
16 A. Correct.
17 Q. How would Highland benefit by
18 having an asset sold $50 million above cost
19 where the consequence was that they would
20 forgive more than $50 million of money that
21 was owed to it?
22 A. Well, I looked at it differently,
23 John. And I thought it benefitted Highland
24 at the time because money didn't come out
25 of Highland's balance sheets to increase

1 N. Dondero
2 Jim's salary. They received interest in
3 payment on the loans. We don't know when
4 and if the trigger is going to come into
5 play that the loans would be forgiven.
6 Even as we sit here today, 20-plus million
7 has been paid on the loan.
8 Q. Can you explain why your brother
9 is making payments on demand notes after
10 entering into the agreements with you?
11 A. It's my limited understanding
12 that he's made payments when whatever
13 entity needs money.
14 Q. And what is the basis for that
15 understanding?
16 A. Common sense. I don't know,
17 John.
18 THE WITNESS: And I hate to do
19 this, but I know when you -- can you
20 come to a place of a break in the near
21 future whenever is convenient in your
22 questions there, please?
23 MR. MORRIS: Sure.
24 BY MR. MORRIS:
25 Q. What is the basis for saying that

1 N. Dondero
2 your brother paid back loans at times that
3 Highland needed the money -- withdrawn.
4 Is it your testimony that your
5 brother made payments against the loans
6 after entering into the agreements with you
7 because Highland needed the money?
8 A. That's my belief, John.
9 Q. Okay. And what is the basis for
10 that belief?
11 A. I don't have one except I know
12 how my brother works.
13 Q. Do you know that your brother
14 caused the borrowers under the promissory
15 notes to make payments against those notes
16 after entering into the agreements with
17 you?
18 A. I do not.
19 Q. Did you ever ask anybody?
20 A. I did not.
21 Q. And I think we covered this
22 earlier, but I just want to try and cover
23 it quickly before we take the break.
24 At the time you entered into each
25 of the agreements, neither you nor Dugaboy

1 N. Dondero
2 had any understanding of the nature of
3 Highland's interest in each of the
4 portfolio companies, correct?
5 A. That would be correct, yes.
6 Q. And at the time the three
7 agreements were entered into, neither you
8 nor Dugaboy had any understanding as to
9 Highland's cost for acquiring its interest
10 in each of the three portfolio companies,
11 correct?
12 A. Yes, that is correct.
13 Q. And at the time each of these
14 three agreements were entered into, neither
15 you nor Dugaboy had any information as to
16 the value of Highland's interest in any of
17 the portfolio companies, correct?
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 MR. MORRIS: You can answer.
21 A. I'm sorry, John, can you repeat
22 the question, please?
23 Q. At the time that you entered into
24 each of these three agreements, neither you
25 nor Dugaboy had any information concerning

1 N. Dondero
2 the value of Highland's interest in the
3 three portfolio companies, correct?
4 MS. DEITSCH-PEREZ: Object to the
5 form.
6 A. That's correct, John.
7 Q. And at the time that you entered
8 into these three agreements, neither you
9 nor Dugaboy knew whether the value of
10 Highland's interest in the three portfolio
11 companies was more or less than the cost of
12 acquisition, correct?
13 A. That's correct.
14 MR. MORRIS: We can take that
15 break now if you'd like.
16 MR. DRAPER: John, this is
17 Douglas.
18 How much more do you think you
19 have?
20 THE VIDEOGRAPHER: The time is
21 2:41. We are going off the record.
22 (Recess is taken.)
23 THE VIDEOGRAPHER: The time is
24 2:57. We are back on the record.
25 MR. MORRIS: Can we put back up

1 N. Dondero
2 paragraph 82 from Mr. Dondero's answer
3 to the Amended Complaint?
4 (Document review.)
5 BY MR. MORRIS:
6 Q. Ms. Dondero, can you hear me?
7 A. Yes.
8 Q. Okay. Do you see in the middle
9 of paragraph 82 it talks about the purpose
10 of the agreement?
11 A. Um-hmm.
12 Q. And do you see where it says that
13 Jim Dondero, quote, "was otherwise
14 underpaid compared to reasonable
15 compensation levels in the industry"?
16 A. I see that.
17 Q. At the time that you caused
18 Dugaboy to enter into the three agreements
19 on behalf of Highland, did you believe that
20 James Dondero was underpaid compared to
21 reasonable compensation levels in the
22 industry?
23 A. Yes, I believed what he told me.
24 Q. Okay. Did you have any basis for
25 believing that he was underpaid compared to

1 N. Dondero
2 reasonable compensation levels in the
3 industry other than what your brother told
4 you?
5 A. No.
6 Q. Okay. Did Dugaboy have any basis
7 for believing that your brother was
8 underpaid compared to reasonable
9 compensation levels in the industry other
10 than what your brother said?
11 A. Not that I'm aware of.
12 Q. Prior to entering into each of
13 these three agreements, did you or Dugaboy
14 make any effort to ascertain whether your
15 brother was underpaid compared to
16 reasonable compensation levels in the
17 industry?
18 A. Not that I remember.
19 Q. At the time that you entered into
20 these agreements, neither you nor Dugaboy
21 knew the total compensation package that
22 Mr. Dondero received from Highland in any
23 calendar year, correct?
24 A. John, can you ask that question
25 again, please?

1 N. Dondero
2 Q. Yes. I'd be happy to.
3 At the time that you caused
4 Dugaboy to enter into each of the three
5 agreements that you've described, neither
6 you nor Dugaboy made any effort to
7 determine your brother was underpaid
8 compared to reasonable compensation levels
9 in the industry, correct?
10 A. That's correct.
11 Q. And at the time that you caused
12 Dugaboy to enter into the agreements,
13 neither you nor Dugaboy knew how much
14 compensation your brother received from
15 Highland in any particular year, correct?
16 MS. DEITSCH-PEREZ: You mean the
17 exact number?
18 MR. MORRIS: I mean general
19 number. Any number.
20 A. Okay. I think we spoke about
21 this earlier. I had a general number on
22 salary.
23 Q. Correct.
24 And now I'm asking about total
25 compensation, including deferred

1 N. Dondero
2 compensation, including any profit sharing,
3 including any distributions, total
4 compensation, right?
5 Do you see that this is referring
6 not to salary but to compensation?
7 A. I do.
8 Q. Okay.
9 A. And I would not have known that.
10 Q. Okay. So let me ask the question
11 again just to make sure it's clear.
12 At the time that you caused
13 Dugaboy to enter into each of these three
14 agreements, neither you nor Dugaboy knew
15 what Mr. Dondero's compensation was from
16 Highland for any particular year, correct?
17 A. Correct.
18 Q. And at the time that you caused
19 Dugaboy to enter into the three agreements,
20 neither you nor Dugaboy ever asked anybody
21 what Mr. Dondero's compensation was from
22 Highland for any particular year, correct?
23 A. Correct.
24 Q. And at the time you caused
25 Dugaboy to enter into these three

1 N. Dondero
2 agreements, neither you nor Dugaboy made
3 any effort to try to ascertain what
4 Mr. Dondero's compensation from Highland
5 was in any particular year, correct?
6 A. That's correct.
7 Q. Okay. Did you or Dugaboy ever
8 conduct any analysis of what reasonable
9 compensation levels in the industry were?
10 A. Not that I recall.
11 Q. Did Mr. Dondero ever tell you
12 what he thought reasonable compensation
13 levels were in the industry?
14 A. John, I vaguely remember him
15 throwing out examples of other people in
16 his position and the astronomical money
17 that they make. I just don't remember
18 their names or the companies.
19 Q. Okay. Did you or Dugaboy make
20 any effort at any time prior to entering
21 into the three agreements to determine what
22 reasonable compensation levels were in the
23 industry?
24 A. No.
25 Q. Did you or Dugaboy reach any

1 N. Dondero
2 conclusions prior to entering into the
3 agreements as to whether Mr. Dondero was
4 underpaid compared to reasonable
5 compensation levels in the industry?
6 A. The first part of that, John?
7 The first part of your question?
8 Q. Did you or Dugaboy reach any
9 conclusions prior to entering into the
10 three agreements as to whether your brother
11 in fact was underpaid compared to
12 reasonable compensation levels in the
13 industry?
14 A. Yes, I came to the conclusion
15 that he was based on what he told me.
16 Q. Okay. And you had no other
17 information upon which you relied to reach
18 your conclusion that he was underpaid
19 except for the information that your
20 brother provided to you, correct?
21 A. That's correct.
22 Q. Okay. And other than -- okay.
23 MR. MORRIS: We can take that
24 down. Thank you.
25 BY MR. MORRIS:

1 N. Dondero
2 Q. Ms. Dondero, do you know if the
3 terms of any of the agreements were ever
4 reduced to writing?
5 A. I didn't put them in writing.
6 That's all I can speak to.
7 Q. Have you ever seen the terms of
8 any of the agreements in writing?
9 A. I have not.
10 Q. Did anyone ever tell you that the
11 terms of the agreements were written down
12 anywhere?
13 A. Not that I recall.
14 Q. Did you or Dugaboy ever ask
15 anyone if the terms of the agreements were
16 written down anywhere?
17 A. Not that I remember.
18 Q. Did you believe that these
19 agreements were important at the time that
20 you caused Dugaboy to enter into them?
21 A. Yes.
22 Q. Why did you think that these
23 agreements were important?
24 A. I think I thought they were
25 important because they gave Highland the

1 N. Dondero
2 chance to motivate and get Jim -- or give
3 Jim an extra incentive to make the
4 portfolio companies into something really
5 magnanimous, which would have been great
6 for Highland and Jim.
7 Q. When you entered into the
8 agreements, did you intend that they would
9 be binding on Highland?
10 A. That was my belief, yes.
11 Q. Did it ever occur to you that you
12 might want to write down the terms of these
13 important agreements?
14 A. Honestly, it didn't come to mind,
15 no.
16 Q. Did you ever tell anybody in the
17 world prior to the petition date that you
18 had entered into these three agreements
19 with your brother?
20 A. Besides Melissa, who knew, I
21 don't remember anyone else offhand that I
22 would have discussed them with.
23 Q. How did Melissa know?
24 A. Pardon?
25 Q. Are you referring to Melissa

1 N. Dondero
2 Schroth?
3 A. Correct.
4 Q. Why do you think that she knew?
5 A. I have a vague memory of
6 discussing it with her.
7 Q. What do you remember about that
8 vague memory?
9 A. It was in regards to Dugaboy.
10 She is one of my main contact people, and I
11 think it was more a recap conversation.
12 Q. And what did she say?
13 A. She just listened, made a note, I
14 assume, made a mental note.
15 Q. Do you recall, did this occur in
16 a telephone conversation?
17 A. Yes, I believe it did.
18 Q. Okay. Do you recall when that
19 conversation took place?
20 A. I do not.
21 Q. Do you recall if it was before or
22 after the petition date?
23 A. I do not.
24 Q. Did she ask any questions?
25 A. Not that I recall.

1 N. Dondero
2 Q. Did you tell her which notes were
3 the subject of the agreements?
4 A. The conversation was not that
5 detailed.
6 Q. Well, if she didn't ask any
7 questions and she didn't say anything that
8 you recall in response, can you recall
9 everything you said to Ms. Schroth during
10 this conversation?
11 A. I don't remember, John, the
12 specifics.
13 Q. Do you remember anything about
14 the conversation at all?
15 A. I just remember them coming up in
16 conversation.
17 Q. You remember what coming up?
18 A. The forgiveness of the loan.
19 Q. Did she indicate to you that she
20 knew about it already?
21 A. I don't remember.
22 Q. Did she express any surprise at
23 what you told her?
24 A. No, but I do remember her saying
25 it was the great motivator.

1 N. Dondero
2 Q. And you don't think your brother
3 was otherwise motivated to sell one of
4 three assets at a dollar above cost,
5 correct?
6 A. I never said --
7 MS. DEITSCH-PEREZ: Object to the
8 form.
9 A. I didn't say that.
10 Q. Well, but that's what the
11 agreement permitted, correct, that the
12 notes would be forgiven if he sold an asset
13 at a dollar above cost, right?
14 MS. DEITSCH-PEREZ: Object to the
15 form.
16 A. John, at the time I entered into
17 the agreement, I believe that they would be
18 a motivator, an increased motivator.
19 You met my brother, right? You
20 know he's motivated.
21 Q. It never would have occurred to
22 me that he needed more motivation, but
23 maybe that's just my view.
24 A. It's increased motivation when
25 there's money on the line.

1 N. Dondero
2 Q. But how does it motivate him when
3 he can recover the benefits of the
4 agreement regardless of how much above cost
5 the asset is sold?
6 A. Okay. I'm sorry, John, one more
7 time, please, the question?
8 Q. How does it motivate him when he
9 will reap the benefits of the agreement if
10 he sells -- withdrawn.
11 How does he get motivated under
12 an agreement whereby he will get the
13 benefit of the forgiveness of over $60
14 million of notes without regard to how much
15 above cost he sells one of three assets?
16 A. Okay. John, when I entered into
17 these, he was still at the helm of
18 Highland.
19 Q. Correct.
20 A. So if he would have monetized
21 them at a really high value, he would have
22 benefitted from his interest, beneficial
23 interest in Highland.
24 Q. Under the terms of the agreement,
25 are you able to identify how Mr. Dondero

1 N. Dondero
2 would have been motivated whether --
3 withdrawn.
4 It doesn't matter under the
5 agreements that you entered into on behalf
6 of Dugaboy how much above cost the assets
7 are sold before Mr. Dondero could reap the
8 benefits of the agreement, correct?
9 A. Correct.
10 Q. And you could have, but you
11 didn't, demand that the notes would be
12 forgiven only if he sold the assets at --
13 I'm just going to pick a number -- 50
14 percent more than cost, right?
15 A. Anything is possible.
16 Q. But you didn't -- anything is
17 possible, but the fact is that neither you
18 nor Dugaboy made any proposal that would
19 tie the benefits that Mr. Dondero wanted to
20 the amount of gain that was to be recovered
21 on behalf of Highland, correct?
22 A. Correct. I didn't look at it the
23 way you are, correct.
24 Q. And so when you speak of
25 motivation under the terms of the agreement

1 N. Dondero
2 that you entered into on behalf of
3 Highland, Mr. Dondero would be indifferent
4 whether the asset was sold at 1 percent
5 above cost, at 10 percent above cost, more
6 than the face amount of the promissory
7 note, right? There's no relationship
8 between the gain to Highland and the
9 benefit to Mr. Dondero, correct?
10 A. You mean now when he's not at the
11 helm of Highland, John?
12 Q. No, I mean -- no. Let me try
13 again.
14 At the moment you entered into
15 the agreement --
16 A. Right.
17 Q. -- if a subsequent event
18 occurred, you and your brother knew that he
19 would receive more than $6 million in value
20 through the forgiveness of the notes,
21 correct?
22 A. Correct.
23 Q. But at the time that you entered
24 into the agreements, neither you nor your
25 brother knew what the economic benefit to

1 N. Dondero
2 Highland would be because the asset hadn't
3 been sold yet, correct?
4 A. Correct.
5 Q. And it wasn't in the hands of a
6 third party, correct?
7 A. Correct.
8 Q. Okay. And I think you may have
9 testified to this earlier. If you did, I
10 apologize. But do you know the aggregate
11 amount that's due under each of the notes
12 that are subject to the agreements that you
13 entered into on behalf of Dugaboy?
14 A. As of today's value or --
15 Q. Let's start with today's value.
16 A. Okay. The amount owed I believe
17 per the lawsuit for all of them is just
18 north of 50 million.
19 Q. And were you aware at the time
20 you entered into the agreements, the
21 aggregate principal amount that was still
22 due on the notes that were subject to the
23 agreement?
24 A. When I entered into the three
25 agreements?

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1 N. Dondero
2 Q. Yes.
3 A. The total for '17, '18, and '19
4 combined was in the ballpark of 72 million,
5 I believe.
6 Q. And the difference between the
7 principal amount that was due at the time
8 that you entered into the agreements and
9 the principal amount that's due today is
10 the payments that were made in the
11 intervening period.
12 Do I have that right?
13 A. I'm assuming payments and
14 interest, sir, yes.
15 Q. Okay. If the assets are sold
16 now, what benefit will Highland receive
17 relative to the forgiveness of the notes?
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 BY MR. MORRIS:
21 Q. The assets are now in the hands
22 of a third party, right?
23 A. Um-hmm. Correct.
24 Q. Okay. And is it your
25 understanding that if a third party sells

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1 N. Dondero
2 the assets that irrespective of the price
3 at which it sold, the moment it's sold, the
4 notes will be forgiven?
5 A. That is my understanding.
6 Q. So that if a third party were to
7 sell the asset -- withdrawn.
8 So at the time that you entered
9 into the agreements on behalf of Dugaboy,
10 neither you nor Dugaboy had any
11 understanding of what Highland's economic
12 recovery would be if a third party sold any
13 of the portfolio companies, correct?
14 A. I wouldn't have known the future.
15 That is correct.
16 Q. Did you and Dugaboy -- withdrawn.
17 Did you and Dugaboy believe at
18 the time that you entered into the
19 agreements that Highland received
20 reasonably equivalent value in exchange for
21 the agreements?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 A. John, I repeat, I thought at the
25 time I entered into the agreement, there

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1 N. Dondero
2 was a -- that it was a good deal for both
3 Jim and Highland, a win-win situation. I
4 think we discussed this already.
5 Q. Okay. But you didn't know the
6 price at which Mr. Dondero would sell the
7 asset that was subject to the condition
8 subsequent, correct?
9 A. John, correct, but I know my
10 brother, and he's a financial guru, and I
11 trusted in the fact that he would make them
12 into something great.
13 Q. Okay. But neither you nor
14 Dugaboy could predict whether Highland
15 would receive from the sale of the assets
16 more or less than the principal and
17 interest due under the notes, correct?
18 A. You are correct; I could not
19 predict what would happen.
20 Q. Okay. Did Mr. Dondero express
21 any reason to you why he thought the notes
22 should be forgiven if the assets were sold
23 by somebody other than himself?
24 A. Okay. I'm sorry, John. Again?
25 Q. Did Mr. Dondero give you any

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1 N. Dondero
2 reason as to why he believed he was
3 entitled to the forgiveness of the notes
4 simply because the assets were sold by
5 somebody other than himself?
6 A. I believe we touched on this
7 already, but I will repeat it.
8 His concern was that he put the
9 time and effort and energy into the three
10 portfolio companies and then some element
11 beyond his control could come in and sell
12 them at a loss after he had done all the
13 work. And if we didn't have that provision
14 in, his notes wouldn't be forgiven.
15 Q. Did you ask him why he was
16 concerned that some element beyond his
17 control were to intervene to prevent him
18 from selling the assets?
19 A. I did not.
20 Q. Did you ask him why that was even
21 a possibility at the time that you entered
22 into these three agreements?
23 A. I did not. But knowing my
24 brother, he looks at all sides of every
25 situation.

1 N. Dondero
2 Q. Okay. The notes that were issued
3 by HCMS, HCRE, and NexPoint, can we refer
4 to those for the next set of questions as
5 the corporate notes?
6 A. Okay.
7 MS. DEITSCH-PEREZ: Can you read
8 that back?
9 MR. MORRIS: Sure.
10 BY MR. MORRIS:
11 Q. Can we call the notes that were
12 executed on behalf of HCMS, HCRE, and
13 NexPoint as the corporate notes?
14 MS. DEITSCH-PEREZ: You're
15 including HCMFA in this?
16 MR. MORRIS: No, I never said
17 that.
18 MS. DEITSCH-PEREZ: I thought you
19 did. That's why I said -- I think you
20 misspoke, but can you ask the question
21 again.
22 MR. MORRIS: I don't think so. I
23 don't think so, but I'll say it for a
24 third time.
25 BY MR. MORRIS:

1 N. Dondero
2 Q. Can we call the notes executed on
3 behalf of HCMS, HCRE, and NexPoint as the
4 corporate notes?
5 MS. DEITSCH-PEREZ: Okay. Thank
6 you. I think I was hearing S as F.
7 Sorry.
8 BY MR. MORRIS:
9 Q. Is that okay, Ms. Dondero?
10 A. Yes, that's fine. Thank you.
11 Q. Okay. And under the agreements,
12 were the corporate notes to be forgiven as
13 compensation to your brother or as
14 compensation to the corporate obligors, the
15 corporate borrowers?
16 A. Deferred compensation for Jim.
17 Q. So let me get this right.
18 HCMS, HCRE, and NexPoint each
19 borrow money from Highland and give
20 Highland promissory notes in return.
21 Do I have that right?
22 A. I'm sorry, John. Just one more
23 time, the question, please?
24 Q. Each of HCMS, HCRE, and NexPoint
25 borrowed money from Highland and gave

1 N. Dondero
2 promissory notes in return, correct?
3 A. Yes. That's my understanding.
4 Q. And under the agreement that you
5 entered into on behalf of Dugaboy, those
6 corporate notes would be forgiven as
7 compensation to your brother upon the
8 condition -- upon the fulfillment of
9 conditions subsequent, correct?
10 A. That is correct.
11 Q. So that the forgiveness of the
12 corporate notes was, in your mind, the same
13 thing as giving compensation to your
14 brother, correct?
15 MS. DEITSCH-PEREZ: Object to the
16 form.
17 A. They would be considered deferred
18 compensation.
19 Q. And they would be considered
20 compensation to your brother, not
21 compensation to the borrowers under each of
22 the corporate notes, correct?
23 A. That's how I understood it, yes.
24 Q. Okay. So in your mind, when you
25 entered into these agreements, it didn't

1 N. Dondero
2 matter whether the notes were executed by
3 your brother or any of these three
4 corporate obligors; the cancellation of the
5 notes would be a direct benefit for
6 compensation purposes only to your brother,
7 correct?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 THE WITNESS: Do I still answer?
11 BY MR. MORRIS:
12 Q. Yes.
13 A. Yes, John, that's how I
14 understood it.
15 Q. Thank you.
16 A. Certainly.
17 Q. Now the compensation that was the
18 subject of these agreements, that wasn't to
19 compensate him for past services, was it?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 MR. MORRIS: Withdrawn.
23 BY MR. MORRIS:
24 Q. The compensation that was subject
25 to the agreement was for services that

1 N. Dondero
2 would be rendered in the future, correct?
3 MS. DEITSCH-PEREZ: Object to the
4 form.
5 BY MR. MORRIS:
6 Q. You can answer.
7 A. Well, in the future from what
8 date?
9 Q. From the date that the agreements
10 were entered into.
11 A. Correct. Yes. From the date,
12 yes.
13 Q. The agreement was that the notes
14 would be forgiven based on a condition
15 subsequent, right?
16 A. Yes. So a future date from when
17 we entered them, um-hmm.
18 Q. So something had to happen in the
19 future in order for your brother to get the
20 benefit of the bargain, right?
21 A. Correct.
22 Q. Because if it was compensation
23 for services rendered in the past, you just
24 give him the money, right?
25 A. So true.

1 N. Dondero
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 BY MR. MORRIS:
5 Q. Let me ask another question, a
6 different question, Ms. Dondero, and just
7 try to finish this up.
8 Pursuant to the agreement that
9 you entered into on behalf of Dugaboy, the
10 notes would only be forgiven if some future
11 event occurred, correct?
12 A. Right, the monetization of one of
13 the three portfolio companies, correct.
14 Um-hmm.
15 Q. The forgiveness of the notes was
16 not for services rendered in the past,
17 correct?
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 A. That is correct.
21 Q. Okay. Do you know if Dugaboy
22 ever issued any promissory notes in favor
23 of Highland?
24 A. I know there are loans between
25 Dugaboy and Highland.

1 N. Dondero
2 Q. And do you know who made the loan
3 and who received the loan or loans?
4 A. I believe Dugaboy was the
5 borrower. The loan with Highland, it was
6 in 2017. And if my memory serves me right,
7 it was 23, 24 million.
8 Again, going by memory, John,
9 because I really wasn't prepared for this
10 line of questioning, but I believe there is
11 an earlier loan between the two of them.
12 Q. And did you -- I apologize. I
13 didn't mean to step on your words.
14 Are you finished?
15 A. Oh, no. I am. Thank you.
16 Q. Okay. Were you the trustee of
17 the Dugaboy Trust at the time the loans you
18 just described were obtained from Highland?
19 A. The one that I mentioned that I
20 remembered the -- I believe it's close to
21 or around 24 million, in May of '17, I was
22 obviously. I became trustee in October of
23 '15.
24 The other one, I'm not positive
25 on, John, the date and the amount. I just

1 N. Dondero
2 know of another one.
3 Q. Now the Dugaboy trust is, I think
4 as you've described it, a trust for
5 education and health and lifestyle
6 purposes, right?
7 A. And maintenance, correct.
8 Q. Do you know why Dugaboy needed to
9 borrow 23 to 24 million dollars from
10 Highland in 2017?
11 A. I'd be speculating. I don't know
12 for sure, but I believe it was for real
13 estate.
14 Q. And did you -- do you recall
15 executing any documents on behalf of
16 Dugaboy in connection with the loan that it
17 obtained from Highland?
18 A. Not that I recall, John, right
19 now.
20 Q. Do you know who authorized
21 Highland -- withdrawn.
22 Did you ever have any
23 conversations with anybody at any time
24 concerning Dugaboy's 23 to 24 million
25 dollar loan that it obtained from Highland

1 N. Dondero
2 in around 2017?
3 MS. DEITSCH-PEREZ: I'm going to
4 object. This is neither one of the
5 Dugaboy topics and it's beyond the --
6 it doesn't pertain to the four
7 adversary proceedings. So it's not
8 fair to ask the witness about things
9 she's not had the occasion to refresh
10 herself on.
11 MR. MORRIS: Okay.
12 MR. DRAPER: John, I let this go
13 on behalf of Dugaboy a little bit just
14 for background information, but now
15 we're sort of bordering on specifics of
16 a transaction that is --
17 MR. MORRIS: I am -- go ahead,
18 Douglas. I'm sorry.
19 MR. DRAPER: -- that is not in
20 dispute in this litigation. It is not
21 within your 30(b)(6) designation. And
22 so it's fundamentally unfair to put
23 this witness through a memory test for
24 no purpose whatsoever that servers
25 nothing to do with this litigation.

1 N. Dondero
2 MR. MORRIS: Okay. Number one, I
3 agree that it's not a 30(b)(6) topic.
4 Number two, I agree that I'm not
5 asking her these questions in her
6 capacity as the Dugaboy trustee. I'm
7 asking them in her individual capacity.
8 So I don't think you have any grounds
9 to object any longer, Mr. Draper.
10 And number three, I think all of
11 this goes to credibility. And it goes
12 to everything we've been talking about
13 today.
14 And so I'm going to continue to
15 ask my questions. And if at any time
16 you want to direct the witness not to
17 answer, you know, we'll deal with it.
18 Okay?
19 MR. DRAPER: Okay. So if I
20 understand what you just said, just so
21 the record is clear, this is not
22 30(b)(6) questions to the witness. In
23 fact, these are questions to the
24 witness in her individual capacity and
25 will not serve as a 30(b)(6) answer on

1 N. Dondero
2 batch of Dugaboy, correct?
3 MR. MORRIS: I thought I was
4 quite clear, but, yes, Douglas, that is
5 correct.
6 MR. DRAPER: Great. Thank you.
7 MR. MORRIS: Yep.
8 BY MR. MORRIS:
9 Q. Okay. So Ms. Dondero, do you
10 recall any conversations you ever had at
11 any time concerning the 23 or 24 million
12 dollars that Dugaboy borrowed from
13 Highland?
14 A. Not at this time.
15 Q. Okay. You mentioned that you
16 believed that the money was used for the
17 acquisition of real estate.
18 Do I have that right?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. Yes.
22 Q. And was that for the acquisition
23 of Jim's house in Colorado?
24 A. I don't know.
25 Q. Do you know if your brother

1 N. Dondero
2 acquired a house in Colorado in or around
3 2017?
4 A. I know he acquired a house in
5 Colorado. The time frame, I'm not certain
6 of.
7 Q. Do you know that he paid more
8 than $20 million for a house in Colorado?
9 A. No.
10 Q. Was the loan that Dugaboy
11 obtained from Highland subject to any of
12 the three agreements that you entered into
13 as the trustee of Dugaboy?
14 A. Any of the three agreements we've
15 been discussing?
16 Q. Yes.
17 A. No.
18 Q. Did you ever ask Jim why the
19 Dugaboy note wasn't included in the
20 agreements?
21 A. I did not.
22 Q. But you knew Dugaboy note existed
23 at the time you entered into the
24 agreements, correct?
25 MS. DEITSCH-PEREZ: Object to the

1 N. Dondero
2 form.
3 A. At the time I entered into the
4 agreements, I don't know, John.
5 Q. So at the time you entered into
6 these three agreements, you don't recall
7 whether you knew that Dugaboy had obtained
8 a 23 to 24 million dollar loan from
9 Highland.
10 Do I have that right?
11 A. I don't know as I sit here now.
12 What I knew then, I don't remember.
13 Q. But you do remember the specific
14 identity of each promissory note that was
15 the subject of each of these three
16 agreements, correct?
17 A. When I refreshed my memory, sure.
18 Q. Do you know if Dugaboy ever
19 entered into any agreement on behalf of
20 Highland other than the three oral
21 agreements that you described today?
22 A. Dugaboy has entered into a lot of
23 agreements with Highland.
24 Q. All right. Let me restate the
25 question.

1 N. Dondero
2 Did Dugaboy ever, ever -- ever,
3 ever. Let me try again.
4 Did Dugaboy ever enter into any
5 agreements pursuant to Section 3.10 of the
6 LP agreement other than the three
7 agreements that you've mentioned today?
8 A. Oh --
9 MS. DEITSCH-PEREZ: Were there
10 any before these, John? Before?
11 MR. MORRIS: I don't care if it's
12 before or after. So let me ask again.
13 BY MR. MORRIS:
14 Q. As the trustee of Dugaboy, are
15 you aware of any agreement Dugaboy has ever
16 entered into pursuant to Section 3.10 of
17 the LP agreement other than the three
18 agreements that you have described today?
19 A. Not that I'm aware of,
20 compensation.
21 Q. Can we put up your discovery
22 responses, which I think is document No. 25
23 in your pile.
24 MS. DEITSCH-PEREZ: The notebook.
25 MR. ELMS: 25.

1 N. Dondero
2 THE WITNESS: What is it?
3 MR. ELMS: Tab 25.
4 THE WITNESS: Tab 25. Okay.
5 (Document review.)
6 BY MR. MORRIS:
7 Q. Have you seen this document
8 before, ma'am?
9 A. Just one second. I'm getting
10 there.
11 Q. Sure. Take your time.
12 A. Okay.
13 (Document review.)
14 A. Yes. Yes, I believe I have.
15 Q. Can you turn to page 15?
16 (Witness complies.)
17 Q. Is that your signature?
18 A. It is.
19 Q. And did you review this document
20 before you signed it?
21 A. I did.
22 Q. Did you have an opportunity to
23 consult with counsel before you signed it?
24 A. I did.
25 Q. Did you in fact consult with

1 N. Dondero
2 counsel before signing it?
3 A. I did.
4 Q. And you reviewed this document in
5 connection with your preparation for
6 today's deposition, correct?
7 A. Correct.
8 Q. As you sit here now, do you know
9 of anything in the objections and responses
10 that is wrong or inaccurate?
11 (Document review.)
12 A. I don't see anything, John. I
13 don't believe so.
14 Q. As you sit here right now, do you
15 have any reason to amend these objections
16 and responses to make them more complete or
17 more precise?
18 A. Not at this time.
19 Q. Can you turn to page 9, please?
20 (Witness complies.)
21 Q. Do you see in request for
22 admissions No. 7 and 8, you were asked to
23 admit, and I'm going to summarize, that no
24 document was created prior to the
25 commencement of the adversary proceeding

1 N. Dondero
2 that reflects -- let's just take them one
3 at a time. Let me withdraw that.
4 Looking at No. 7, do you see that
5 you denied having sufficient knowledge or
6 information to admit or deny the request?
7 A. Yes.
8 Q. Okay. Would you agree that as
9 you sit here right now, you are not aware
10 of any document that was created prior to
11 the commencement of the adversary
12 proceeding that reflects or memorializes
13 the terms of the agreement?
14 A. Yes.
15 Q. Okay. And turning to No. 8, do
16 you see for that one, you also responded by
17 saying you lack sufficient information to
18 admit or deny the request?
19 A. Yes, I do.
20 Q. Would you agree with me that it
21 would be fair to say that as you sit here
22 today, you are not aware of any document
23 that was created prior to the commencement
24 of the adversary proceeding concerning the
25 existence of the agreement?

1 N. Dondero
2 A. That's correct; I'm not aware of
3 any.
4 Q. Okay. Can we go to Interrogatory
5 No. 5?
6 MS. DEITSCH-PEREZ: So page 12 to
7 13. No, no, where you were. We were
8 in Tab 25.
9 THE WITNESS: Tab 25. What page
10 now?
11 MR. ELMS: Page 13.
12 MS. DEITSCH-PEREZ: Page 13. The
13 number is on page 12, but then --
14 MR. ELMS: He's asking you at the
15 very top there.
16 THE WITNESS: Oh.
17 (Document review.)
18 BY MR. MORRIS:
19 Q. And do you see that Interrogatory
20 No. 5 asked you to identify every document
21 and communication you reviewed in
22 connection with your decision to enter into
23 the agreement?
24 A. Yes.
25 Q. Okay. And you said that you

1 N. Dondero
2 either reviewed or discussed with your
3 brother the LP agreement and the Dugaboy
4 Trust documents.
5 Do you see that?
6 A. Yes.
7 Q. Do you have any recollection of
8 actually reviewing the LP agreement before
9 entering into any of the agreements that
10 you've described?
11 A. I don't recall.
12 Q. You may or you may not, but do
13 you have a recollection of discussing it
14 with your brother?
15 A. I don't recall, John.
16 Q. Do you recall reviewing Section
17 3.1 before you entered into any of the
18 three agreements?
19 A. I don't know when that review
20 took place.
21 Q. Do you recall whether the review
22 took place in connection with your entry on
23 behalf of Dugaboy into any of the three
24 agreements?
25 A. I don't know the time frame,

1 N. Dondero
2 John.
3 Q. Did you confer with anybody --
4 withdrawn.
5 Did you or Dugaboy confer with
6 anybody other than your brother before you
7 caused Dugaboy to enter into the three
8 agreements?
9 A. No, not that I'm aware of.
10 Q. Did you or Dugaboy seek any legal
11 advice before entering into any of the
12 three agreements?
13 A. No.
14 Q. Do you have any recollection of
15 actually reviewing the Dugaboy Trust
16 documents before entering into any of the
17 three agreements?
18 A. I have reviewed the trust
19 documents, John. I don't know what time
20 frame.
21 Q. Okay. I appreciate that.
22 A. Sure.
23 Q. I'm sorry, did I cut you off?
24 A. Oh, no. I'm sorry. I was just
25 answering you. Thank you.

1 N. Dondero
2 Q. Okay. So take a look at
3 Interrogatory No. 6 below.
4 Do you see that?
5 A. Yes.
6 Q. And your response was, "Other
7 than generally approving compensation,
8 including the agreements at issue in this
9 notes proceeding, none."
10 Do you see that?
11 A. I do.
12 Q. What does "Other than generally
13 approving compensation" refer to?
14 A. Well, "Other than generally..."
15 I'm assuming it means the
16 forgiveness of the loan, "Other than
17 generally approving compensation."
18 Q. Okay. So let's look at the
19 Interrogatory. This Interrogatory
20 specifically says that "Other than the
21 agreement" --
22 A. Okay.
23 Q. -- "identify every agreement you
24 ever entered into as a representative of a
25 majority of Class A shareholders of

1 N. Dondero
2 plaintiff."
3 Do you see that?
4 A. I do.
5 Q. Are you aware of any agreement
6 that you ever entered into as a
7 representative of a majority of Class A
8 shareholders of plaintiff other than the
9 agreements that you've identified?
10 A. No.
11 Q. Okay. And were you, in your
12 capacity as the trustee of Dugaboy --
13 withdrawn.
14 Did you, in your capacity as
15 trustee of Dugaboy, approve compensation
16 for any affiliate of Strand other than the
17 three agreements that you entered into that
18 you've described today?
19 A. Not that I'm aware of.
20 Q. Okay. So generally approving
21 compensation, does that have any meaning at
22 all other than the three agreements that
23 you entered into that you've described
24 today?
25 A. No.

1 N. Dondero
2 MR. MORRIS: Can we put up --
3 withdrawn. Hold on.
4 BY MR. MORRIS:
5 Q. Before we take this down, did
6 Dugaboy provide -- withdrawn.
7 Did Dugaboy approve any
8 compensation for Jim Dondero other than the
9 three agreements that you've described
10 today?
11 A. I do not believe so since I've
12 been trustee.
13 MR. MORRIS: Can we put up
14 Exhibit No. 26, please, which would
15 have been Dugaboy's discovery
16 responses?
17 (N. Dondero Exhibit 26, Defendant
18 the Dugaboy Investment Trust's
19 Objections and Responses to Plaintiff's
20 Request for Admission, Interrogatories,
21 and Requests for Production, marked for
22 identification, as of this date.)
23 BY MR. MORRIS:
24 Q. And that was No. 26 in the
25 binder.

1 N. Dondero
2 A. Okay. Um-hmm.
3 Q. Have you seen this document
4 before?
5 A. I believe so, yes.
6 Q. And can you turn to page 14?
7 A. Yes.
8 Q. Is that your signature?
9 A. It is.
10 Q. And did you review this document
11 before you signed it?
12 A. I did.
13 Q. And did you have an opportunity
14 to consult with counsel before you signed
15 it?
16 A. I did.
17 Q. And did you in fact consult with
18 counsel before you signed it?
19 A. I did.
20 Q. As you sit here right now, in
21 your capacity as the trustee of the Dugaboy
22 Trust, do you know of anything in the
23 objections and responses that is wrong or
24 inaccurate?
25 (Document review.)

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1 N. Dondero
2 A. I don't see anything that needs
3 to be changed.
4 Q. As you sit here right now, as the
5 trustee of the Dugaboy Trust, do you have
6 any reason to amend your objections or
7 responses to make them more complete or
8 more precise?
9 A. I have no reason at this time,
10 John.
11 Q. Okay. I think I have kind of the
12 same questions that I just asked you about
13 your discovery responses, but let's see.
14 Can we turn to page 8, which
15 again has responses to request for
16 admission No. 7 and 8?
17 A. Okay.
18 Q. And if you take a look request
19 for admission No. 7 and the response, can
20 you just read the that to yourself and tell
21 me when you're finished?
22 (Witness complies.)
23 A. I'm done.
24 Q. Okay. Would your response be
25 accurate as follows: Dugaboy is not aware

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1 N. Dondero
2 of any document that was created prior to
3 the commencement of the adversary
4 proceeding that reflects or memorializes
5 the terms of the agreement?
6 A. That is correct.
7 Q. Okay. Moving to request for
8 admission No. 8, the same thing, can you
9 just read the request and the response to
10 yourself and let me know when you're
11 finished?
12 (Witness complies.)
13 A. I'm done, John.
14 Q. Okay. Would it be fair to
15 interpret your response as follows:
16 Dugaboy is not aware of any document that
17 was created prior to the commencement of
18 the adversary proceeding concerning the
19 existence of the agreement?
20 A. Correct.
21 Q. Okay. And let's go to
22 Interrogatory No. 5.
23 Are your answers in your capacity
24 as -- and if you want me to go through it
25 again, I'm happy to do it, but I just need

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1 N. Dondero
2 to know in the first instance, is there any
3 difference -- will your answers concerning
4 Interrogatory No. 5 be any different in
5 your capacity as the Dugaboy trustee than
6 they were in your individual capacity?
7 A. Let me read it, John.
8 Q. Take your time.
9 (Document review.)
10 A. It's the same as the one earlier.
11 Q. Okay. And finally, let's just
12 look at Interrogatory No. 6. Please take a
13 look at that and the response and let me
14 know if your answers in your capacity as
15 the trustee of the Dugaboy Trust would
16 differ in any way from the answers that you
17 gave pertaining to Interrogatory No. 6 in
18 your individual capacity.
19 A. No, it's the same.
20 Q. Okay.
21 MR. MORRIS: So the time right
22 now is 4:57 Eastern, I guess 3:57 your
23 time. I'm done with my outline, but I
24 just want to check my notes to see if I
25 have anything left.

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1 N. Dondero
2 Douglas, you'll be happy to know
3 that I do expect to finish well in
4 advance of 4:30 Central time. So why
5 don't we just take a break and we'll
6 come back at, I guess, 4:10 Central
7 time?
8 THE WITNESS: Okay.
9 THE VIDEOGRAPHER: The time is
10 3:57. We are going off the record.
11 (Recess is taken.)
12 THE VIDEOGRAPHER: The time is
13 12:15. We are back on the record.
14 MR. MORRIS: This is John Morris.
15 I have no further questions of this
16 witness at this time.
17 Does anybody else have any
18 questions?
19 MS. DEITSCH-PEREZ: Reserve for
20 trial.
21 MR. MORRIS: So are we in
22 agreement that we can close the record
23 right now?
24 MR. DRAPER: Yes.
25 MR. MORRIS: Thank you very much

1 N. Dondero
2 everybody. Ms. Dondero, thank you.
3 THE VIDEOGRAPHER: The time is
4 4:16. This concludes today's
5 deposition, Monday, October 18, 2021.
6 (Time noted: 4:16 p.m.)
7
8 ______________________________.
9 NANCY DONDERO
10
11
12 Subscribed and sworn to before me
13 this day of 2021.
14
15 ________________________________
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1
2 C E R T I F I C A T E
3
4 STATE OF FLORIDA)
5 : ss.
6 COUNTY OF PALM BEACH)
7
8 I, ANNETTE ARLEQUIN, a Notary
9 Public within and for the State of New
10 York, do hereby certify:
11 That NANCY DONDERO, whose
12 deposition is hereinbefore set forth,
13 was duly sworn by me, and that the
14 transcript of such depositions is a
15 true record of the testimony given by
16 such witness.
17 I further certify that I am not
18 related to any of the parties to this
19 action by blood or marriage; and that I
20 am in no way interested in the outcome
21 of this matter.
22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 18th day of October, 2021.
24 ___________________________________
25 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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1
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3 CASE NAME: IN RE: HIGHLAND CAPITAL MANAGEMENT
4 DATE: OCTOBER 18, 2021
5 DEPONENT: NANCY DONDERO

	Pg.	Ln.	Now Reads	Should Read	Reason
6					
7	__	__	_________	___________	_______
8	__	__	_________	___________	_______
9	__	__	_________	___________	_______
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11	__	__	_________	___________	_______
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14	__	__	_________	___________	_______
15	__	__	_________	___________	_______
16	__	__	_________	___________	_______

17
18 _______________________
19 NANCY DONDERO
20 SUBSCRIBED AND SWORN BEFORE ME
21 THIS____DAY OF____________ 2021.
22
23 _______________________________
24 (Notary Public)
25 MY COMMISSION EXPIRES:_______________

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EXHIBIT 12

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

3 In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
4 HIGHLAND CAPITAL	)	
MANAGEMENT, L.P.,	)	Dallas, Texas
5	)	January 24, 2024
Reorganized Debtor.	)	9:30 a.m. Docket
6	)	
	)	- HIGHLAND'S MOTION FOR
7	)	BAD FAITH FINDING [3851]
	)	- HIGHLAND'S MOTION TO STAY
8 ______________________________	)	CONTESTED MATTER [4013]

9 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
10 UNITED STATES BANKRUPTCY JUDGE.

11 APPEARANCES:

12 For the Reorganized Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
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25 Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 24, 2024 - 9:32 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Stacey Jernigan presiding.

5 THE COURT: Good morning. Please be seated. All
6 right. We have a video hearing this morning in certain
7 Highland Capital Management matters. We're not going to do an
8 appearance roll call because we've started a new, I think,
9 more efficient system where we just have people log in their
10 appearance when they come onto the video WebEx. And so we're
11 going to rely on that.

12 All right. So we have two matters. One has been long-
13 scheduled. It's Highland's motion for a bad faith finding and
14 attorneys' fees against NexPoint Real Estate Partners in
15 connection with proof of claim litigation. So we have that
16 set.

17 And then we had an expedited motion to stay a contested
18 matter set by Highland. Highland is wanting to stay any
19 litigation on a newly-filed motion by Hunter Mountain
20 Investment Trust to sue Mr. Seery in the Delaware Chancery
21 Court or Delaware state court system.

22 I'm thinking it probably makes sense to consider that
23 expedited motion for a stay first. Does anyone on the line
24 disagree with that sequence?

25 MR. MORRIS: Your Honor, this is John Morris from

1 Pachulski for Highland. I don't disagree with it. I was
2 prepared to handle the other matter first, simply because it
3 was filed first, but I defer to the Court if that's the
4 Court's wishes.
5 THE COURT: Well, I'm just thinking it's probably the
6 shorter matter and there may be folks who will drop off, I
7 don't know, maybe.
8 MR. MORRIS: Oh. Then that makes sense.
9 THE COURT: Okay. All right. Well, I'll hear what
10 Highland wants to say first, please.
11 MR. MORRIS: Okay. Good morning, Your Honor. Before
12 I get to that, just a couple of housekeeping matters. I don't
13 mean to be the policeperson here, but there are, at least
14 showing on my screen, a number of participants just by phone
15 number. There's somebody who's identified as Participant. It
16 may be that the Court has the information as to the identity
17 of these folks, but I thought the purpose was to disclose the
18 identity of anybody who's attending this hearing.
19 So I see, for example, phone numbers beginning with 202 or
20 312. There's somebody who's listed, at least on my screen, as
21 "Participant." I don't think that was the intent of the rule.
22 And, again, I don't mean to be the policeperson here.
23 Somebody just joined with a telephone number beginning 469.
24 If I'm mistaken, you know, please just correct me, but I
25 thought the idea was that there would be transparency as to

1 who was here.
2 THE COURT: Okay. The idea is, because of national
3 rules at the Administrative Office of the Courts, post-
4 September 21, 2023, because of so-called anti-broadcasting
5 rules, if you're a participant in the case you may watch by
6 video a court proceeding, but if you're not a participant you
7 can only listen in, audio.
8 So it may be that those that you're seeing is just, you
9 know, they may have chosen to use the term Participant, but
10 they may be only audio. Of course, it seems less --
11 MR. MORRIS: Okay.
12 THE COURT: -- significant when we don't have human
13 beings taking the witness stand in the courtroom.
14 So, Mike, can you answer, are the anonymous people, are
15 they all audio?
16 THE CLERK: No. They're not. Not -- excuse me. Let
17 me do this, Judge.
18 Okay. Anyone with a number, you need to identify yourself
19 for the Court. I see a 202, a 312, and a 469 and 703. If you
20 cannot identify yourself, we will have to expel you from the
21 hearing.
22 THE COURT: And, again, --
23 (Inaudible interruption.)
24 THE COURT: Again, if you aren't identified, you're
25 going to be expelled from the WebEx. You can always call in,

1 audio, but you -- not my rule. A rule from Washington, DC.
2 So, does anyone at this point want to identify themselves?
3 (No response.)
4 THE COURT: Okay. Hearing no identification, they'll
5 be expelled. And then, again, if they want to call in, they
6 can call in, but no video WebEx.
7 All right. Any other housekeeping matters?
8 MR. MORRIS: Just one other, Your Honor. It's with
9 some very mixed feelings that I report to the Court that our
10 star paralegal, Aja Cantey, has left us. She has moved on to
11 become the head bankruptcy paralegal at Paul Weiss. You know
12 how much I rely on my paralegals. But my sadness has been
13 assuaged a bit by Andrea Bates, who joined us recently. She
14 is on the line today. She'll be assisting me in today's
15 hearing.
16 I just wanted to, you know, let the Court knows that there
17 has been a change, that we have supreme confidence in Ms.
18 Bates, who joins us from Skadden Arps.
19 THE COURT: Okay.
20 MR. MORRIS: And I just -- I just didn't want there
21 to be any surprises there.
22 THE COURT: All right. Thank you for announcing
23 that.
24 MR. SANJANA: Your Honor, I'm sorry to interrupt.
25 Your Honor?

1 THE COURT: Yes?
2 MR. SANJANA: I'm sorry to interrupt.
3 THE COURT: Who is this?
4 MR. SANJANA: Hi. This is Jason Sanjana at Reorg --
5 this is Jason Sanjana at Reorg Research. I was the 202
6 number. And I just wanted to -- I was always on audio, and
7 I'm on audio now.
8 THE COURT: Okay.
9 MR. SANJANA: But I was on mute until now. So, --
10 THE COURT: Okay.
11 MR. SANJANA: -- I just wanted to let you know that.
12 THE COURT: Okay.
13 MR. SANJANA: But it may have been appearing as on
14 WebEx for you, but it isn't.
15 THE COURT: Okay. All right. I appreciate you
16 clarifying that for us, Jason.
17 Okay. Anything else?
18 MR. MORRIS: No, Your Honor.
19 THE COURT: All right. Well, we had this motion to
20 stay the contested matter of Hunter Mountain wanting relief
21 from the gatekeeper provision to sue Mr. Seery in Delaware.
22 So I'll hear what Highland has to say with regard to its
23 motion for a stay.
24 MR. MORRIS: Okay. Thank you, Your Honor. John
25 Morris; Pachulski Stang Ziehl & Jones; for Highland Capital

1 Management. We're here today on Highland's motion for a very
2 limited stay of Hunter Mountain's motion for leave to sue Mr.
3 Seery.
4 I have a short deck to use to assist in today's
5 presentation, and I would ask Ms. Bates to put that up on the
6 screen.
7 While we're waiting for that, just so it's clear, the
8 motion was originally filed at Docket No. 4013.
9 THE COURT: Okay.
10 MR. MORRIS: And, you know, as an overarching theme
11 here, the basis for the stay is that the issues in the motion
12 for leave pertaining to whether or not Hunter Mountain is a
13 beneficiary under the Claimant Trust Agreement are the very
14 issues that are going to be -- that have been fully briefed
15 and that are going to be argued just three weeks from now in
16 connection with Highland's motion to dismiss Hunter Mountain's
17 valuation complaint.
18 And I think that the easiest thing to do here, Your Honor,
19 if we can -- if we could go to the next slide, is just to
20 think about what's -- what the pleadings are. What's the
21 relief that is being requested and what's the basis for the
22 relief?
23 And so you'll see -- and this is in our motion -- but I
24 find it helpful to actually focus on exactly what the
25 complaint is. The complaint that we're seeking to stay

1 includes four or five causes of action. You'll find up on the
2 screen Paragraph 35 of the proposed complaint. It follows the
3 heading Roman Numeral V, Causes of Action. And this is the
4 basis for the complaint. It's solely relying on Delaware
5 corporate law, Section 3327 of the Delaware corporate law.
6 And that law allows, you know, certain people the ability to
7 seek the removal of the Trustee.
8 As set forth in Hunter Mountain's own pleading, under
9 Section 3327, relief can be sought only if it's in accordance
10 with the governing instrument, and Hunter Mountain is not
11 making that claim here, or by a trustor, another officeholder,
12 or a beneficiary. There's no contention that Hunter Mountain
13 is a trustor, there's no contention that it's a court, there's
14 no contention that it's another officeholder.
15 Therefore, under Hunter Mountain's complaint that they
16 seek to file to remove Mr. Seery, they must be a beneficiary.
17 This Court must determine that Hunter Mountain is a
18 beneficiary. That's what their complaint says, and there
19 really can't be any dispute about that because each of the
20 causes of action uses the very highlighted language that
21 follows from the statute that they're relying upon.
22 And let's compare that with Hunter Mountain's motion --
23 complaint for valuation information. So if we can go to the
24 next slide. They have three causes of action in that lawsuit,
25 and every one of those causes of action also requires a

1 determination that Hunter Mountain is a beneficiary under the
2 Claimant Trust Agreement.
3 The first cause of action can be found in Paragraphs 82 to
4 88, and it demands disclosure of trust assets and an
5 accounting. They claim that they need the information, quote,
6 to determine whether their claimant -- contingent Claimant
7 Trust interests may vest into Claimant Trust interests.
8 You know, for me, Your Honor, that's already a --
9 shouldn't they know they're not beneficiaries? They have
10 already conceded in Paragraph 83 that they are not holders of
11 Claimant Trust interests but merely have unvested contingent
12 Claimant Trust interests.
13 But beyond that, as the Court knows from prior litigation,
14 only Claimant Trust beneficiaries have rights to obtain
15 information, and those rights are severely limited.
16 So you have a concession that Hunter Mountain is not a
17 Claimant Trust beneficiary. You have a document that's been
18 adopted by this Court, approved by this Court, approved by the
19 Fifth Circuit Court of Appeals, that expressly gives only
20 Claimant Trust beneficiaries very limited information rights.
21 And Hunter Mountain here seeks to ignore all of that.
22 They don't care that they're not a Claimant Trust
23 beneficiary. They don't care that they're seeking more than
24 even Claimant Trust beneficiaries are entitled to. They don't
25 care that they're seeking information that they have no right

1 to receive.

2 But the whole premise of Count One is dependent on whether

3 they're a Claimant Trust beneficiary, which is the exact same

4 issue that has to be decided in the motion to remove Mr.

5 Seery.

6 The second cause of action is for declaratory judgment on

7 the value of the trust assets. That can be found in

8 Paragraphs 89 to 92. And, you know, these are their words.

9 This isn't my -- these aren't my words. This isn't argument.

10 This is just asking the Court to read Hunter Mountain's own

11 pleading. And it depends -- the second cause of action

12 depends on whether the Defendants have been compelled to

13 provide the information about the Claimant Trust assets. The

14 Court can't make a declaratory judgment unless Highland has

15 been compelled to provide the information. But for the

16 reasons I just discussed, Highland can't be compelled to

17 provide any information to Hunter Mountain or Dugaboy because

18 they're not Claimant Trust beneficiaries.

19 For the same reasons, the third cause of action, which

20 seeks declaratory judgment regarding the nature of the

21 Plaintiffs' interests, you know, there's a whole host of

22 reasons why these causes of action are deficient and why the

23 motion to dismiss ought to be granted, but I'll save that for

24 February 14th. The point now is that, just like the second

25 cause of action, they seek a determination that the Claimant

1 Trust interests are likely to vest, an advisory opinion if
2 I've ever heard of one. But be that as it may, it -- still,
3 it's an acknowledgement that they're not Claimant Trust
4 beneficiaries.
5 And so, in both cases, in both lawsuits, the central
6 question is, is Hunter Mountain a Claimant Trust beneficiary?
7 If we can go to the next slide, let's look at the
8 briefing, because there's really no dispute about this.
9 There's no dispute about it at all. Look at Highland's motion
10 to dismiss the valuation complaint. Right up in Paragraph 2,
11 we say explicitly: Despite holding only unvested contingent
12 trust interests with no rights in the Claimant Trust,
13 Plaintiffs stubbornly seek financial information regarding
14 Claimant Trust assets. This is the basis for the motion to
15 dismiss, that they're not Claimant Trust beneficiaries.
16 And it's not as if this is the only place in the pleading
17 where this is discussed. If you go to Docket No. 14 in this
18 adversary proceeding, as you can see in the footnote, there's
19 an extensive analysis that explains why Plaintiffs have no
20 rights to financial information, precisely because they're not
21 Claimant Trust beneficiaries.
22 And it's not as if Hunter Mountain says we're wrong, it's
23 not an issue. They know it's an issue, and they go to great
24 lengths to address it.
25 If we can go to the next slide. This is from their

1 opposition to the motion to dismiss. In Paragraph 10, they
2 say the Claimant Trust Agreement evidences an intent that
3 Plaintiffs become Claimant Trust beneficiaries when Claimant
4 Trust assets are sufficient to pay all lower-ranked claims in
5 full, with interest. Again, their pleading, not mine. And it
6 shows that they understand the hurdle they have to come --
7 Now, there's lots of other stuff in these pleadings
8 regarding other theories for why these claims fail, but all of
9 them fail if they're not a Claimant Trust beneficiary.
10 And I'd ask the Court to pay particular attention to
11 Paragraphs 40 to 52 in Hunter Mountain's pleading in
12 opposition to the motion to dismiss. As you can see in the
13 footnote, they have an extensive legal argument as to why
14 Plaintiffs are allegedly -- why Plaintiffs allegedly, quote,
15 have a legal right to obtain the information they seek.
16 That's the same issue that's got to be decided in the motion
17 for leave to sue Mr. Seery.
18 And what's really interesting, Your Honor, is not only do
19 they make the argument in opposition to the motion to dismiss,
20 they basically cut-and-pasted -- I credit Mr. Demo for helping
21 me out; he pointed this out to me this morning, so I want to
22 give credit where credit is due -- they cut-and-pasted the
23 exact same argument in their motion for leave to sue Mr.
24 Seery. So if you just compare Paragraphs 41 to 46 of Hunter
25 Mountain's opposition to Highland's motion to dismiss the

1 valuation complaint to Paragraphs 31 to 37 of Hunter
2 Mountain's motion for leave to sue Mr. Seery, you'll see
3 they're making the exact same argument as to why they contend
4 they're a Claimant Trust beneficiary.
5 Again, don't take our word for it. This isn't argument.
6 This is just looking at their own pleading. Right? They're
7 saying in both cases they're Claimant Trust beneficiaries.
8 They're fighting it, right? They know they have to get over
9 that hurdle, because if they don't they can't pursue these
10 claims.
11 If we can go to the next slide. You've got Highland's
12 reply. Again, extensive discussion. It's the very first
13 point in the very first paragraph, under the Trust Act,
14 whether a party is a beneficiary: Here, a Claimant Trust
15 beneficiary is determined by the plain language of the
16 governing trust -- here, the Claimant Trust Agreement.
17 And, again, if you take a look at the footnote, our reply
18 in Paragraphs 5 through 9 provides further argument as to why
19 Plaintiffs are not beneficiaries of the Claimant Trust under
20 the plan, the Claimant Trust Agreement, or under applicable
21 law.
22 So I think it's pretty clear from the pleadings, it's
23 pretty clear from the parties' positions, it's pretty clear
24 from the Delaware law that Hunter Mountain relies upon to move
25 Mr. Seery, Section 3327, that the causes of action in that

1 proposed complaint and the causes of action in Hunter
2 Mountain's valuation complaint all depend on whether or not
3 Hunter Mountain is a beneficiary under the plan, under the
4 Claimant Trust Agreement, and under Delaware law. And all of
5 those issues are going to be argued in just three weeks. All
6 of those issues are going to be decided by the Court
7 thereafter.
8 If we can go to, yeah, this next slide. So, yesterday,
9 Hunter Mountain filed its response to the motion for a stay.
10 And I just want to address some of the arguments that were
11 made.
12 You know, the first argument that they made concerned the
13 legal standard. They said, oh, Highland didn't use the proper
14 legal standard. We disagree. This isn't a motion for
15 injunctive relief. It's not a motion for a stay pending
16 appeal. It's a motion asking the Court to prudently police
17 its own docket.
18 And here's, here's the irony, Your Honor. Again, don't
19 take my word for it. Take Ms. Deitsch-Perez and her clients'
20 word for it. Because just last year, in connection with their
21 motion for a stay pending the mediation, in a pleading that
22 was filed on 4/20, they said that the Court has the discretion
23 to issue a stay. They relied on *Clinton v. Jones*, exactly as
24 Highland has done to seek a stay in this case. Okay? So the
25 very standard and the case citation that they criticize today

1 is the very standard and case citation that they relied upon
2 last April.
3 And here, it gets even better. Because Ms. Deitsch-Perez,
4 on behalf of her client, Hunter Mountain, joined in Dugaboy
5 and Mr. Dondero's motion for a stay. She and her client
6 personally adopted the very standard that they're criticizing
7 today. You can't make this stuff up.
8 The standard is the right standard. The Court certainly
9 has the discretion to police its own docket.
10 The second point that they make is that, you know, they'll
11 be really prejudiced without a stay. I say it's the exact
12 opposite. Everybody will be prejudiced without a stay. The
13 Court will be prejudiced. Highland will be prejudiced. Mr.
14 Dondero. Hunter Mountain. All of us will be prejudiced
15 because we will wind up litigating the exact same issue twice.
16 We will expend further resources. And of greatest concern to
17 us is that we might wind up with inconsistent results.
18 There's no question that -- I shouldn't say there's no
19 question. In all likelihood, a decision will be had on
20 Highland's motion to dismiss the valuation complaint in short
21 order, since argument is scheduled just three weeks from now
22 and the matter is fully briefed. And as Your Honor knows,
23 that -- if we prevail and the Court finds, as it's indicated
24 in prior rulings, that Hunter Mountain is not a Claimant Trust
25 beneficiary and has no rights to this information, and they

1 appeal that, that'll get assigned to a particular district
2 judge.
3 If the stay is denied and we proceed with the litigation
4 of the Hunter Mountain complaint that seeks to remove Mr.
5 Seery and we prevail on that one, that'll go to a different
6 judge, in all likelihood, since there's more than, I think,
7 two dozen judges in the District Court. They'll be on
8 completely separate tracks. And you run the -- you run the
9 real risk -- I mean, actually, it's not a real risk, from our
10 point, given the substance -- but you definitely run the risk
11 of inconsistent decisions.
12 So I know, and I'll close in a moment with some comments
13 about the wisdom of this whole exercise, but I know -- I know
14 how much Mr. Dondero, you know, wants to challenge Mr. Seery.
15 But that doesn't -- that doesn't make it the efficient thing
16 to do. It doesn't make it the fair thing to do, when we're
17 litigating the exact same issues right now.
18 The third, the third notion, the third argument they make
19 is really they attempt to rewrite their complaint. They try
20 to suggest that the issues are not identical. They suggest
21 that, you know, they've got theories of breach of fiduciary
22 duty and good faith and fair dealing. You know what, Your
23 Honor? You just have to go back to Paragraph 35 of the
24 proposed complaint. That are the legal theories of their
25 case. And to the extent that there's a notion of fiduciary

1 duty in there, it is predicated on Section 337. In fact, it's
2 predicated -- if you'll give me just one moment -- it's
3 predicated on Section 337 -- 3327(1): The officeholder has
4 committed a breach of trust.
5 It's not a stand -- there is no standalone breach of
6 fiduciary duty claim, nor could there be. Because as the
7 Court is likely aware, there's a very specific provision in
8 the trust agreement that's been affirmed by this Court, the
9 District Court, the Fifth Circuit, that specifically
10 disclaimed any fiduciary duty to anybody but a Claimant Trust
11 beneficiary. So you couldn't have a standalone breach of
12 fiduciary duty claim. It just doesn't exist.
13 So they can try if they want to characterize their claims
14 however they want. They should be held to the pleading that
15 they filed. It's the one that we'll be defending if the
16 motion for stay is denied or if the Debtor sees the light of
17 day.
18 But I do want to close with just some general observations
19 about this. Right? They want to -- they suggest, you know,
20 Highland wants to avoid the suit to remove Mr. Seery. No, we
21 don't. What we want to do is the right thing here. There is
22 no dispute that neither Mr. Dondero, Mr. Patrick, or Hunter
23 Mountain serve on the Claimant Trust Board. They have no
24 personal knowledge of anything concerning the Claimant
25 Oversight Board. And Hunter Mountain's proposed complaint

1 cites no facts concerning the governance of the Claimant
2 Oversight Board.
3 Instead, they seek to file another complaint, borne out of
4 grievances, based on rank speculation, untenable inferences,
5 and fabricated tales, lacking in common sense, frankly, that
6 is woefully ignorant of the evidence that has already been
7 admitted against it.
8 According to Hunter Mountain, the Claimant Trust Board is
9 missing in action. They have abandoned their fiduciary duty.
10 They have ceded control of the Claimant Trust to Mr. Seery to
11 do what he wishes, even if it's acting against Stonehill and
12 Farallon's own interests. Right? The complaint said, oh, Mr.
13 Seery is arbitrarily withholding distributions so he can
14 supposedly enrich himself by getting the same salary that this
15 Court approved it'll be four years ago in July.
16 You can't make this stuff up, Your Honor. The whole
17 premise doesn't make any sense at all. Why doesn't it make
18 any sense at all? Because Mr. Dondero [sic] is accountable.
19 He is fully accountable. He's accountable for the Claimant
20 Oversight Board and he is accountable to every holder of an
21 actual vested claimant beneficial interest in the trust. He
22 owes them fiduciary duties. Hunter Mountain is not in that
23 group. But Mr. Seery is most definitely accountable to the
24 people who had allowed claims and the people today who are
25 Claimant Trust beneficiaries.

1 And here's the thing. Hunter Mountain knows that the
2 Claimant Oversight Board is not missing in action. Hunter
3 Mountain knows that Mr. Seery is not acting unilaterally. How
4 does it know that? Because we had a trial last June. And
5 during that trial -- you can find this at Docket No. --
6 MS. DEITSCH-PEREZ: Your Honor? I -- Your Honor, I
7 regret --
8 THE COURT: Stop.
9 MS. DEITSCH-PEREZ: -- interrupting.
10 THE COURT: Okay. What do you want to say, Ms.
11 Deitsch-Perez?
12 MS. DEITSCH-PEREZ: I regret interrupting Mr. Morris,
13 but this is not an evidentiary hearing and Mr. Morris is now
14 testifying to things that are not in his pleadings. It's just
15 not a fair way to proceed and the Court should not allow it.
16 Thank you.
17 THE COURT: Okay.
18 MR. MORRIS: If I may, Your Honor, just to --
19 THE COURT: Go ahead.
20 MR. MORRIS: We received a response -- we received a
21 response yesterday --
22 THE COURT: Uh-huh.
23 MR. MORRIS: -- that accused Highland of filing this
24 motion for the stay in order to avoid having this heard. I'd
25 like to -- all I'm doing is responding to the very argument

1 that they made yesterday.

2 THE COURT: Okay. You may respond. I overrule that

3 objection.

4 MR. MORRIS: Thank you. So, and this is all really

5 important, because there's evidence in the record at Exhibits

6 39, 40, and 41 that were admitted last June that show a very

7 active, responsible Claimant Oversight Board fulfilling their

8 fiduciary duties in negotiating an incentive compensation

9 package for Mr. Seery. And they want to file a complaint

10 that says the Claimant Oversight Board has abandoned its

11 responsibilities, that they're missing in action.

12 And I want to be really careful here. I want to -- I

13 want to really be transparent here, frankly. Stonehill and

14 Farallon are two of the biggest claimholders. They both hold

15 seats on the board. Does it make any sense at all that they

16 would allow Mr. Seery to do all this at their own expense if

17 they didn't think it was justified?

18 This is very important, Your Honor. No one who holds a

19 valid, vested claim in the Claimant Trust, who is a Claimant

20 Trust beneficiary, not one of them is complaining about Mr.

21 Seery's management. Not one of them is complaining about his

22 decisions concerning reserves. Not one of them is

23 complaining about whether he has or hasn't made distributions

24 or how much he's distributing. Not one of them has suggested

25 to the Court that Mr. Seery is acting unlawfully. Nobody

1 holding a claim, a vested claim in the trust is complaining
2 about anything. The only person complaining is Mr. Dondero,
3 the same person who has been the sole source of litigation
4 since the effective date.
5 He and his counsel should be careful for what they wish
6 for. If Highland's motion for a stay is denied, Highland
7 will respond to the motion and will serve another Rule 11
8 motion, just as it did when Mr. Dondero filed his ridiculous
9 lawsuit claiming that my firm actually represented him
10 personally back in 2019. Your Honor may have seen how this
11 ended. It ended with the withdrawal of that motion. And
12 this motion will head for the same result.
13 And I say all of this, Your Honor, because I want to be
14 respectful. I want to make sure everybody's eyes are wide
15 open. I want to ensure everybody understands that we're not
16 seeking a stay here because we're afraid of anything. And I
17 want everybody to know that if the stay is denied or this
18 motion is ever heard, that the first thing that's going to
19 happen is there will be a response and a Rule 11 motion,
20 because it has no basis in law and it has no basis in fact.
21 Highland seeks a stay not to avoid a hearing on the merits
22 but because it makes no sense to keep litigating the same
23 issue over and over again. We are not the same. The stay
24 should be granted.
25 Thank you, Your Honor.

1 THE COURT: I have two follow-up questions. First,
2 I think I heard you say February 14th is when the Court --
3 MR. MORRIS: Yes.
4 THE COURT: -- is set to have a hearing on the
5 motion to dismiss the complaint seeking valuation. Correct?
6 MR. MORRIS: Yes.
7 THE COURT: And --
8 MR. MORRIS: Yes, Your Honor.
9 THE COURT: And your motion for a stay here is
10 'Please stay hearing this latest Hunter Mountain motion to
11 file a complaint until not only this Court has ruled on the
12 February 14th matter but until all levels of appeals have
13 been exhausted on that.' Am I correct about your request?
14 MR. MORRIS: Yes, Your Honor.
15 THE COURT: Okay. And my second question: When Ms.
16 Deitsch-Perez started objecting to your argument, I think you
17 were alluding to a trial this Court had on Hunter Mountain's
18 motion to sue Farallon and Stonehill as well as Mr. Seery
19 with regard to what I'll call claims purchasing activity. Is
20 that what you were alluding to?
21 MR. MORRIS: It was, Your Honor.
22 THE COURT: Okay.
23 MR. MORRIS: And I was alluding to it for the very
24 singular purpose of pointing out that there was evidence
25 admitted into the record against Hunter Mountain that shows

1 the Claimant Oversight Board fulfilling its fiduciary duties
2 and doing exactly what this Court would expect the Claimant
3 Oversight Board would do.
4 And I point that out only to contrast that evidence,
5 which has already been admitted, with allegations in the
6 proposed complaint that somehow the Claimant Oversight Board
7 has ceded control to Mr. Seery and they're missing in action.
8 It's just -- they know it's not true. They have the
9 evidence.
10 THE COURT: Okay. And I said two follow-up
11 questions, but I actually have this additional question.
12 This was on my brain, this -- I couldn't remember what month
13 -- the trial, where I ruled on whether Hunter Mountain should
14 be granted leave to sue Farallon and Stonehill and Mr. Seery.
15 This was on my brain because, you know, I've issued a lot of
16 opinions during the Highland case, but I remembered writing
17 extensively on whether Hunter Mountain had standing back in
18 connection with that motion. And in fact, I'm going to hold
19 it up.
20 MR. MORRIS: Yep.
21 THE COURT: I wrote a 105-page opinion -- which I
22 don't know if anyone besides my law clerk and I read it,
23 because it's not entertaining -- but I wrote a 105-page
24 opinion denying Hunter Mountain -- different lawyer at the
25 time, not Ms. Deitsch-Perez -- denying Hunter Mountain leave

1 to sue what I'll call the Claims Purchasers -- Farallon,
2 Stonehill, as well as Mr. Seery. They wanted to sue Mr.
3 Seery for breach of fiduciary duty. And I had multiple
4 reasons for denial, but lack of standing was one of those
5 reasons.
6 And I went and printed the opinion yesterday to refresh
7 my memory, did I rule on this already? I thought I ruled on
8 this already. And 23 pages of my 105-page opinion deals with
9 the lack of standing of Hunter Mountain. Twenty-three pages,
10 and 85 footnotes, by the way, within that 23 pages, so it's a
11 very dense 23 pages. I went through constitutional standing
12 and I went through prudential standing, and I said Hunter
13 Mountain failed under both tests.
14 So this is a very longwinded question: What I'm hearing
15 you argue, Mr. Morris, is I'm going to rule one way or
16 another on February 14th, and then there will likely be
17 appeals, so let's don't have to reinvent the wheel. But is
18 there something about my opinion, my 105-page opinion, that
19 isn't -- I mean, have I already addressed this, or is there
20 something I missed in that opinion regarding standing? Has
21 something changed? This was August 2023.
22 So maybe it's not fair to ask you, because this was more
23 the Claims Purchasers' lawyers' fight, right, and Mr.
24 Seery's, more than --
25 MR. MORRIS: Right.

1 THE COURT: -- the Reorganized Debtor? They were
2 the ones who briefed it and argued it. So maybe it's not
3 something that you bothered to read in detail. But I feel
4 like I've ruled on this. And --
5 MR. MORRIS: So, --
6 MS. DEITSCH-PEREZ: Your Honor, may --
7 THE COURT: First Mr. Morris, and then I'll let you,
8 Ms. Deitsch-Perez.
9 MR. MORRIS: So, a couple of observations, Your
10 Honor.
11 THE COURT: Uh-huh.
12 MR. MORRIS: First of all, I read every word that
13 Your Honor wrote, --
14 THE COURT: I'm sorry.
15 MR. MORRIS: -- as I do for all judicial.
16 THE COURT: Okay.
17 MR. MORRIS: Yeah, right?
18 Second of all, this issue was addressed by the Court. It
19 was addressed pretty extensively. It was addressed further,
20 frankly, on -- there was a subsequent post-trial motion by
21 Hunter Mountain challenging that very finding --
22 THE COURT: The motion for reconsideration.
23 MR. MORRIS: -- and it challenged that very finding.
24 THE COURT: Uh-huh.
25 MR. MORRIS: That's right. It challenged that very

1 finding based on the same *pro forma* balance sheet that's at
2 -- that we're saying kind of moots this whole exercise, at
3 least the valuation proceeding.
4 But I'm sure Your Honor is not aware of it, but Hunter
5 Mountain has appealed that decision, and they are
6 challenging, you know, every word, I think, in your order.
7 Every word in seven interlocutory orders that preceded it.
8 And unlike the resolution of the issue that will be had
9 on February 14th, where Hunter Mountain's lack of beneficial
10 ownership in the Claimant Trust is front and center, that
11 issue is one of a very, very long laundry list of issues that
12 are going to the District Court. And we have no reason to
13 believe, we have no -- right? It's one of a million issues,
14 and there's no certainty at all that the District Court is
15 ever going to get to that issue. Right? We don't know how
16 they're going to -- it's just starting now. I don't even
17 think the opening brief -- I think the opening brief might
18 have been filed a day or two ago. I'll start looking at that
19 shortly.
20 But, so that's why we didn't think that was particularly
21 relevant. We did note that in our footnote. I mean, we did
22 point out that this -- that, you know, there is an appeal of
23 the Hunter Mountain decision of last June. But given the
24 girth of the appeal and the number of matters that are being
25 adjudicated, you know, I wouldn't -- we're not here saying

1 you should stay the latest Hunter Mountain motion in order to
2 get a result there, because it doesn't seem, you know, maybe
3 they address it, maybe they don't. There's no way to say
4 because it's just not -- it's just buried in there. It's
5 buried in the laundry list.
6 Another thing I'll say is that you did, you did address
7 it. You did address it pretty comprehensively. But we have
8 new pleadings, you know, with arguably some new shades of
9 argument. But the motion for leave to remove Mr. Seery is
10 based solely on Section 3327 of the Delaware law, which turns
11 right back to the terms of the Claimant Trust.
12 I'm sure that we're going to wind up at the same spot,
13 whether it's through res judicata, collateral estoppel. I
14 mean, I think we've made a number of these arguments already.
15 But the point here is, why do we have to litigate these
16 issues for a third time?
17 THE COURT: Okay. Thank you.
18 All right. Ms. Deitsch-Perez, I'll hear from you.
19 MS. DEITSCH-PEREZ: Okay. And Mr. Aigen is going to
20 pull up a PowerPoint.
21 Just to -- and go to Slide 2. But just to jump ahead, the
22 motion for leave is predicated on Delaware Code 3327, and it
23 has in it a number of criteria for why a trustee should be
24 removed. The issues are entirely different than in a
25 valuation proceeding, and a Delaware court may well have a

1 different view of what a beneficiary is for the purpose of
2 Delaware Code 3327 and the importance of making sure that
3 Delaware trustees are not hostile or unable to act.
4 I'm also going to jump ahead and answer one of the -- what
5 Mr. Morris added in his last slide, which was new, claiming
6 that, oh, no, it's perfectly clear that the Oversight Board is
7 on the job, so really you, as an equitable matter, you
8 shouldn't worry about this, because Mr. Seery is supervised.
9 One, that's not in his pleadings. But more importantly,
10 he's mixing apples and oranges, because the evidence in the
11 former trial had to do with approving his compensation. The
12 issue in the motion for leave to bring a suit to remove Mr.
13 Seery is the fact that the Claimant Trust structurally does
14 not -- it gives Mr. Seery complete discretion over the issue
15 of moving money into the indemnity subtrust. It's an entirely
16 different issue than the issue that was raised in the trial in
17 June, and Mr. Morris should and probably does know that, and
18 so has been -- well, his comment was misleading at best.
19 THE COURT: Okay. Different --
20 MS. DEITSCH-PEREZ: But let's take a look at --
21 THE COURT: Different causes of action, different
22 theories, but still it boils down to whether Hunter Mountain
23 is a Claimant Trust beneficiary, right?
24 MS. DEITSCH-PEREZ: Or whether it will be treated as
25 a Claimant Trust beneficiary, --

1 THE COURT: Okay.
2 MS. DEITSCH-PEREZ: -- which is an additional basis.
3 THE COURT: I don't know what that distinction, where
4 it comes from.
5 MS. DEITSCH-PEREZ: The distinction is that the
6 parties cannot waive, in Delaware, the duty of good faith and
7 fair dealing. And so if Mr. Seery is taking actions that
8 prevent or attempt to prevent the Class 10 and 11 from
9 becoming beneficiaries, then under Delaware law he would not
10 be able to raise a lack of that status as a defense under
11 3327.
12 THE COURT: You're talking about the cause of action
13 --
14 MS. DEITSCH-PEREZ: And so if --
15 THE COURT: Stop. You're talking about the cause of
16 action and defenses thereto. We're talking about standing,
17 which, as I mentioned, 23 pages, 85 footnotes, the last time
18 Hunter Mountain wanted to sue Mr. Seery and Farallon and
19 Stonehill. Some of it was constitutional standing, but a few
20 pages was standing under Delaware law, and I said not a
21 Claimant Trust beneficiary. Okay?
22 Regardless of what the causes of action and theories are,
23 Hunter Mountain has to be a Claimant Trust beneficiary.
24 MS. DEITSCH-PEREZ: Or --
25 THE COURT: I've written on that extensively already,

1 and it sounds like I'm going to have to write on it one way or
2 another extensively after February 14th.
3 Why should we not stay this new motion to file a new
4 lawsuit, rather than reinvent the wheel again? Maybe it's
5 going to be different --
6 MS. DEITSCH-PEREZ: Your Honor, --
7 THE COURT: -- with the valuation motion versus what
8 I wrote in Summer 2023. I don't know. I haven't started
9 looking at the pleadings in depth. But what is illogical --
10 MS. DEITSCH-PEREZ: Your Honor?
11 THE COURT: -- about this? I mean, this is, again,
12 it's about judicial resources, efficiency, parties' resources.
13 Why on earth would --
14 MS. DEITSCH-PEREZ: No, Your Honor, what it --
15 THE COURT: Go ahead.
16 MS. DEITSCH-PEREZ: The reason is there's a reason
17 that the Supreme Court has a very high standard to stay other
18 judicial proceedings. So not only must the applicant make a
19 showing of likelihood of success, but the issue is whether
20 they will be irreparably harmed by not having a stay and
21 whether another party would be harmed by having a stay.
22 And here, because Highland seeks to stay this matter for
23 years, if it turns out in the end that Your Honor's decision
24 is overturned and Hunter Mountain is found to have standing,
25 it will be too late to do anything about it if the cases are

1 not allowed to proceed in tandem.

2 Parties have a right to have their cases heard. The fact

3 that there are similar issues means at some point there may be

4 res judicata or collateral estoppel that deals with it. But

5 there's not a rule that only one case can go forward.

6 Under Highland's theory, virtually Hunter Mountain could

7 not bring any claims, anymore, ever. And that's not the law.

8 Hunter Mountain is entitled to have this decided.

9 It may well be that Your Honor thinks there's no

10 difference because of 3327 and is going to rule the same way.

11 We don't think that that's correct. We think we will convince

12 you that because Hunter Mountain is moving under 3327, there

13 is a difference in standing. And in any event, that it should

14 go to a Delaware court for that determination to be made. But

15 if Your Honor stays this proceeding, --

16 THE COURT: And by the way, by the way, what does the

17 Trust Agreement say about where things get litigated?

18 MS. DEITSCH-PEREZ: Delaware law says that you --

19 that --

20 THE COURT: I asked what the Trust Agreement said.

21 MS. DEITSCH-PEREZ: Delaware law --

22 THE COURT: I asked what the trust agreement said,

23 because it would trump, right? A contractual agreement would

24 --

25 MS. DEITSCH-PEREZ: No. That's the -- exactly. It

1 doesn't trump. Under Delaware law, and we cite a case for
2 this, it's in the brief, a venue provision in an agreement
3 does not override having matters of Delaware internal affairs
4 decided in Delaware. So, no, the Trust Agreement does not
5 automatically override Delaware law.
6 And so this goes back to the *Landis* -- the standard for
7 stay under *Landis*. Who's harmed? Which harm is irreparable?
8 Because Highland seeks to stay this matter for years. And
9 Your Honor knows how long the Fifth -- the District Court and
10 the Fifth Circuit have been taking to get to rulings. It
11 could be one, two, two and a half, three, if it goes up to the
12 Supreme Court. It could be years. And by that time, Mr.
13 Seery will have continued doing the very things that the
14 complaint seeks to challenge. That's not fair.
15 I understand there may be a tiny amount of additional
16 work. Mr. Morris says this is all the same. Well, if it's
17 all the same, then he's already done the work. And if Your
18 Honor is convinced it's all the same, well, then you cut-and-
19 paste the old opinion and put it down and the parties could go
20 forward with their appeals.
21 The prior standing decision is up on appeal. The parties
22 are entitled to go forward and have -- and have their judicial
23 process. There is -- the amount of money Highland spends on
24 these matters, such as bringing -- bringing the sanctions
25 claim against Mr. Ellington and then suddenly dropping it in

1 the middle, it defies belief that their -- the real interest
2 here isn't conserving resources. If in fact these are
3 duplicative matters, then it will be easy enough to write them
4 up.
5 And because Highland waited two weeks after the motion to
6 leave was filed and only a week before its response was due,
7 is it really credible that it hasn't already largely written
8 its response? Was it so sure that this Court would do as it
9 asked that it didn't bother to respond, that it set a hearing
10 for a date after its response was due? That seems improbable,
11 Your Honor. I certainly hope that they've gotten this largely
12 written.
13 But in any event, we've given them -- they asked for and
14 we've given them an additional week to write up its response
15 to the motion to leave. I'd ask that the Court allow this to
16 proceed, because Highland simply doesn't meet the standard,
17 the very, very high standard for a motion to stay here.
18 THE COURT: All right.
19 MR. MORRIS: If I may, just a few comments, Your
20 Honor?
21 THE COURT: Very briefly. Two minutes. Because I
22 thought this was going to be a short matter, and we've been
23 going --
24 MR. MORRIS: Yeah.
25 THE COURT: -- fifty minutes. Five-oh minutes. So,

1 go ahead.
2 MR. MORRIS: Yeah. Okay. Just, it's not the exact
3 same thing. It has the exact same legal gating issue: Are
4 they a beneficiary?
5 If the Court denies the stay -- and I assure the Court, I
6 haven't written one word of this thing yet -- but if the Court
7 denies the stay, we are going to be in major litigation. We
8 reserve the right to take discovery. There will be an
9 evidentiary hearing, of that I'm absolutely certain, when we
10 get to that point, as appropriate under the gatekeeping order
11 that's been adopted by this Court. So it will be expensive,
12 it will be time-consuming, and it will ultimately yield
13 absolutely nothing for the Movants here.
14 You know, we didn't set the date for today. Ms. Deitsch-
15 Perez is exactly wrong about that. The Court set the date for
16 today. We filed an emergency motion a week ahead of time.
17 It's not like we waited until the last second. Right?
18 So I just, I take offense with all of that. I take
19 offense to the reference to the Ellington sanctions motion.
20 That got resolved because Mr. Ellington finally said he wasn't
21 going to sue Mr. Seery. Had he done that when we asked him a
22 hundred times before that, we never would have filed the
23 motion. He refused to do it. That's why the motion was
24 filed. And it was resolved -- not withdrawn, but resolved --
25 only after Mr. Ellington and his lawyer finally said they

1 weren't going to sue Mr. Seery.
2 So, you know, facts matter, Your Honor. Facts are very
3 important to me. And I want to make sure that the factual
4 record is a hundred percent accurate.
5 The fact of the matter is, at the end of the day, the
6 Court should grant the stay. You know, if Hunter Mountain
7 really wanted Mr. Dondero [sic] out, they should have included
8 it in their complaint last summer and they shouldn't be
9 allowed to come up with new claims that aren't even in the
10 proposed complaint that's on file right now. There is no
11 claim for breach of the duty of good faith and fair dealing.
12 There isn't. And so they don't get to come here and argue
13 against the stay based on a pleading that has yet to be filed.
14 The Court should grant the stay.
15 THE COURT: All right.
16 MS. DEITSCH-PEREZ: Your Honor?
17 THE COURT: No. I'm done. I've heard enough.
18 I am going to grant a stay. It's going to be slightly
19 different from what is requested here. I'm going to grant a
20 -- well, I'm going to grant a stay on this newest HMIT motion
21 to sue Mr. Seery until at least the time I rule on the
22 valuation motion, the motion to dismiss the valuation
23 complaint. Okay? So it's argued February 14th. We know how
24 this case works. I get voluminous submissions. I try to
25 carefully go through them and make a careful ruling. And so

1 will I get a ruling out in April? That's just a wild guess,
2 okay, but it's probably a reasonable guess.
3 So what I envision doing is having something like a status
4 conference/scheduling conference shortly after I rule on the
5 motion to dismiss the valuation complaint and decide, are we
6 going to continue the stay to let maybe any appeals -- in
7 fact, I'll probably set a status/scheduling conference shortly
8 after the deadline for a notice of appeal. And we'll see, is
9 there an appeal pending, what's going on big-picture, should I
10 continue the stay? Okay? So I'm not saying it's going to be
11 a two- or three-year stay, but I'm saying it's going to be at
12 least an until-later-this-year stay, and we'll see where
13 things stand in this case.
14 Now, let me give you a couple of reasons. I don't think
15 the four-prong TRO standard test applies here: Irreparable
16 harm; likelihood of success on the merits; balancing the
17 parties' interests; the public interest. I don't feel the
18 need to make that evaluation here because I do think this is
19 just policing the Court's own docket, which of course any
20 court has the discretion to police its own docket, in the
21 interest of judicial economy and reducing expense. And so I
22 am going to elaborate on that and why I'm exercising my
23 discretion as such.
24 As I've alluded to a couple of times, August 25, 2023,
25 Docket Entry No. 3903, this Court issued a 105-page opinion in

1 what I would call a very similar context, if not squarely down
2 the middle of the fairway the same context. And the context,
3 for the record, was Hunter Mountain, through a different
4 attorney -- not Ms. Deitsch-Perez, a different attorney --
5 filed a motion for leave to sue Mr. Seery and Farallon and
6 Stonehill, Claims Purchasers, for different causes of action.
7 One of them was breach of fiduciary duty by Mr. Seery, I note,
8 but there were different causes of action.
9 As I've noted here, and I'm saying this for the record in
10 case there's an appeal of this order granting stay today, in
11 the 105-page opinion that I issued denying Hunter Mountain
12 leave to file the lawsuit against Mr. Seery and the Claims
13 Purchasers, I did spend 23 pages, dense pages with 85
14 footnotes, explaining why I thought in that context Hunter
15 Mountain has no constitutional standing as well as no
16 prudential standing to sue Mr. Seery and the Claims
17 Purchasers.
18 I note that the prior lawyer for Hunter Mountain, not Ms.
19 Deitsch-Perez, gave very little oral argument or written
20 argument on that. In fact, as I remember, he said, The person
21 aggrieved standard is what applies and we're a person
22 aggrieved.
23 And the Fifth Circuit as well as the U.S. Supreme Court
24 seem to love the topic of standing. Okay? And I thought we
25 needed a very thorough discussion of standing, okay, because I

1 thought, more likely than not, that's going to be the first
2 issue -- of course, because it could be bear on subject matter
3 jurisdiction -- that's going to be the first issue that a
4 District Court, the Fifth Circuit, even the U.S. Supreme Court
5 is going to focus on. So, 23 pages, 85 footnotes.
6 Now, there may be more or different things to say when we
7 have the motion to dismiss on the valuation complaint. Okay?
8 (Echoing.)
9 THE COURT: Please turn off your speakers, whoever
10 that is.
11 I will note that Delaware law, that would be the narrower
12 question of prudential standing, right? And in my 23 pages, I
13 actually spent more time on constitutional standing than
14 prudential standing. And as Mr. Morris notes, the 105-page
15 opinion is chock-full of other stuff besides standing. Okay?
16 Colorability of the claim that Hunter Mountain wanted to bring
17 and what is the standard the Court should apply under the
18 gatekeeping provision. Okay? So, lots of other things.
19 Yes, it may be years before a higher court rules or
20 different courts rule. And it may be slightly nuanced and
21 different for the valuation thing. But I don't know why
22 anyone would reasonably think I would go down this trail a
23 third time for the same party. Okay? I went down it *ad*
24 *nauseam* August 25, 2023. It sounds like I'm going to go down
25 it *ad nauseam* again February 14th and thereafter, as I decide

1 what to do.

2 As far as abuse of discretion, I think my bosses -- the

3 District Court, the Fifth Circuit, the Supreme Court -- would

4 want to slap my hand if I didn't grant the stay. It's not

5 just judicial economy to me, it's not just efficiency of the

6 parties, but it's my bosses. It's the District Court, the

7 Fifth Circuit. Why are you going to make us look at this yet

8 again? Okay?

9 Maybe I'll have something different to say. Maybe I'll

10 have something more to say in connection with the valuation

11 motion. I don't know. And that's why I'm leaving open the

12 possibility that we're going to have a status conference after

13 I've ruled, after notices of appeal may have been filed, and

14 we'll figure out, do I go forward with this motion for leave?

15 I'll have a better idea, is there something new and different

16 at this point?

17 But there is no way any responsible court would go forward

18 a third time considering Hunter Mountain's standing under

19 Delaware law, under constitutional law, as a Claimant Trust

20 beneficiary. Okay? There's no way any reasonable court would

21 do that, with it twice having been teed up. Okay?

22 So that is the ruling of the Court. We will put it on our

23 tickler system to set a status conference on whether to

24 continue a stay in place after I've ruled on the valuation

25 motion to dismiss.

1 All right. Please upload an order, Mr. Morris, that
2 reflects that.
3 MR. MORRIS: Okay. And just so there's no ambiguity,
4 any further briefing on the motion for leave is also
5 suspended? Is that right?
6 THE COURT: Correct. Yes. Correct. And, again, --
7 MR. MORRIS: All right.
8 THE COURT: -- I just want to say one more thing,
9 actually, for the record. Not whining to anyone, but it's
10 going to sound like whining. I checked yesterday, and I'm not
11 even sure my numbers are perfectly accurate, it may be more
12 than this, but I counted in the Highland case I have issued 13
13 -- well, there are 13 published opinions from this Court. And
14 then if you go back to *Acis*, which was, one might say, a
15 precursor to Highland, there were five more published
16 opinions. And that's not even counting Reports and
17 Recommendations to the District Court, of which there are many
18 more, probably close to a dozen. And then I've heard -- I've
19 heard; I've never checked it -- that there were something like
20 55 appeals. And that was I think about a year ago someone
21 announced that in court.
22 So, again, I mean, this is not just about the parties,
23 although I care about the parties and the lawyers. This is
24 about judicial efficiency. This is overwhelming to the
25 system, so to speak. Okay? And so, again, I think it would

1 be an abuse of discretion for sure if I didn't grant the
2 motion to stay.
3 All right. I've said enough. And with that, we'll go on
4 to Highland's motion for a bad faith finding and attorneys'
5 fees against I call it HCRE, but I guess it's changed its name
6 a long time ago to NexPoint Real Estate Partners, LLC. All
7 right. Mr. Morris, are you presenting that?
8 MR. MORRIS: I am, Your Honor. Thank you very much.
9 John Morris, Pachulski Stang, for Highland.
10 We're here on this hearing, Your Honor, to argue
11 Highland's motion for a bad faith finding for an award of
12 attorneys' fees in connection with the proof of claim and the
13 prosecution of the proof of claim by HCRE.
14 The motion was originally filed at Docket 3851, and if Ms.
15 Bates can put up the next deck, I'll walk the Court through
16 this. This is pretty straightforward.
17 The starting point, the starting point here, Your Honor,
18 as it ought to be, is HCRE's claim. And if we could just,
19 yeah, go to this page. What I've put up on the screen here,
20 or what Ms. Bates has put up on the screen, is a slide that
21 shows two pieces of evidence, two documents that were admitted
22 into evidence in this matter. The first is HCRE's proof of
23 claim, and the second is HCRE's response to Highland's
24 objection to that proof of claim. And these documents are
25 critical (chiming) because it sets forth the entire basis for,

1 you know, for this litigation.

2 In the proof of claim, HCRE said, among other things, that

3 it contends that all or a portion (chiming) of Highland's

4 interest in an entity called SE Multifamily, quote, does not

5 belong to the Debtor. Or may be property of (garbled).

6 So this is the proof of claim. They're saying all or a

7 portion of Highland's interest in SE Multifamily isn't

8 Highland's. Right? But Your Honor knows that that's just a

9 statement without regard to how they get there. A proof of

10 claim -- and this is really simple, and it's why this motion,

11 I think, is pretty simple -- a proof of claim has to have some

12 basis in the law. Somebody could have a breach of contract.

13 Somebody could have a slip and fall. There could be a

14 personal injury case against the Debtor. There could be a

15 claim for breach of fiduciary duty or other tortious conduct.

16 But there's got to be a legal theory on which a claimant is

17 seeking to recover against the Debtor.

18 And the claimant here, HCRE, set forth those legal

19 theories in their response. And that's the box that's below

20 it. And it's based on the very agreement that's at issue, the

21 Amended and Restated (garbled) LLC Agreement for SE

22 Multifamily. It says, After reviewing the documentation,

23 HCRE, quote, believes the organizational documents relating to

24 SE Multifamily Holdings, LLC improperly allocates the

25 ownership percentages -- so that's the issue -- of the members

1 thereto due to mutual mistake, lack of consideration, and
2 failure of consideration. And these are the legal theories.
3 They claim to reform, rescind, or modify the agreement.
4 Again, not argument, don't accept anything I say, just
5 accept what HCRE says. These are their pleadings. They told
6 the Court that they believed that Highland didn't have a right
7 to its interest in SE Multifamily. They told the Court that
8 they believed the document improperly allocated the
9 percentages. They told the Court that Highland provided no
10 consideration. They told the Court that they had claims for
11 reformation, to rescind the agreement, or to modify the
12 agreement. That's the whole basis for this litigation.
13 If we could go to the next slide. Because let's just look
14 at some very simple terms of the agreement. This is
15 unambiguous. Right? And this is an agreement that's drafted
16 by Highland, by HCRE, all under Mr. Dondero's control.
17 Everybody's rowing in the same direction. The testimony here
18 was consistent, not only among Highland and HCRE witnesses
19 but also, and very, very importantly, BH Equities. Right?
20 We haven't spent a lot of time talking about BH Equities, but
21 that evidence is in the record. BH Equities testified up,
22 down, and sideways that the agreement was consistent with its
23 intent, that it was fully aware that Highland had only put in
24 $49,000, that Highland was getting a 46.0 percent interest.
25 Right?

1 But in addition to BH Equities, Mr. Dondero, and we'll
2 talk about this more in a moment, and Mr. McGraner testified
3 to the same thing. And how could they not? Just look at
4 these provisions. The first box is Schedule A to the
5 agreement. It says, right, in contrast to the $291 million
6 that was credited to HCRE Partners -- they actually didn't
7 put in any of that; that's what the testimony showed --
8 Highland actually put in $49,000. But these are the
9 percentages that they wrote.
10 And Your Honor will recall that in the 48 hours before
11 the document was signed -- this is evidence in the record;
12 I'm sorry I don't have citations to the specific exhibits --
13 but there's a back-and-forth in emails between Freddy Chang,
14 I believe it was, and BH Equities about Schedule A and about
15 the contributions.
16 And so none of this is an accident. And it's not just
17 stated in Section -- ii Schedule A. It's set forth --
18 Highland's interest was set forth in Section 1.7, in Section
19 6.1A, in Section 9.3E, which is the liquidation provision.
20 Right? This was the waterfall in the event of a liquidation.
21 So these are the plain, unambiguous, uncontested terms of the
22 agreement that everybody agreed to when the document was
23 signed.
24 We can go to the next slide.
25 Despite that, Mr. Dondero swore under the penalty of

1 perjury that the proof of claim was true and correct.
2 Remember, the proof of claim said that this really wasn't
3 Highland's interest in SE Multifamily. I don't understand
4 how he could do that, given the plain terms of the agreement.
5 But his testimony was short and precise and unambiguous. It
6 can be found at Pages 55 to 59. It's quoted there -- it's
7 cited there in the footnote. If you just read those four
8 pages, Your Honor.
9 And Your Honor cited to this pretty extensively on Pages
10 4 and 5 of the Court's decision in this matter. I've
11 summarized just some of the Court's findings. It's not the
12 Court's findings; it's Mr. Dondero's admissions. He didn't
13 -- he didn't personally do any due diligence of any kind to
14 make sure that Exhibit A was truthful and accurate before he
15 authorized it to be filed. He filed it.
16 He didn't review or provide comments to the proof of
17 claim or Exhibit A before it was filed. He didn't review the
18 applicable agreements or any documents before signing the
19 proof of claim. He had no idea whose -- where the genesis of
20 the proof of claim was, who at HCRE worked with or who
21 provided information to Bonds Ellis to allow Bonds Ellis to
22 prepare the proof of claim. He had no information about what
23 information was given to Bonds Ellis to formulate the proof
24 of claim. He didn't know whether Bonds Ellis ever
25 communicated with anybody the real estate group regarding the

1 proof of claim.
2 He also testified that he never specifically asked
3 anybody in the real estate group if the proof of claim was
4 truthful and accurate before he authorized it to be filed.
5 He didn't check with any member of the real estate group to
6 see whether or not they believed the proof of claim was
7 truthful and accurate. He failed to -- he admitted he failed
8 to do anything to make sure the proof of claim was truthful
9 and accurate before he authorized his electronic signature to
10 be affixed and have it filed on behalf of HCRE.
11 That's bad faith, Your Honor. You can't rely on some
12 vague process or say 'I'm just relying on others,' because if
13 that's the case, that's what I -- that's we said in our
14 reply, that's the very important person defense, right? He's
15 too busy, he just relies on others, he just signs stuff, and
16 he's got no obligation to do anything. How do you sign
17 something under the penalty of perjury in that milieu?
18 If the Court doesn't grant our motion here, it will be
19 sending a signal that people can sign proofs of claim with no
20 knowledge of the substance of the claim, with no knowledge of
21 whether the claim is valid, with no knowledge as to whether
22 or not the Court should take the time to adjudicate a
23 disputed claim.
24 That's what will happen. Right? That will be the
25 signal, that very important people are absolved of the

1 responsibility of doing basic due diligence before signing a
2 proof of claim.
3 I think the signing of the proof of claim, the filing of
4 the proof of claim, given what we know now, in particular
5 what we know now, is bad faith.
6 And I know that HCRE in their opposition said, oh, well,
7 you know, Mr. McGraner did stuff. I would urge the Court to
8 look at Pages 109 to 112 of the transcript, because Mr.
9 McGraner kind of distanced himself from the proof of claim.
10 He said he didn't authorize it, he didn't approve the filing.
11 He said he never gave any documents to Mr. Sauter. He never
12 discussed the proof of claim with Mr. Dondero or anybody at
13 Bonds Ellis. He didn't provide any comments to the proof of
14 claim. He deferred to counsel. He didn't know if Mr. Sauter
15 gave any documents to Bonds Ellis. He never gave the
16 information to Bonds Ellis. He never discussed it with
17 anybody but D.C. Sauter. Right?
18 So the two people, the only two people who are authorized
19 to act on behalf of HCRE did absolutely nothing to make sure
20 that there was at least a modicum of credibility, at least
21 some basic level of diligence, at least some good-faith basis
22 to assert that this interest that Highland has in SE
23 Multifamily could be subject to challenge. Right? They did
24 nothing.
25 If we can go to the next slide.

1 And then, as Your Honor will recall, they tried to
2 withdraw the proof of claim. Right? That in and of itself
3 we contend was an act of bad faith, and it was an act of bad
4 faith for multiple reasons. There's no dispute that they
5 tried to -- they filed their motion to withdraw the proof of
6 claim immediately after taking Highland's depositions but
7 immediately before I was about to depose their witness. It's
8 a naked attempt to try to procure a patently unfair
9 litigation advantage, particularly in light of the fact that
10 HCRE was simultaneously trying to preserve its claims for
11 another day.
12 If they had just -- and Your Honor made this point at the
13 hearing, right? Just say unequivocally you're done with
14 this. They couldn't do it. They tried to save it for
15 another day.
16 And so the withdrawal of -- a motion to withdraw the
17 proof of claim we're not saying is always bad faith. Look at
18 what I say in the title of this slide. Under these
19 circumstances, when you file it after taking discovery but
20 before subjecting your people to discovery, and when you try
21 to preserve your claims for another day, the Court properly
22 denied that motion for leave to withdraw the proof of claim.
23 And it stunk. And Your Honor I think rightly questioned
24 whether or not this was, you know, a threat to the integrity
25 of the bankruptcy system and the claims process, whether or

1 not this amounted to gamesmanship.
2 But it didn't end there. In closing argument, HCRE
3 persisted with its attempt to try to preserve their claim.
4 This is bad faith. They continued down the exact same path.
5 They told the Court in closing argument at Pages 180 to 181
6 of the transcript, quote, They want you to make findings that
7 we can't raise any of these other issues, decisions, et
8 cetera, going forward. That's not proper on proofs of claim.
9 Going forward. They wanted to preserve this issue for the
10 future.
11 But this issue is their proof of claim. This issue is
12 based on the legal theory set forth in Paragraph 5 of HCRE's
13 response to the objection, the response that says they have
14 claims for rescission, to rescind, to modify the agreement.
15 Right? That's the whole legal theory of it. But they wanted
16 Your Honor to simply say the proof of claim is gone but you
17 all can go pursue another day the legal theories that
18 underlied the entire process.
19 That's (garbled), Your Honor. That's what this is all
20 about, the claims process. You have a claim. You have legal
21 theories on which the claim is based. If your claim is
22 denied or if the objection to the claim is sustained, done.
23 They wouldn't have it. It's why the proof of -- it's why the
24 motion withdraw was denied and why the Court should find that
25 their attempt to preserve these claims for the future is bad

1 faith.
2 And the interesting thing, Your Honor, is this is
3 (chiming) one of the very few rulings in the case that Mr.
4 Dondero didn't appeal. I think even he acknowledges, like,
5 like, this is just not -- that he didn't -- he didn't want
6 this seeing the light of day in the District Court.
7 If we can go to the next slide. And this really
8 amplifies the bad faith in filing the proof of claim. It's
9 the testimony about the nature of the claim. And again, I --
10 we talk about this exhaustively in our papers, and so I
11 haven't cited to everything, but this is just some of the
12 nuggets from, you know, the testimony that's out there.
13 Right?
14 Consideration. Mr. McGraner testified that Highland
15 bankrolled HCRE's business. Your Honor can take judicial
16 notice that Highland loaned millions of dollars to HCRE.
17 Right? Those are part of the Notes Litigation that HCRE is
18 now strenuously trying to avoid repaying in its appeal.
19 Right? They're appealing that to the Fifth Circuit and
20 they're trying -- right? We bankrolled the business, we
21 shouldn't have our interest, and they don't want to pay the
22 money back. It really -- this is *chutzpa*, where I'm from.
23 Right?
24 Going on to the question of consideration -- because,
25 again, this is in Paragraph 5 of the pleading -- there's the

1 admission that HCRE didn't have the financial wherewithal to
2 close on the Key Bank loan by itself and it needed Highland
3 to provide capital -- flexibility by co-signing on the loan.
4 Right? Couldn't have done the deal without Highland, but
5 they want to take the interest away from us. Bankrolled the
6 whole project, but they want to take the deal away from us.
7 They include Highland in order to provide tax benefits,
8 but they want to take the deal away from us. Both Mr.
9 Dondero and Mr. McGraner were very clear that tax benefits
10 was one of the reasons Highland was in this. And if Your
11 Honor will recall, in the closing argument, I pointed Your
12 Honor to just one of the tax returns that showed something
13 like $30-plus million in income was allocated to Highland in
14 order to shelter it from taxes. Right? I don't know that
15 there's anything illegal about it. I take no opinion about
16 it. Right? I have no view on it. But *The Little Engine*
17 *That Could* that put in the $49,000 was suddenly stuck with
18 $31 million of income. I'll wait to hear an explanation as
19 to why Highland was included in the deal and whether taxes
20 were a part of it.
21 Mr. McGraner also testified just --
22 (Audio cuts out.)
23 THE COURT: Okay. What happened?
24 MR. MORRIS: (begins speaking)
25 THE COURT: Okay. Mr. Morris, we lost your sound

1 for about 20 seconds, so if you could kind of repeat the last
2 20 seconds.
3 MR. MORRIS: Sure. So I'll try and summarize. On
4 the consideration piece, they know there was consideration.
5 They pursued a claim based on lack of consideration, but in
6 the first point there's an admission about Highland having
7 both bankrolled the whole operation, and in the second point
8 there's the admission from Mr. McGraner that the deal would
9 never have gotten done without Highland's financial
10 wherewithal. And Mr. Dondero and Mr. McGraner admitted that
11 there were tax benefits. And Your Honor saw those tax
12 benefits, right? In my closing argument, I pointed to just
13 one of the tax returns showing that Highland -- I called it
14 *The Little Engine That Could*, who put in the $49,000, somehow
15 got -- somehow got $31 million of income assigned to it.
16 Right?
17 This was not an accident. Highland was there for tax
18 reasons. Again, I take no view as to the propriety of that
19 at this time, but the notion that there was no consideration
20 is just -- it was ridiculous then, and their admissions show
21 that it was ridiculous.
22 The next bullet point shows Mr. McGraner's admissions
23 that on March 15, 2019, the deadline was approaching to amend
24 the original LLC agreement to admit BH Equities and to have
25 it retroactive to the prior August. He admitted that he

1 reviewed the draft Schedule A, which is what we looked at,
2 right? It showed $49,000 and a 46.06 percent interest for
3 Highland. He saw that it unambiguously showed Highland
4 making a $49,000 contribution, getting the 46.06 percent
5 interest. He believed Schedule A reflected his understanding
6 of the terms between Highland and HCRE, and he knew of no
7 obligation that Highland had to make any future capital
8 contributions. I've cited to all of the testimony very
9 specifically.
10 Mr. McGraner admitted that the allocation of the interest
11 in Schedule A was consistent with the parties' negotiation of
12 the waterfall and other provisions in the amended LLC
13 agreement, that HCRE understood it accurately reflected the
14 parties' intent.
15 How do you (garbled) proof of claim saying you have to
16 reform, rescind, modify the agreement, when all of this is in
17 your head? How do you do that in good faith? They both
18 admitted that Schedule A reflected the parties' intent at the
19 time it was signed.
20 It's the last bullet point that's really the head
21 scratcher. What happened is Mr. Dondero, who also caused
22 Highland to file for bankruptcy, didn't like the consequences
23 of his decision. Nothing happened here, as I said in my
24 closing argument, that doesn't happen in every bankruptcy
25 case. The assets of the Debtor are marshaled for distribution

1 to the creditors. Highland's interest in HCRE is an asset of
2 the estate. HCRE challenged Highland's title to that asset.
3 That's what this litigation is about. And the only reason
4 they challenged the title is because they didn't like the
5 consequences of Mr. Dondero's decision to file Highland for
6 bankruptcy.
7 That's not good faith. If that were good faith, every
8 equity owner of every business would be able to claw back
9 everything they'd given to a company, every loan that they'd
10 given to a company, every -- like, they can't do that. That's
11 not what the law -- there's no basis for that theory.
12 Finally, just deal with the attorneys' fees issues
13 quickly. You know, the challenges to our fees are both petty
14 and baseless, frankly. They said we should have avoided
15 discovery. I don't know how you say that. We shouldn't have
16 taken depositions. They took depositions, and we shouldn't
17 have done that? We should have gone to trial where they had
18 discovery and we didn't? That doesn't make a lot of sense to
19 me, and I can't imagine it would make sense to any objective
20 participant.
21 They claim our legal fees are *per se* excessive. The total
22 legal fee is less than five percent of the value of Highland's
23 interest in SE Multifamily, not according to us but according
24 to Mr. Dondero's family trust, Dugaboy. They told this Court
25 in -- on June 30, 2022, I think, in the very first motion for

1 information, that Highland's interest in SE Multifamily was
2 $20 million. So we spent less than five percent of the value
3 of that to get good, clean title. I don't think that's
4 excessive by any means, particularly with the amount of hoops
5 we were required to jump through.
6 Unidentified timekeepers. They say three people were not
7 identified. It was a *de minimis* amount of money. We've
8 addressed that in the brief.
9 Travel time. You know, again, an even more *de minimis* --
10 I think that's right -- a more *de minimis* amount of money,
11 less than $10,000 for me and Ms. Winograd to go to Dallas. We
12 billed out at half-time. They admit it. And ironically, you
13 know, our compensation for nonworking travel time was part of
14 the agreement that was authorized when Mr. Dondero was still
15 the head of Highland. I don't know how you criticize that
16 today when it's part of Mr. Dondero's own agreement.
17 Finally, they take issue with Mr. Adler's relatively
18 modest invoice. I think he charged $700 an hour. He
19 (garbled) 30 hours or something in August 2022 as we were
20 preparing for depositions. Mr. Dondero and Mr. McGraner have
21 admitted that tax issues were a driving force in including
22 Highland in this. And if you look at the Amended and Restated
23 LLC Agreement in the section that comes after Section A, there
24 is a multipage tax analysis that I can't possibly get my head
25 around. I'm not a tax lawyer. And we needed some help to

1 understand kind of what the tax implications were.
2 I think, under the circumstances, the need for the tax
3 services was completely warranted, and the amounts here are
4 relatively modest to the whole. You know, it's 30-some-odd
5 hours in connection with depositions at a $700 hourly rate,
6 when my firm doesn't provide tax advice.
7 So, you know, Your Honor, I think I'm done. I think
8 there's multiple reasons for finding the bad faith here. This
9 proof of claim should never have been filed. You know, if
10 they wanted to withdraw it, they shouldn't have taken our
11 depositions and they should have given us a clean bill of
12 health without trying to reserve some right to bring future
13 challenges to our title to the asset.
14 And once we got to the trial, it became clear that there's
15 absolutely no basis for the claim, that through the admissions
16 there is no question that the document reflected the intent of
17 parties. Highland provided more than adequate consideration
18 for its interest. It continues to hold its interest today.
19 It continues, you know, to receive its allocation of income.
20 And there's a reason for all of that.
21 And for those reasons, Your Honor, I think the time has
22 come to start holding people to account here. You know, we
23 did it, as I mentioned, with the Rule 11 on the motion for
24 leave to sue us. We were able to get rid of that. I think
25 the Court really needs to try to bring some discipline to this

1 process instead of allowing people -- instead of allowing Mr.
2 Dondero and those working at his direction to just file things
3 irresponsibly, without basis of fact, you know, just -- just
4 because.
5 It's not a thing. You know, that's not what this Court
6 ought to be doing. It's not what I ought to be doing. It's
7 not what I want to be doing, I'll tell you that right now.
8 And so I think there's a real need for a bad faith finding in
9 this particular case. I think there's a real need for there
10 to be consequences of putting the Court and the Reorganized
11 Debtor through this process. Because this -- if Mr. Dondero
12 had only searched his own memory, if he had only asked Mr.
13 McGraner, hey, did the agreement actually reflect the intent
14 of the parties, how could this ever have gotten filed? That's
15 all he had to do, was ask himself the question. All he had to
16 do was ask Mr. McGraner. Right? We wouldn't be here, Your
17 Honor.
18 And for those reasons, we ask the Court to find that this
19 whole filing and prosecution of this claim was in bad faith
20 (chiming), that we should get an award of attorneys' fees.
21 THE COURT: All right.
22 MR. MORRIS: Thank you.
23 THE COURT: A couple of follow-up questions. Thank
24 you. I think you just answered this question with your
25 closing comment, that you think there was bad faith in both

1 the filing and the prosecution.
2 So, as I understand it, the filing of the proof of claim
3 itself you say is bad faith because you say it was a baseless
4 proof of claim, and it was signed without any due diligence on
5 the part of the person who signed it, Mr. Dondero? And then
6 we obviously had months of prosecution, if you will,
7 litigation, after Highland's objection. And then the timing
8 of the withdrawal I would say is kind of a third thing I hear
9 being argued, correct?
10 MR. MORRIS: Yeah. I would just summarize it this
11 way. The filing of the proof of claim itself was bad faith
12 for all of the reasons that I've stated. The motion to
13 withdraw under these circumstances was also bad faith because
14 they did it after taking discovery and tried to protect their
15 own witnesses from discovery while trying to preserve the
16 claims. They wanted to assert them at another day. Counsel
17 said it in his closing. You know, going forward. That's what
18 he said. And then the third thing is the substance. There is
19 no basis to reform the contract. There's, like, there's no
20 factual basis for the claim itself.
21 THE COURT: Okay. And my last question -- famous
22 last words, my last question -- if I were to award attorneys'
23 fees here, I'm looking at sort of a summary page for
24 Pachulski's fees. I'm looking at Docket 2852-6. I think this
25 was an Exhibit F to that motion.

1 So, I always use timelines in my life. While HCRE filed
2 its proof of claim on April 8, 2020, and then Highland
3 objected to it in an omnibus pleading on July 30, 2020,
4 Pachulski has started the clock running, so to speak, August
5 21st. So, to the extent there were fees incurred, looking at
6 this, after the proof of claim was filed, 2020, thereafter I
7 note HCRE filed a response to the objection October 19, 2020,
8 then the move to disqualify Wick Phillips, dah, dah, dah, dah,
9 dah, April 14, 2021.
10 I had understood you weren't billing time for the
11 disqualification motion, but in fact it looks like you're only
12 asking for time starting August 2021, correct?
13 MR. MORRIS: That's right. My intent -- and I think
14 we started the clock then because that's -- you know, we may
15 have filed an omnibus objection, I think we did file, and
16 we're not including time for that. So that's when -- that's
17 when the fees started to become incurred.
18 THE COURT: Okay.
19 MR. MORRIS: And if I made a mistake anywhere, I
20 apologize, Your Honor, but the intent was certainly to
21 include, consistent with Your Honor's prior order, every
22 minute of time that was expended in connection with the
23 disqualification motion.
24 THE COURT: Okay. I just --
25 MR. MORRIS: Okay. I'm reminded, actually, I'm

1 actually reminded that August 7th was also the effective date,
2 so that's probably why we used that date.
3 THE COURT: Okay. Understood. Understood.
4 All right. I think those are all my questions, so I will
5 hear from HCRE, or NexPoint Real Estate, I think they may
6 prefer to be called. Who is making the argument there?
7 THE CLERK: He's on mute, Judge.
8 THE COURT: Okay. You're on mute. Is it Mr.
9 Gameros?
10 THE CLERK: Yes.
11 THE COURT: Okay. Mr. Gameros, you're on mute.
12 MR. GAMEROS: No, I'm not. There we go.
13 THE COURT: Okay. Here we go.
14 MR. GAMEROS: Sorry. Good morning, Your Honor.
15 THE COURT: Good morning.
16 MR. GAMEROS: Bill Gameros for NexPoint Real Estate.
17 I'm going to hopefully show a PowerPoint. Let's see. I just
18 want to make sure that this is showing. Can everyone see it?
19 THE COURT: Not yet.
20 MR. GAMEROS: All right. Nope. How about that? No.
21 THE COURT: We're not here on our court equipment.
22 Do others -- Mr. Morris, do you see it?
23 MR. MORRIS: I do not, Your Honor.
24 THE COURT: Okay.
25 MR. GAMEROS: Let me try it this way. I'm sorry.

1 THE COURT: We do not -- oops, now something is
2 starting to happen. Or was. For a --
3 MR. GAMEROS: How about now?
4 THE COURT: Here we go. Oh.
5 MR. GAMEROS: Is it showing now?
6 THE COURT: Oh, here we go. We have it now, yes.
7 MR. GAMEROS: All right. I'm sorry about that, Your
8 Honor.
9 THE COURT: Okay.
10 MR. GAMEROS: Hate to waste the Court's time.
11 THE COURT: No problem.
12 MR. GAMEROS: All right. We're here in response to
13 HCMLP's motion for a bad faith finding and attorneys' fees.
14 First, what are they asking for? Over $800,000 in fees to
15 defend a singular proof of claim that had for it as actions
16 six short depositions, not lengthy, limited written discovery,
17 and a single-day evidentiary hearing.
18 NREP only has one matter before this Court, the proof of
19 claim. It has discrete ownership. You've already seen that
20 from Mr. Morris's slides. BH Equities. Mr. McGraner actually
21 has a remote interest in it. There are a bunch of folks that
22 have interests in it, so it's a discrete ownership structure.
23 And it's not a vexatious litigant. It didn't appeal when
24 the Court denied and overruled the proof of claim. It hasn't
25 done anything else.

1 It didn't file its claim in bad faith. We're going to go
2 through that with some detail. It's never conducted itself in
3 bad faith in front of this Court in any step in the process.
4 But most importantly today, Your Honor, two things.
5 First, there's not a single case cited in Mr. Morris's slide
6 deck, and it's -- there's none cited for a very simple reason.
7 There is no authority regarding fees for an alleged bad faith
8 proof of claim under 105. We couldn't find it. We looked for
9 it. It hasn't happened. There's no authority for it. He
10 hasn't showed you any, and the authorities that he had showed,
11 there's none in his slide, but we're going to go through them
12 in detail, Your Honor, there's no basis to award attorneys'
13 fees.
14 I think intellectually the Court should look at this as a
15 two-step process. First, is the proof of claim and its
16 prosecution done in bad faith? I think the answer is going to
17 be a resounding no. But if the Court thinks there is a bad
18 faith -- is bad faith activity, the second step is what fees
19 are possibly awardable.
20 First, it's styled as a bad faith finding. You look at
21 when the proof of claim was filed and the process that got
22 there. Your Honor, in our response brief, we provide detailed
23 citations to the trial transcript that says a variety of
24 things, including Bonds Ellis never talked to Mr. Dondero,
25 but, contrary to what Mr. Morris told you this morning, Mr.

1 McGraner did. So there are folks at NREP that were working
2 with Bonds Ellis when they filed the proof of claim.
3 But he did so, candidly, with one of the best bankruptcy
4 -- that NREP filed its proof of claim with one of the best
5 bankruptcy shops in the Metroplex is telling. They wanted to
6 do it, and they wanted to do it right, and they hired very
7 competent counsel to do that.
8 These two cases I think are important. It's not just if
9 there's a mistake in the proof of claim, you don't sanction
10 them. And just beating the proof of claim. Is not enough if
11 they lose. Undenied authority. And I think it's telling
12 here.
13 This Court has seen a lot of litigation on proofs of
14 claim. Objections to all of them, with a host of settlements.
15 That just didn't happen here, but that doesn't make those
16 prior proofs of claim in bad faith, even though they would
17 like you to think that that's true. It's not true and it's
18 not fair. It's also not right.
19 How did they do it? First, they hired Bonds Ellis. And
20 part of that process was Bonds Ellis did the drafting. Mr.
21 Dondero testified as to how he signed it and the basis on
22 which he signed it. Because despite all the derision from
23 HCMLP about the process and not believing in it, the reality
24 is the process exists, it's what happened, it's what was done,
25 and they coordinated with counsel in its filing.

1 Just because it's not enforceable, for whatever reason,
2 doesn't make it sanctionable.
3 What were they trying to accomplish? They did try to
4 reallocate. They wanted a reallocation because HCMLP only put
5 in a tiny amount of capital and it wasn't providing any
6 services.
7 I don't think it's in dispute that the bankruptcy case has
8 been adversarial. I sat through the prior hour this morning.
9 Mr. Morris made reference to it during this particular motion
10 as well. But it also made the amendment impractical. Not in
11 dispute.
12 Importantly, Your Honor, in your opinion disallowing the
13 claim and sustaining HCMLP's objection, you didn't find that
14 it was done in bad faith, and Mr. Morris asked you to do it
15 several times at trial. Quite frankly, Your Honor, this
16 ground has been plowed. We don't need to plow it again. The
17 chance for the bad faith finding was last year. He didn't get
18 what he wanted, so now he's taking a second swing at this
19 particular piñata, and it's not right.
20 But look what happened in the reply brief. These are what
21 are items of bad faith. Bad motive, animus, ill will. That's
22 *Yorkshire*. That's the surreptitious bankruptcy filing.
23 *Brown*. First, not bad faith. What happens in *Brown*, of
24 course, it's a home case, a loan servicer looking to
25 foreclose. And the sanction itself was tiny. Not $800,000.

1 It was a small sanction. And this Court, you, Your Honor,
2 specifically looked at that case in the past.
3 *Page* (phonetic) (garbled). Intentional, deceitful, bad
4 faith, theft. That is not what happened here. Not even
5 close.
6 *Lopez*. They don't discuss *Lopez* again. They never
7 mention it. Why? Because *Lopez* has the 'but for' test in it
8 for fees. But this case, unlike *Lopez*, which had multiple
9 motions to compel, had none.
10 Your Honor, this case had one hearing before the
11 evidentiary trial. A scheduling conference. I'm sorry, it
12 had two. The motion to withdraw, which we believe should have
13 been granted. Your Honor didn't grant it. I understand the
14 Court's ruling. We didn't appeal it. I'm not appealing it
15 right now. But we did try to withdraw the proof of claim.
16 But *Lopez* finds bad faith under 105 for discovery abuse. It
17 doesn't even apply to these facts.
18 So, looking at the Court's inherent powers, it's not a
19 standard fee application under the Code, that matters, but
20 most importantly, they've got to provide a causal link for
21 'but for.' *Lopez* tells you that. *Hagar* in the Supreme Court
22 tells you that.
23 What happens instead at the motion to withdraw, Mr. Morris
24 tells you he wants to win on the merits. The difference in a
25 withdrawn proof of claim and a disallowed proof of claim is

1 zero. There would have been no difference at all. Nothing
2 has changed. Except for the 'but for' causation analysis on
3 fees. They spent over $375,000 to get there.
4 I mentioned it in the reply brief. It's on the slide.
5 The *Johnson* factors. Completely absent from their reply
6 brief. They genuflect at it in the initial motion. But me
7 telling you the *Johnson* factors, Your Honor, is like telling
8 you the standard for summary judgment. You don't want to hear
9 it.
10 However, eight out of twelve *Johnson* factors do not favor
11 this particular fee app. Time and labor required for
12 everything after the withdrawal. Not required.
13 Novelty and difficulty. It's a proof of claim. It's
14 neither novel nor difficult.
15 Preclusion of other employment. There's no evidence of
16 that.
17 The customary fee for work in the community. Candidly,
18 it's against it. Eight hundred grand for fighting a proof of
19 claim is pretty stout.
20 Time limitations. There were none.
21 The amount involved and the results obtained. Candidly,
22 Your Honor, almost twice the fees for the same outcome.
23 Undesirability of the case. No evidence of that.
24 And awards in similar cases. Here, Your Honor, the
25 absence of 105 cases for proofs of claim, there are no

1 comparable awards. And I think that's important.
2 What is the standard you should be using in assessing
3 whether to use your 105 powers? Clear and convincing, Your
4 Honor. Your Honor needs to have a firm belief or conviction
5 that this was done with malice, ill intent, bad faith, et
6 cetera. That's not here.
7 Why do you know that? Mr. McGraner had his deposition
8 taken. He showed up at trial. Mr. Dondero had his
9 deposition. Showed up at trial. At no instance were they
10 running away from testifying. Quite the contrary. They came
11 to court, they answered Mr. Morris's questions, they answered
12 my questions. If Your Honor had questions, they would have
13 answered them, too.
14 They took this very seriously. This wasn't some slapdash
15 proof of claim. They were really trying to get something
16 accomplished.
17 Fees. Your Honor, this is the fee table. I turned it
18 sideways. It's in our response to the motion. I think it's
19 absolutely shocking. The number of hours that were expended
20 and the fees that were expended, the cumulative total -- this
21 is just for selected timekeepers, not everybody -- but I'd
22 point Your Honor to the very bottom, post-motion to withdraw.
23 If they had just said yes, we'll take the win, they wouldn't
24 have had to spend $350,000 for these selected timekeepers,
25 over $375,000 with the rest. That is a clear failure of the

1 'but for' test in *Lopez* and the cases that it cites.

2 So, our conclusion, Your Honor. First, the reply doesn't
3 change anything. They don't give you any new authority or any
4 basis to award sanctions or bad faith analysis, if for no
5 other reason than the record is already closed. You've seen
6 this all before. And when asked repeatedly for a bad faith
7 finding, you didn't give it to them. No bad faith in the
8 filing of the claim.

9 The requested fees are reasonable and necessary. Your
10 Honor, so they flunk the *Johnson* factors. They fail the 'but
11 for' test.

12 Respectfully, Your Honor, their motion should be denied.
13 If it's not going to be denied, we would like an opportunity
14 to file supplemental briefing addressing the new authorities
15 in the reply brief. Your Honor, I don't think we need to go
16 there. I think you should deny it outright.

17 Subject to questions from the Court, that concludes my
18 presentation.

19 THE COURT: All right. A few follow-up questions.
20 In arguing about the size of the potential fees if I get to
21 bad faith, you've had a little bit of a theme of: It was just
22 a proof of claim, it was not difficult, and this was not some
23 "slapdash proof of claim." So you emphasize not reasonable
24 fees for addressing the proof of claim, and you also stress
25 can't find any authority where attorneys' fees have been

1 allowed for having to defend against a proof of claim.
2 Here's what I want you to address. Here is what is going
3 through my brain here. This wasn't a proof of claim where,
4 oops, they actually paid our invoice, we're not really owed
5 this amount, sorry, mistake. It's not a situation where you
6 filed a $105,000 proof of claim and in fact only $97,000 was
7 due and owing. And I just use those as very common examples
8 we see in the Bankruptcy Court.
9 This was, while not a liquidated amount, while not an
10 amount used in the proof of claim, it was basically a
11 multimillion-dollar issue, right? And I don't know if it was
12 a tens-of-millions-of-dollar issue or more than that, but it
13 was a multimillion-dollar issue, right?
14 MR. GAMEROS: Yes, Your Honor, I understand that.
15 THE COURT: I mean, that's stating the obvious,
16 right, because you're saying that Highland wasn't really
17 entitled to a 46-percent-whatever ownership interest in
18 Multifamily, it would be something much, much lower than that.
19 Okay. So I think we had in the record Mr. Dondero says the
20 equity interest is worth $20 million. And we know there was a
21 Key Bank loan of up to $500 million-plus. I mean, the proof
22 of claim seeking reformation was ultimately a many-
23 multimillion-dollar claim, if the theory prevailed, right?
24 MR. GAMEROS: That's right, Your Honor. It could
25 have been.

1 THE COURT: Okay. So, again, assuming I get to the
2 bad faith finding, I mean, shouldn't I look at these fees in
3 that context? I mean, it wasn't just a proof of claim; it was
4 a potentially multimillion dollar hit to the estate, a bundle
5 of value that wouldn't be there for the creditors. Is that
6 fair, or no?
7 MR. GAMEROS: Your Honor, I think it's blending some
8 issues in a way that I don't think are appropriate. I think
9 for analyzing whether or not it's a bad faith filing or bad
10 faith prosecution, you have to look to see ill motive, animus,
11 et cetera, and that's not present here. Instead, --
12 THE COURT: Yes. I'm just saying --
13 MR. GAMEROS: -- you've got Mr. Dondero --
14 THE COURT: I'm just saying assuming I get there.
15 And I totally recognize I've got to look at the overall facts
16 of the filing of the claim, of the prosecution, of the
17 withdrawal. I have to look at all that to see do we have bad
18 faith.
19 But assuming I get there, you've challenged the
20 reasonableness. And it wasn't just some proof of claim. It's
21 a complicated proof of claim, right? It's potentially a multi
22 --
23 MR. GAMEROS: Your Honor, I understand that.
24 THE COURT: Okay, go ahead.
25 MR. GAMEROS: I'm sorry for interrupting, Your Honor.

1 Go ahead.
2 THE COURT: Oh, I'm just saying it was pretty darn
3 complicated, the proof of claim. It wasn't quantified. And
4 even though it wasn't quantified, it was clearly a
5 multimillion dollar claim being asserted at the end of the
6 day, the ownership interest that HCRE was trying to challenge.
7 MR. GAMEROS: That's the position, Your Honor. And
8 they looked at that particular position at the time of filing
9 and said the capital wasn't right, and their response to the
10 objection lays out the different legal arguments. That's
11 exactly what happened.
12 THE COURT: Okay. My next question is I think you're
13 arguing that because I did not specifically find bad faith in
14 my opinion -- I'm in the mood to talk about lengthy opinions
15 today; it was a 39-page opinion, with 127 footnotes,
16 disallowing the proof of claim -- because I did not make a
17 finding of bad faith there, I'm somehow precluded at this
18 juncture. Am I hearing your argument correctly?
19 MR. GAMEROS: Your Honor, I didn't say precluded. I
20 just said we don't need to plow that ground again.
21 THE COURT: Well, --
22 MR. GAMEROS: I think you left the door open for this
23 particular motion.
24 THE COURT: Uh-huh.
25 MR. GAMEROS: And that's what you did in your

1 opinion. And I just think you were asked repeatedly to make a
2 bad faith finding, and at the time when you ruled disallowing
3 the proof of claim, you didn't do it. You didn't say bad
4 faith.
5 THE COURT: Okay.
6 MR. GAMEROS: That's all.
7 THE COURT: Okay. And then I guess my last question
8 is you said if they, Highland, if they had just said yes, take
9 the win, we wouldn't have all these fees. But I really want
10 to drill down. Would that really have been a win, or would it
11 have been a temporary stand-down? I mean, I begged you all to
12 wrap it all up with language in connection with the withdrawal
13 of the proof of claim. You know, agreed you weren't going to
14 raise this issue again. And your client wouldn't let you do
15 that.
16 So is it really fair to say, if they had just said yes and
17 taken the win, we wouldn't have had these fees, when it
18 appeared very likely that it was going to be new litigation in
19 a different forum? What is your response to that?
20 MR. GAMEROS: Your Honor, we're looking back at what
21 happened with hindsight, and I think if we're going to see the
22 maybe-bad we should also see the maybe-good.
23 What's happened, in hindsight? Zero. Nothing. NREP
24 hasn't done anything. Its proof of claim was disallowed last
25 year, and nothing else has happened.

1 I think what really happened at the hearing and the motion
2 to withdraw and what we were hearing from Highland, candidly,
3 is they wanted to put a pin in that's our number forever,
4 can't talk about it, don't want to do that. And the agreement
5 allows for amendment.
6 And that was what we were hung up on. What if we need to
7 amend this thing in the future? We don't want to be stuck
8 with a 46 percent number that we can never get away from. And
9 that was the problem. That was it.
10 THE COURT: All right. Thank you, Mr. Gameros.
11 Any rebuttal, Mr. Morris?
12 MR. GAMEROS: Thank you, Your Honor.
13 MR. MORRIS: I do. I'll be brief. It's exactly a
14 $20 million issue. It's not millions of dollars. It's
15 exactly $20 million. As I like to say, don't take my word for
16 it, take Mr. Dondero's word for it.
17 In Dugaboy's pleading that was filed under seal on June
18 30, 2022, he included his analysis of the value of Highland's
19 assets. I don't want to go through them all, but I'm happy to
20 report that he valued Highland's interest in SE Multifamily in
21 that document that he represented to the Court was worth $20
22 million. So, from our perspective, we were fighting to get
23 good, clean title to a $20 million asset. That's Point #1.
24 Point #2, of course, the Court has inherent power under
25 105 to enter orders of this type. I -- honestly, you know,

1 the cases are what the cases are. So there's never been a
2 case exactly like this. You know what? I've been doing this
3 for a while. I've never seen a proof of claim as baseless as
4 this one.
5 So the whole concept of the 'but for' thing, I'll talk
6 about in a minute, but there's no question that the Court has
7 the power to enter orders of this type, and I don't even think
8 counsel disputes that.
9 I do want to address the notion that we asked the Court
10 repeatedly for a bad faith finding and the Court declined to
11 do it. That's because this Court does its job and does its
12 job well. And I understood Your Honor when you denied it
13 without prejudice. It was telling. And apparently counsel
14 got the signal, too, that you want to make sure that, before
15 you enter an order of that type, that HCRE has due process.
16 And that's why it's denied without prejudice. Because I was
17 raising the issue for the first time at the podium, and you
18 reluctantly, properly, prudently decided that probably isn't
19 fair. And so you wanted to make sure that this thing was
20 fully briefed. And it's been briefed, and that's why we're
21 here today, not because you made a decision back in November
22 of 2022 that there was no bad faith, but simply that you
23 wanted to make sure that HCRE had a full opportunity to
24 address the charge.
25 Getting to the 'but for' issue. But for the filing of,

1 frankly, a fraudulent, baseless proof of claim, Highland would
2 have more than $800,000 in its pocket today.
3 But for the filing of a motion to withdraw that sought an
4 unfair litigation advantage while trying to preserve for the
5 future more challenges to Highland's clear and good title to
6 this asset, Highland would have more money in its pocket.
7 But for the conduct of a trial, the taking of depositions,
8 and all of the rest of it, we wouldn't be here today.
9 Highland would have more than $800,000 in its pocket.
10 The notion that we should have taken the win, frankly, is
11 offensive. That we should have just allowed them. He wants
12 the benefit of the $300,000 on the theory that we should have
13 allowed him to take our depositions, not take their
14 depositions, and fight another day. I just -- I'm speechless.
15 I'll just leave it at that. The argument speaks for itself.
16 No motive? They had no motive here? They don't have ill
17 will? They showed up at the hearing? Goodness, I hope that
18 doesn't absolve them from filing a proof of claim with no
19 basis in fact or law. Of course they showed up at the
20 hearing. They would have been in contempt of court at that
21 point had they not.
22 The only reason, apparently, they filed the proof of claim
23 is because they didn't like the unintended consequences of the
24 Highland bankruptcy that Mr. Dondero filed. In what world, in
25 what courtroom, under what law, is that a good faith basis for

1 pursuing a proof of claim, because you don't like the
2 unintended consequences of your own decisions? That's bad
3 motive right there. To try to deny a debtor a $20 million
4 asset because you didn't like the way it turned out.
5 Mr. Dondero, Mr. McGraner, HCRE were perfectly happy for
6 Highland to have a 46.06 percent interest in exchange for a
7 $49,000 contribution right up until the day they filed that
8 proof of claim. Maybe until the day they filed for
9 bankruptcy. I didn't ask that particular question.
10 It's not good faith to come to this Court, to file a proof
11 of claim, to go through all of this, because you don't like
12 the consequences of your own decision.
13 The Court really needs to ask itself whether or not it
14 wants to sanction this. Whether it wants to allow litigants,
15 claimants, to file proofs of claim with no due diligence, no
16 basis in fact, no basis in law. I don't think the Court
17 should do that. I think the bad faith finding is easy,
18 frankly.
19 And with respect to our legal fees, they are what they
20 are. The notion that this was overstaffed is kind of crazy.
21 It was me, Ms. Winograd, and Ms. Cantey. We billed, the three
22 of us, more than 82 percent of the total fee. And if you take
23 out Mr. Adler, it's probably close to if not in excess of 90
24 percent of it. It is what it is.
25 My rates are higher than some of the attorneys Mr. Dondero

1 hires. It is what it is. He knew about that when he hired
2 us. They're market rates. Clients from east coast to west
3 coast, from north to south, pay those rates every day, with
4 bankruptcy court approval. I'm sorry if he doesn't like to
5 pay those kinds of rates at this point in time, but they are
6 what they are and my client is entitled to get reimbursed for
7 this bad faith conduct.
8 I have nothing further, Your Honor.
9 THE COURT: Okay. Thank you.
10 Well, no surprise, we'll take this under advisement and
11 issue a written opinion and order.
12 No surprise, I'm going to say like I always say, we'll get
13 to this as soon as our calendar will allow, but I'm not going
14 to promise a date on that.
15 Obviously, I'm going to be refreshing my memory, going
16 back and studying the memorandum opinion and order I issued
17 sustaining Highland's objection to this proof of claim and
18 going back and looking at the transcript from that hearing
19 that was submitted.
20 And I say this a lot, that timelines matter a heck of a
21 lot to me and they reveal a heck of a lot. And I will be
22 studying the timeline here and considering its significance.
23 Some of the important facts that will matter here are that
24 the HCRE proof of claim, again, was filed timely in this case.
25 April 8, 2020. It was signed by Mr. Dondero as the

1 representative of HCRE.
2 The evidence I do remember is that Mr. Dondero was
3 president and sole manager of HCRE and he had signed the
4 limited liability agreement for SE Multifamily Holdings, I
5 think is the name of the entity. He had signed the agreement
6 for both Highland and HCRE. There was an original LLC
7 agreement and there was also an amended LLC agreement.
8 And again, I always think timelines -- again, I've said it
9 a million times -- are very revealing. This was not a very
10 ancient transaction, a very old transaction, in the Highland
11 universe. The evidence I saw -- and again, I always create a
12 timeline -- was that it was actually August 23, 2018 that this
13 SE Multifamily entity was created, and then it was sometime
14 early first quarter of 2019 where there was an amendment of
15 the LLC agreement that brought in the BH entity and its six
16 percent interest. And then, of course, it was October 2019
17 when the bankruptcy was filed.
18 Again, why am I mentioning this? I'm mentioning it
19 because this was fairly recent in Highland history that this
20 whole SE Multifamily transaction, Project Unicorn, was done.
21 And that matters to me because I would think memories should
22 have been fresh relative to a lot of other things we've looked
23 at during this case. And so that really is weighing on my
24 brain here with regard to the bad faith possibility on the
25 filing of the proof of claim and the prosecution. It, in my

1 view, could have been a quick process, doing the due diligence
2 and assembling, you know, is there a good faith basis for this
3 proof of claim or not. And that concerns me. That concerns
4 me.
5 It, as I recall hearing the evidence, looked like, oh my
6 goodness, look at the consequences now of this bankruptcy, and
7 Highland falling out of the status of being a friendly partner
8 with HCRE. We don't like this. We don't like this and we
9 want to change this.
10 So, again, I'm sort of thinking out loud here. I'm sort
11 of revealing where I'm leaning right now. It seems like this
12 was a recent-enough transaction where someone could have
13 assembled information pretty quickly and figured out if there
14 was any basis to argue reformation.
15 And I never did have a clear idea why they would pack up
16 their marbles and want to go home if there was some evidence.
17 And again, the Bankruptcy Rules require the Court to enter an
18 order whether withdrawal should be permitted or not. I very
19 much wanted this to go away, and then there wasn't --
20 wordsmithing could not come up with a sentence everyone would
21 agree on to make it go away.
22 So I will, again, be drilling down on the evidence here as
23 to whether we have bad faith, but that's some of the timeline
24 and evidence I'm going to be drilling down on here.
25 I think *The Little Engine That Could* was the phrase Mr.

1 Morris argued. I remember very well the evidence was that
2 Highland put in $49,000 to get its membership interest in SE
3 Multifamily Holdings, but I already heard that it was required
4 ultimately to be a cosigner on a $500 million loan from Key
5 Bank. It provided resources, at least until some point during
6 the bankruptcy, to SE Multifamily. And again, the tax benefit
7 of absorbing the income from the entity, which, again, it's
8 nothing to sneeze at here.
9 All of that I think was addressed pretty thoroughly in my
10 earlier opinion, but again, I'm going to go back and look at
11 it and the evidence and give you a thorough ruling one way or
12 another on the indicia of bad faith as well as the
13 reasonableness of fee-shifting.
14 All right. It sounds like I'm going to see you on
15 February 14th, or some of you, and so I shall see you then.
16 We're adjourned.
17 THE CLERK: All rise.
18 MR. GAMEROS: Your Honor?
19 THE COURT: I'm sorry?
20 MR. GAMEROS: Your Honor?
21 THE COURT: Yes.
22 MR. GAMEROS: Yeah, I'm sorry. I did ask, if you
23 weren't going to deny it outright, if I could file a brief
24 surreply. Is that allowed?
25 THE COURT: No. I've got enough on briefing on this.

1 Thank you.

2 MR. GAMEROS: All right. Thank you.

3 (Proceedings concluded at 11:41 a.m.)

4 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the above-entitled matter.

23 **/s/ Kathy Rehling** **01/24/2024**

24 ____ _________________

25 Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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EXHIBIT 13

From: John A. Morris
Sent: Tuesday, December 26, 2023 8:36 PM
To: Amy L Ruhland <aruhland@reichmanjorgensen.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>
Subject: Highland: Opposition to Motion for Leave and Notice of Intent to File Motion for Sanctions Under Rule 9011

Amy:

Please see the attached.

Regards,

John

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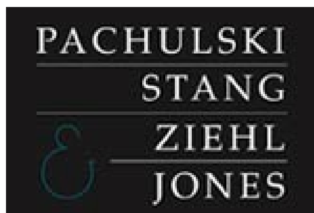

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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

PSZJ'S AMENDED OPPOSITION TO MOTION OF JAMES D. DONDERO AND STRAND ADVISORS, INC. FOR LEAVE TO FILE ADVERSARY COMPLAINT [DOCKET NO. 3981]

Pachulski Stang Ziehl & Jones LLP ("**PSZJ**"), restructuring counsel to Highland Capital Management, L.P., the reorganized debtor in this chapter 11 case ("**Highland**"), files this opposition (the "**Opposition**") to the *Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint* [Docket No. 3981] (the "**Motion for Leave**"). The Motion for Leave should be denied for the reasons stated below.

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I. INTRODUCTION[1]

1. In the latest chapter of their ongoing campaign to interfere with Highland's reorganization plan and harass their adversaries by initiating frivolous litigation, James Dondero and Strand Advisors, Inc. (together, "**Movants**") seek leave under the "gatekeeper" provision of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "**Plan**") to commence an adversary proceeding against PSZJ by filing the complaint attached to the Motion for Leave (the "**Proposed Complaint**"). The Proposed Complaint contains a single count of breach of fiduciary duty. That claim is based entirely on the allegation that PSZJ began representing Movants in September 2019 at the same time PSZJ commenced representing Highland as its restructuring counsel and that PSZJ violated its fiduciary duty to the Movants by fulfilling its fiduciary duty to the estate. Movants' newly-manufactured allegation that they had an attorney-client relationship—asserted essentially for the first time more than four years after PSZJ began representing Highland—is a frivolous fabrication, is being made to harass PSZJ and interfere with Highland's reorganization; and lacks any evidentiary support.[2]

2. The indisputable evidence conclusively establishes that PSZJ has always represented Highland alone, and never Mr. Dondero or Strand. Such evidence includes, among other things, (a) PSZJ's written Retention Agreement with Highland (as contrasted against the absence of any agreement with either Movant) and Employment Application under Bankruptcy Code § 327(a) and Bankruptcy Rule 2014, and (b) Movants' years-long silence about PSZJ's

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[1] Capitalized terms used but not defined in this Introduction have the meanings given to them below.

[2] Contemporaneously with the filing of this Opposition, PSZJ served a letter and draft motion under Bankruptcy Rule 9011(c) to Movants and their counsel demanding the withdrawal of the Motion for Leave for violating Bankruptcy Rule 9011(b)(1)–(3). If the Motion for Leave is not withdrawn, PSZJ will move for sanctions against Movants and their counsel under Bankruptcy Rule 9011(c).

supposed representation of them despite dozens of matters in which PSZJ represented Highland adversely to them.[3]

3. Movants' factual allegations are a recent invention and will never be corroborated by competent or credible evidence. Movants allege that PSZJ advised them (or Highland) that Highland could easily restructure its affairs in chapter 11 and emerge quickly with its business, operations, and corporate governance intact. In fact, the indisputable documentary evidence establishes that ***PSZJ provided the exact opposite advice***. Before the Petition Date, PSZJ advised Highland, in writing, of certain material risks associated with a chapter 11 filing, including that (a) Highland's "existing management could be replaced or its authority could be modified or limited" through the appointment of a chapter 11 trustee or conversion of the case to one under chapter 7 and (b) Highland's "choice of venue in Delaware could be rejected in favor of a transfer of venue to Dallas, Texas." Movants' related argument that they would have remained in control had PSZJ not recommended to Highland the corporate governance settlement is false. The indisputable record shows that if Highland and the Committee had not agreed to the Independent Board, the Court would have appointed a chapter 11 trustee divesting Movants of their control positions with Highland.

4. Beyond lacking any evidentiary support, Movant's claim is frivolous as a matter of law for several reasons. First, Movants waived their claim that they had an attorney-client relationship with PSZJ and that PSZJ had a conflict of interest by failing to raise it until now.

[3] Particularly damning are four separate letters (one of which was sent by Movants' counsel just three months ago) sent over a two-year period to the Executive Office of the United States Trustee (the "**EOUST**") on Mr. Dondero's behalf, each of which (a) included a laundry list of serious but false allegations against Highland and its fiduciaries, but (b) excluded any allegation that PSZJ (i) violated Bankruptcy §327(a) and Bankruptcy Rule 2014 by failing to disclose its alleged attorney-client relationships with Mr. Dondero and Strand, or (ii) breached its fiduciary duty to the Movants by fulfilling its fiduciary duty to Highland. Indeed, contrary to the allegations in the Proposed Complaint, Movants' counsel told the EOUST that Mr. Dondero retained PSZJ to "file a Chapter 11 bankruptcy petition on Highland's behalf." *See* ¶¶ 28–31 below.

Despite having every incentive to do so, they did not raise their claim when Highland filed its application to retain PSZJ, which attested to PSZJ's disinterestedness; they did not raise their claim in any of the dozens of contested matters, adversary proceedings, and appeals in which PSZJ was adverse to them; and they did not raise their claim in any of the four letters sent to the EOUST. Movants will never be able to credibly explain why they waited until December 2023 to seek authority to file an action alleging that PSZJ served as their counsel in late 2019 and early 2020, and never previously sought relief despite PSZJ's representation of Highland in matters adverse to them *for years*. In fact, Movants' utter failure to seek relief until now proves that the claim is fabricated and is being pursued in bad faith.

5. Second, Movants' claim is barred by the two-year statute of limitations applicable to malpractice actions. Movants' attempt to repackage their purported malpractice claim as a breach of fiduciary duty claim to avoid the running of the statute of limitations fails as a matter of law.

6. Third, Movants' claim is barred by *res judicata*. Movants' prayer for relief seeks to compel PSZJ to disgorge fees received from Highland under this Court's order approving those fees on a final basis. Movants should have raised their claim that PSZJ represented them and was not disinterested during the final fee application process; if proven, that claim would most certainly have affected the Court's final compensation order. They remained silent on that issue, even as their affiliates objected to PSZJ's final fee application on other, unrelated grounds.

This Court has previously held that, for purposes of determining whether a claim is "colorable" under the "gatekeeper" provision, the putative claimant must make "a prima facie case that is proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being***

***pursued for any improper purpose such as harassment*.**"[4] Because Movants cannot possibly satisfy that standard, the Court should deny the Motion.

II. STATEMENT OF FACTS

7. Movants' contention that they retained PSZJ to provide them individually with legal advice in September 2019 when Highland retained PSZJ is a recent fabrication contradicted by considerable documentary evidence and Movants' own consistent, four-year course of conduct. The facts below are indisputable.

A. Highland's Prepetition Retention of PSZJ

8. On September 29, 2019, Highland contacted PSZJ regarding a potential chapter 11 filing to forestall the confirmation of an arbitration award in Redeemer's favor. PSZJ prepared a *Retention Agreement* and exchanged drafts with Isaac Leventon, Highland's Assistant General Counsel.[5] The *Retention Agreement* provides, among other things:

> Based on the information, [*sic*] the Firm has received to date, it is not aware of any current or past relationship with another party interested in the subject matter of this representation that would constitute a conflict of interest, nor does the Firm itself have an interest in the subject matter of the representation …. The Firm will utilize the list to comply with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules to be sure that the firm is 'disinterested' and is in a position to make all required disclosures to a Bankruptcy Court. … The Firm is being engaged by the Client, being the individual(s), entity or entities for which appear below signature blocks (other than the signature block for the Firm). **Unless reflected by a separate agreement, the Firm's representation of the Client does not include the representation of others, including individual officers, directors, partners, shareholders or employees of the Client**.…

[4] Docket No. 3903 at 91 (emphasis in original).

[5] Mr. Leventon provided written comments to the draft Retention Agreement.

Exhibit 1 at 6-7 (emphasis added).[6] On October 1, 2019, Scott Ellington, a licensed, practicing lawyer and Highland's General Counsel, signed the *Retention Agreement* on Highland's behalf in his capacity as the Secretary of Strand, Highland's general partner:

T. Effective Date.

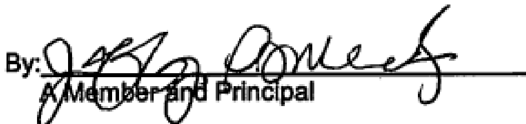
This Agreement will govern all legal services performed by the Firm on behalf of Client commencing with the date the Firm first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay the Firm the reasonable value of any services the Firm may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE THE FIRM FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT.

CLIENT SHOULD SEEK INDEPENDENT COUNSEL TO ADVISE IT CONCERNING THIS AGREEMENT.

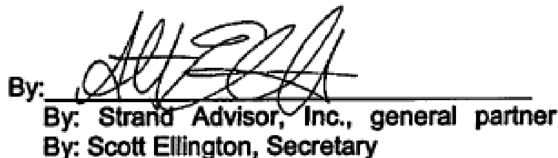
Dated: October 1, 2019

PACHULSKI STANG ZIEHL & JONES, LLP



By: ______
A Member and Principal

HIGHLAND CAPITAL MANAGEMENT, L.P.



By: ______
By: Strand Advisor, Inc., general partner
By: Scott Ellington, Secretary

Highland and PSZJ are the only signatories to the *Retention Agreement* and Highland funded a $500,000 retainer to PSZJ for its representation of Highland.[7] No "separate agreement" between PSZJ and any other person or entity concerning Highland's contemplated bankruptcy filing was ever contemplated, discussed, drafted, or executed.

9. If Mr. Ellington believed or was informed that PSZJ also represented Strand and Mr. Dondero, it is inconceivable that he would have signed an agreement indicating unequivocally

[6] Citations to "Exhibits __" refer to the exhibits attached to the *Declaration of Hayley R. Winograd in Support of PSZJ's Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint,* filed contemporaneously with this Opposition.

[7] Highland asked PSZJ whether entities other than Highland could contribute to the retainer being requested by PSZJ. PSZJ unequivocally told Highland that the full retainer needed to come from Highland and not any affiliated entities.

that PSZJ's only client was Highland. It is also inconceivable that neither Mr. Ellington nor Mr. Leventon, in their capacities as Highland's General and Assistant General Counsel, respectively, would have failed to review the *Retention Agreement* with Mr. Dondero, Highland's president, or inform him of the substance of that document.

10. There is no retention agreement between PSZJ and Mr. Dondero or between PSZJ and Strand. There is no document or written communication that establishes, reflects, or even refers to an attorney-client relationship between PSZJ and either Mr. Dondero or Strand. Nor is it alleged that Mr. Dondero or Strand ever paid PSZJ a penny—PSZJ was paid entirely by its sole client in this matter, Highland.[8] And there will never be any evidence that PSZJ believed that it was entering into an attorney-client relationship with any entity or individual other than Highland. Movants haven't even alleged that such evidence exists.

B. PSZJ Advises Highland of Significant Risks a Chapter 11 Filing Would Entail

11. Movants' theory of the case is that PSZJ advised them to file chapter 11 to resolve the claim of Redeemer and that the chapter 11 would ensure that Movants would retain control of Highland. The reality is that PSZJ advised Highland to try to settle with Redeemer to *avoid* chapter 11. On October 2, 2019, PSZJ provided Highland with a memorandum (the "**October 2 Memo**") that warned Highland of potential adverse consequences a chapter 11 filing might have on Highland's business and operations, and on Movants' ability to retain control of Highland. **Exhibit 2**. The contents and significance of the October 2 Memo are discussed further below.

[8] There will be no evidence that PSZJ ever rendered an invoice to Mr. Dondero or Strand or that either of them ever compensated PSZJ for services allegedly rendered.

C. Highland Commences Its Chapter 11 Case and Files an Application to Employ PSZJ as General Restructuring Counsel

12. On October 16, 2019 (the "**Petition Date**"), Highland filed its voluntary chapter 11 petition in the Bankruptcy Court for the District of Delaware (the "**Delaware Bankruptcy Court**"). **Exhibit 3**. Mr. Dondero signed the petition (under penalty of perjury) on Highland's behalf in his capacity as President of Strand, Highland's general partner.[9]

13. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of Highland's chapter 11 case to this Court.

14. Before the chapter 11 case was transferred to this Court, Highland filed the *Debtor's Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 70] (the "**Employment Application**"). **Exhibit 4**. The Employment Application specifically represented:

> ***PSZ&J has not represented the Debtor [sic], its creditors, equity security holders, or any other parties in interest, or its respective attorneys, in any matter relating to the Debtor or its estate.*** Further, to the best of the Debtor's knowledge, PSZ&J does not hold or represent any interest adverse to the Debtor's estate, PSZ&J is a "disinterested person" as that phrase is defined in section 101(14) of the Bankruptcy Code ….[10]

15. The Employment Application was signed on Highland's behalf by Frank Waterhouse, Highland's Chief Financial Officer, in his capacity as the Treasurer of Strand, Highland's general partner. [11] Movants did not challenge, oppose, or question the accuracy of these

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[9] Docket No. 3 at 4.

[10] Docket No. 70 at 5-6 (emphasis added).

[11] The Employment Application and the Bankruptcy Court's order approving the Employment Application were each served on Strand. Docket No. 70 at 28 and Docket No. 185, respectively. These documents were also served on The Dugaboy Investment Trust and Hunter Mountain Investment Trust, entities controlled by Mr. Dondero. *Id*.

representations. Movants' failure to do so is inconceivable if Movants believed that PSZJ also represented Movants.

16. Nor did Movants ever challenge or raise any concern regarding the three verified statements Jeffrey Pomerantz filed with the Bankruptcy Court under Bankruptcy Rule 2014 in support of the Employment Application (on October 29, 2019, on November 26, 2019, and on March 22, 2021, collectively, the "**Pomerantz Statements**"),[12] each of which affirmatively represented that PSZJ was "disinterested" and that PSZJ has never represented any Highland affiliate, officer, equity holder, partner, or subsidiary. **Exhibit 5**. Movants never raised the issue of their supposed attorney-client relationship with PSZJ or PSZJ's alleged "conflict of interest" until now, more than four years after the first Pomerantz Statement was filed.

D. Mr. Dondero Agrees to Cede Control of Highland to the Independent Board to Avoid the Appointment of a Chapter 11 Trustee

17. Because of significant misgivings about Mr. Dondero's ability to function as an estate fiduciary, Highland's official committee of unsecured creditors (the "**Committee**") and the U.S. Trustee both threatened to seek appointment of a chapter 11 trustee to manage Highland's bankruptcy case. To avoid appointment of a trustee, Mr. Dondero and Highland entered into an agreement with the Committee that: (a) removed Mr. Dondero from all managerial control positions at Highland; (b) appointed an independent board (the "**Independent Board**") at Strand to manage the chapter 11 case; and (c) implemented operating protocols that, among other things,

[12] Mr. Pomerantz has led PSZJ's engagement by Highland since it began. The first Pomerantz Statement was included in the Employment Application and was served on Strand and other Dondero-related entities. *See* n. 11 above. The second Pomerantz Statement was also served on Strand and other Dondero-related entities. *See* Docket No. 178 at 26 and 30. The third Pomerantz Statement [Docket No. 2079] was served on Mr. Dondero (through his counsel, Bonds Ellis) and other Dondero-related individuals and entities, including Scott Ellington and Isaac Leventon (each of whom was terminated by Highland for cause and was fully aligned with Mr. Dondero), The Dugaboy Investment Trust, Hunter Mountain Investment Trust, Highland Capital Management Advisors, L.P., and NexPoint Advisors, L.P. *See* Docket No. 2125.

generally required Committee approval of most asset sales or transfers. The Bankruptcy Court approved the settlement on January 9, 2020.[13]

18. Not satisfied, the U.S. Trustee continued to press its motion for the appointment of a chapter 11 trustee.[14] On January 21, 2020, following an evidentiary hearing, the Bankruptcy Court denied the U.S. Trustee's motion precisely because Mr. Dondero had already ceded all control positions to the Independent Board as part of the corporate governance settlement.[15]

E. Mr. Dondero Retains Bonds Ellis as His Personal Counsel

19. On March 6, 2020, Mr. Dondero's personal bankruptcy counsel, Bonds Ellis Eppich Schafrer Jones LLP ("**Bonds Ellis**"), filed a notice of appearance noting "their representation of Mr. James Dondero in the above styled and numbered cause …." **Exhibit 7**. Presumably, Mr. Dondero would have had no need to retain Bonds Ellis if PSZJ was his counsel in Highland's bankruptcy case, as he now alleges.[16] Neither Bonds Ellis nor Mr. Dondero ever

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[13] Docket No. 339.

[14] Docket No. 271.

[15] At the hearing on January 21, 2020, the Court said:

> The U.S. Trustee relies on the strict wording that, quote, The Court shall order the appointment of a trustee for cause, including fraud, dishonesty, incompetence, or gross [mis]management of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause. The Court believes this statutory provision is aimed at problems or malfeasance with current management. All of this has been fixed. It's a very different scenario than when this case was filed…. Again, this was a complete overhaul. The facts and timing are such today that Mr. Dondero is no longer current management. Current management are the words used in Section 1104…. A new board and new management are not only a pragmatic solution, but this Court concludes are totally within the parameters and the provisions and overall structure of Chapter 11…. ***I approved the new governance structure pursuant to Sections 363 and 105, and now we don't have the cause that 1104 refers to***.

Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge, January 21, 2020, *In re Highland Capital Management, L.P.,* Case No. 19-34054-sgj-11 (**Exhibit 6**) at 115:3 – 116:19 (emphasis added). *See also* the Court's order confirming the Plan, Docket No. 1943 at 13 ("Suffice it to say the settlement and ***the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee***.") (emphasis added).

[16] Had Mr. Dondero actually believed that PSZJ was his counsel before then, he would have discharged PSZJ when he engaged Bonds Ellis. Of course, Mr. Dondero did nothing of the kind precisely because there was no attorney-client relationship to discharge.

informed PSZJ (or anyone else) that Bonds Ellis was substituting in as counsel for Mr. Dondero. Neither Bonds Ellis nor Mr. Dondero ever asked PSZJ to turn over Mr. Dondero's client files. Neither Bonds Ellis (a firm of bankruptcy experts who presumably know what "disinterested" means in the Bankruptcy Code) nor Mr. Dondero informed PSZJ that it could not continue to represent Highland because a conflict of interest supposedly existed.[17]

20. Mr. Dondero relied on his own counsel to advance his personal interests in the chapter 11 case.[18] Mr. Dondero had his own counsel in the nearly countless array of litigations where Highland (represented by PSZJ) and Mr. Dondero were directly adverse to one another. Never—not once over the course of more than four years—did Mr. Dondero or Strand raise a concern about PSZJ's representing Highland in matters adverse to Movants and their affiliates, let alone seek to disqualify PSZJ from doing so on the ground that PSZJ previously represented Movants. To offer but a few of the more notable examples:

a. On January 7, 2021, Highland, represented by PSZJ, moved to hold Mr. Dondero in contempt of court for violating the Court's temporary restraining order entered in Adv. Proc. No. 20-03190-sgj; on June 7, 2021, following an evidentiary hearing during which PSZJ vigorously cross-examined Mr. Dondero, the Court held Mr. Dondero in contempt of court [Adv.

[17] This is not the first time Mr. Dondero has attacked lawyers when he didn't get what he wanted. *See James Dondero vs. Bonds Ellis Eppich Schafer Jones LLP, et al.*, Docket No. DC-22-08142 (Tex. Dist. Ct. July 15, 2022) (a suit for alleged malpractice). Parsons McEntire McCleary PLLC commenced that suit on Mr. Dondero's behalf. Significantly, the complaint in that lawsuit (**Exhibit 8**) includes a litany of items Mr. Dondero alleges Bonds Ellis failed to raise, yet the complaint is devoid of any mention of Bonds Ellis having failed to raise the issue of PSZJ suffering from some sort of conflict of interest or having committed malpractice. On information and belief, Mr. Dondero and entities controlled by him have entered into tolling agreements with other law firms with respect to alleged malpractice claims they threatened to pursue.

[18] After the unfortunate passing of former bankruptcy judge D. Michael Lynn, Mr. Dondero retained new counsel to represent him in the chapter 11 case, Stinson LLP ("**Stinson**"). Like Bonds Ellis, Stinson never raised PSZJ's alleged conflict of interest or breach of fiduciary duty, nor, until now, did any of the other myriad law firms representing Mr. Dondero's interests.

Proc. Docket No. 190]. Bonds Ellis represented Mr. Dondero in these proceedings but never raised any "conflict of interest" issue concerning PSZJ's supposed representation of Mr. Dondero.

b. On April 27, 2021, Highland, represented by PSZJ, moved to hold Mr. Dondero and others in contempt of court for violating the "gatekeeper" orders; on August 4, 2021, following an evidentiary hearing during which PSZJ vigorously cross-examined Mr. Dondero, the Court held Mr. Dondero and others in contempt of court [Docket No. 2660]. Bonds Ellis represented Mr. Dondero in these proceedings but never raised any "conflict of interest" issue concerning PSZJ's supposed representation of Mr. Dondero.

c. In January 2021, Highland, represented by PSZJ, commenced five related adversary proceedings seeking to collect over $60 million of demand promissory notes owed by Mr. Dondero and four of his entities. In December 2021, Highland moved for partial summary judgment and, following argument in April 2022, the Court recommended partial summary judgment in Highland's favor, ruling that Mr. Dondero's alleged "oral agreement" defense couldn't pass the "straight-face test," citing "a complete lack of evidence" supporting it. Stinson represented Mr. Dondero in these proceedings but never raised any "conflict of interest" issue concerning PSZJ's supposed representation of Mr. Dondero.

d. On March 31, 2021, after Highland discovered that former employees under Mr. Dondero's direction caused certain of Highland's controlled entities to fraudulently transfer some $300 million in face amount of cash and securities to avoid UBS's judgment before the Petition Date, UBS filed an adversary complaint seeking a restraining order against Highland. Following discovery,[19] Highland, represented by PSZJ, consented to a permanent injunction the

[19] During discovery, Highland learned, among other things, that Mr. Dondero secretly used a Cayman Islands entity to indemnify six Highland employees in June 2020 while Highland's bankruptcy case was pending.

Court granted on August 23, 2022, following a hearing during which the Court said it would assess the evidence to determine whether a criminal referral of Mr. Dondero, among others, was warranted. Mr. Dondero participated in discovery, was aware of the damaging evidence being marshalled against him, but never raised any "conflict of interest" issue concerning PSZJ's supposed representation of him.

e. In January 2021, Dondero-controlled entities referred to as the "Advisors" filed an application for allowance of an approximately $14 million administrative expense claim. The Dondero entities were represented by Munsch Hardt Kopf & Harr, P.C. ("**Munsch Hardt**"). Highland responded with a countervailing breach of contract claim against the Advisors. After a two-day trial during which PSZJ vigorously examined Mr. Dondero on Highland's behalf,[20] the Court granted Highland's breach of contract claim and denied the Advisors' administrative expense claim. Again, no "conflict of interest" issue was raised concerning PSZJ's supposed representation of Mr. Dondero.

f. The highly litigious proceedings concerning confirmation of the Plan—which permanently extinguished the roles of Mr. Dondero and his affiliates in Highland—could not have been more adverse to Movants' interests. Yet at no time during the confirmation proceedings and trial—during which Mr. Dondero and numerous other entities he controlled objected to confirmation on so many grounds that the Fifth Circuit Court of Appeals characterized their arguments as a "bankruptcy-law blunderbuss"[21]—did either Movant ever raise the issue of a

[20] During cross-examination, Mr. Dondero was forced to admit that, in the spring of 2020, after having supposedly ceded control of Highland, he paid $10 million to certain then-Highland employees without disclosing those payments to the Independent Board or this Court.

[21] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 48 F.4th 419, 432 (5th Cir. 2022).

conflict of interest or breach of fiduciary duty on PSZJ's part.[22] If there was ever a conflict on PSZJ's part, one would certainly have expected Movants and their phalanx of attorneys to raise that issue then. They did not—thereby corroborating the fact that there was no issue to raise.

g. In March 2023, Highland, the Claimant Trust, Mr. Seery, and others opposed a motion brought by Hunter Mountain Investment Trust ("**HMIT**"), another of Mr. Dondero's entities, for leave to file a complaint alleging insider claims trading and breach of fiduciary duty. After a trial in June 2023 during which Mr. Dondero was forced—under cross-examination by PSZJ—to admit to, among other things, insider trading and lying about Amazon's December 2020 agreement to meet MGM's offer price, the Court denied HMIT's motion and adopted the Gatekeeper Colorability Test described further below. PSZJ represented Highland and the Claimant Trust in opposing the motion, and no one raised any "conflict of interest" issue.[23]

21. Although the foregoing is obviously not an exhaustive list of litigated matters involving Mr. Dondero and his affiliates, PSZJ has indisputably represented Highland—and only Highland—in every litigated matter against Mr. Dondero and his affiliates since the Independent Board was installed in January 2020. During that time, PSZJ deposed Mr. Dondero and cross-examined him at trial more than a dozen times, and in each instance, Mr. Dondero was represented and defended by counsel other than PSZJ. At no time did Mr. Dondero mention the existence of a

[22] In the contested Plan confirmation proceedings, Mr. Dondero was represented by Bonds Ellis, and his affiliated entities were represented by Heller Draper & Horn LLC, K&L Gates LLP, and Munsch Hardt, all experienced bankruptcy practitioners who presumably know that PSZJ was required to be "disinterested" at all times.

[23] The evidence adduced during the hearing established that HMIT exists solely for Mr. Dondero's personal benefit. Significantly, Mr. Dondero's personal counsel at Stinson, Deborah Deitsch-Perez, simultaneously represents HMIT and sat in the courtroom during PSZJ's cross-examination of Mr. Dondero yet never said a word about any supposed "conflict of interest" or breach of fiduciary duty. *See*, *e.g.*, Adv. Pro. 23-03038-sgj, Docket No. 1.

disabling attorney-client relationship or conflict of interest, nor did his counsel ever move to disqualify PSZJ from representing Highland on that basis.[24]

F. The Court Approves PSZJ's Application for Final Compensation, Over the Objection of NexPoint Advisors, L.P., Which Is Owned and Controlled by Mr. Dondero

22. Movants had a golden opportunity to raise the issue of PSZJ's alleged representation of Movants and the resulting conflict when PSZJ filed its final application for approval of fees and expenses under Bankruptcy Code § 330 (the "**Final Fee Application**"). **Exhibit 9**. Yet, as they did throughout Highland's bankruptcy case, Movants remained silent on the issue.[25]

23. Although Movants failed to object to PSZJ's Final Fee Application, NexPoint Advisors, L.P. ("**NexPoint**")—another entity owned and controlled by Mr. Dondero—did so. NexPoint was represented in that matter by Jain Law & Associates PLLC and Schwartz Law PLLC and raised numerous objections to the Final Fee Application—but PSZJ's alleged prior and conflicting representation of Movants or violation of Bankruptcy Code §327(a) and Bankruptcy Rule 2014 were not among them.[26]

G. Strand's Counsel Seeks a Turnover of Its Books and Records but Is Informed that PSZJ Never Represented Strand

24. The Plan went effective on August 11, 2021. Under the Plan, Highland was reorganized and all partnership interests, including Strand's, were terminated. Concurrently,

[24] Even now Movants do not seek to disqualify PSZJ from representing Highland in the future; they just seek "damages" and the "[d]isgorgement of fees." *See* Proposed Complaint at 20 (Prayer for Relief).

[25] This failure lies at the heart of the *res judicata* defense below and further supports the waiver defense.

[26] Following a contested hearing held on November 17, 2021 (the "**Fee Hearing**"), this Court overruled NexPoint's objections and entered an order granting PSZJ's Final Fee Application (the "**Final Fee Order**"). NexPoint's appeals to the District Court and the Fifth Circuit Court of Appeals were dismissed for lack of standing. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Mgmt., L.P.),* 74 F.4th 361 (5th Cir. 2023).

HCMLP GP LLC became reorganized Highland's new general partner, and Strand was removed as Highland's general partner. The members of the Independent Board also resigned.

25. On February 3, 2022, Strand's counsel, Amy Ruhland (the same lawyer who signed the Motion for Leave as Movants' counsel), emailed Mr. Pomerantz a letter (the "**Ruhland Letter**"), demanding that PSZJ turn over its "client file" regarding Strand and essentially assuming that PSZJ had been counsel to Strand, even conjuring up an engagement letter between PSZJ and Strand that never existed. On February 11, 2022, Mr. Pomerantz responded to the Ruhland Letter with a one-sentence email: "In response to your February 3, 2022 letter, please be advised that Pachulski Stang Ziehl & Jones (the 'Firm') acted solely as counsel to Highland Capital Management L.P. during Highland's chapter 11 bankruptcy case and has never represented Strand Advisors, Inc." **Exhibit 10** (including the Ruhland Letter).

26. Ms. Ruhland dropped the matter. Neither Ms. Ruhland nor anyone else representing Strand or Mr. Dondero ever responded to Mr. Pomerantz. Again, it was only in the Motion for Leave, a draft of which was provided to PSZJ on November 28, 2023—almost *22 months* after Mr. Pomerantz's February 3, 2022, email—that Strand directly alleged (rather than assumed, as Ms. Ruhland did in the Ruhland Letter) that PSZJ ever acted as Strand's counsel. Not surprisingly, the Motion for Leave does not mention (let alone attach) any retainer agreement between PSZJ and Strand, despite Ms. Ruhland's earlier reference to one. No such agreement exists.

H. Dondero's Lawyers File Substantial But False Allegations of Wrongdoing with the United States Trustee but Never Mention an Attorney-Client Relationship Between Movants and PSZJ or Allege that PSZJ was Not "Disinterested"

27. Between October 11, 2021, and September 8, 2023, Mr. Dondero and entities he controls caused four separate letters (collectively, the "**EOUST Letters**") to be sent to the EOUST in Washington, D.C. **Exhibit 11**. In general, the EOUST Letters detailed Mr. Dondero's

contentions of "serious abuses of the bankruptcy process" including alleged breaches of fiduciary duties and a lack of transparency.[27]

28. The last of the EOUST Letters was sent on September 8, 2023 - just before the parties were supposed to mediate their disputes by Amy Ruhland - the attorney who signed the Motion for Leave. Ms. Ruhland not only failed to raise any issues concerning alleged "conflicts of interest" or "breaches of fiduciary duty," she tacitly acknowledged to the EOUST that Mr. Dondero hired PSZJ to represent Highland, and Highland alone: "Mr. Dondero (who was then the acting CEO and sole director of Highland's general partner, Strand Advisors, Inc. ("Strand")), in consultation with counsel, determined that an orderly restructuring was in Highland's best interest. Accordingly, ***he retained [PSZJ] to file a Chapter 11 bankruptcy petition on Highland's behalf***."[28].

29. The other three EOUST Letters were written by Douglas Draper and Davor Rukavina, respectively, attorneys who regularly practice bankruptcy law and presumably know that Bankruptcy Code § 327(a) and Bankruptcy Rule 2014 require a debtor's counsel to be "disinterested." Yet none of the EOUST Letters even suggest that PSZJ: (a) failed to disclose the existence of a conflicting attorney-client relationship with Mr. Dondero and Strand; (b) violated Bankruptcy Code § 327(a) and Bankruptcy Rule 2014 because PSZJ was, in fact, "interested" based on the supposed attorney-client relationship with the Movants; or (c) breached their fiduciary duty to the Movants by fulfilling their fiduciary duty to Highland.

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[27] The EOUST Letters collectively cover nearly 75 single-spaced pages (excluding hundreds of pages of exhibits) and set forth a litany of serious but fabricated or grossly misleading allegations against Highland and its fiduciaries. Because the EOUST Letters were not filed in any court, neither Bankruptcy Rule 9011 nor Rule 11 of the Federal Rules of Civil Procedure apply. But other laws do, and Highland and its fiduciaries (who are now falsely accused of wrongdoing) reserve all rights to address these spurious and malicious allegations at a time and in a manner of their choosing. Notably, the EOUST has never contacted Highland or its fiduciaries concerning any aspect of the EOUST Letters.

[28] **Exhibit 11** at 2 (emphasis added).

30. The failure of Mr. Draper, Mr. Rukavina, and Ms. Ruhland to press any of these matters is particularly noteworthy because (a) Mr. Dondero should have been highly motivated to identify another area of alleged wrongdoing (one that would certainly fall within the EOUST's purview), and (b) each of the EOUST Letters included an overview of the circumstances concerning the commencement of Highland's bankruptcy case and/or the appointment of the Independent Board where these matters would have been directly relevant.[29]

III. MOVANTS' CLAIM IS NOT COLORABLE

A. The Gatekeeper Colorability Test

31. This Court recently articulated the standard of "colorability" under the Plan's gatekeeper provision (the "**Gatekeeper Colorability Test**") as follows:

> The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves an ***additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave.[30]

Movant's proposed claim does not satisfy any part of the Court's Gatekeeper Colorability Test. The allegations concerning an "implied" attorney-client relationship between PSZJ and Movants lack any evidentiary support and are directly contradicted by Movants' consistent course of conduct; the alleged breach of fiduciary duty claim based on that alleged relationship is meritless for multiple reasons. The claim is being pursued to harass PSZJ and, by extension, Highland and

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[29] *See* **Exhibit 11** (Ruhland 9/8/23 letter) at 4; **Exhibit 11, Ex. A** (Draper 10/11/21 letter) at 2; **Exhibit 11, Ex. B** (Rukavina 11/3/21 letter) at 2; **Exhibit 11, Ex. C** (Rukavina 5/11/22 letter) at 5–7.

[30] Docket No. 3903 at 91 (emphasis in original).

the Claimant Trust, and—like so many other coordinated actions by Mr. Dondero and his counsel—to undermine Highland and frustrate the Plan's implementation.

B. PSZJ Never Had an Attorney-Client Relationship with Either Movant

(1) *No Express Attorney-Client Relationship Existed*

32. The Motion for Leave and the Proposed Complaint depend on the simple issue of whether an attorney-client relationship between PSZJ and either Movant ever existed. It didn't. Conspicuously absent from both the Motion for Leave and the Proposed Complaint is any allegation that a written agreement or other document or recorded communication exists to establish an express attorney-client relationship between PSZJ and either Movant. There never was one.

33. PSZJ and Highland signed binding contracts, executed documents, and communicated by email regarding PSZJ's retention with one goal: to establish an attorney-client relationship between PSZJ and Highland (and only Highland). Movants said nothing before (or after) the Bankruptcy Court approved the Employment Application about their having an attorney-client relationship with PSZJ and accepted without objection the Pomerantz Statements, which included the unchallenged assertions that PSZJ never represented any Highland affiliate, officer, equity holder, partner, or subsidiary.

34. Even when Mr. Dondero's personal counsel, Bonds Ellis, filed a notice of appearance, Movants said nothing about some sort of dual representation or conflict of interest at any point—not when pitched litigation ensued between Highland and Mr. Dondero, not when Mr. Dondero opposed confirmation of the Plan, not in any of the several dozen appeals Mr. Dondero and his entities have pursued over the last four years, not when Mr. Dondero's lawyers wrote four letters to the EOUST complaining about supposed "abuses of the bankruptcy process," and not even when NexPoint objected to the Final Fee Application. On this record, there is simply no way

that any court applying Texas law could reasonably conclude that PSZJ ever had an attorney-client relationship with either Movant.

(2) *No Implied Attorney-Client Relationship Existed*

35. Because no express attorney-client relationship ever existed between PSZJ and either Movant, Movants must establish that an "implied" attorney-client relationship existed under Texas law. "In determining whether a contractual relationship can be implied, we use an objective standard, looking at what the parties said and did for some manifestation that **both** parties intended to create an attorney-client relationship, and do not consider their unstated, subjective beliefs."[31]

36. Movants haven't identified any evidence - or even alleged the existence of any evidence - that PSZJ ever intended to create an attorney-client relationship with either of them or that either Movant intended to create an attorney-client relationship when *Highland* retained PSZJ. PSZJ never said or did anything that would have reasonably led either Movant to believe that PSZJ represented it. In fact, *all* of PSZJ's actions and *all* of PSZJ's representations to the Bankruptcy Court—about which Movants said nothing, ever—provide no evidence of an implicit attorney-client relationship between PSZJ and either Movant and instead lead inexorably to the conclusion that PSZJ represented Highland and only Highland.[32] The documentary evidence proves that there never was such a relationship and that no one—neither PSZJ nor even the Movants—ever conducted themselves in a manner that would evince the legally-required *mutual* belief that PSZJ represented Movants.

[31] *Kennedy v. Gulf Coast Cancer & Diagnostic*, 326 S.W.3d 352, 357-58 (Tex. App. 2010) (emphasis added).

[32] As this Court knows, Mr. Dondero is perfectly willing to fabricate stories even in the face of an avalanche of contrary documentary evidence: recall Mr. Dondero's uncorroborated tale concerning a series of secret oral agreements with his sister to forgive over $60 million in promissory notes that caused this Court to invoke the "sham affidavit" rule.

37. Any subjective and previously undisclosed beliefs about the alleged relationship held by Movants—beliefs contradicted by all the documentary evidence and their own lengthy, uninterrupted, and inexplicable silence—are legally irrelevant.[33] "Texas law is clear that one party's subjective beliefs are not evidence of an implied attorney-client relationship."[34] If, as Texas courts uniformly hold, Movants' subjective beliefs are not evidence of an attorney-client relationship, then no such evidence exists. The lack of an attorney-client relationship is fatal to Movants' claim for breach of fiduciary duty. The Movant's claim is not colorable—and the Motion for Leave must fail—on that basis alone.

C. PSZJ Owed No Fiduciary Duty to Either Movant Because No Attorney-Client Relationship Between Them Existed

38. An attorney has a fiduciary duty only when an attorney-client relationship is created.[35] The corollary is that attorneys never owe fiduciary duties to non-clients because no attorney-client relationship exists. "A fiduciary duty is an extraordinary one and will not be lightly created. The mere fact that one subjectively trusted the other does not, alone, indicate that he reposed confidence in the other in the sense demanded by fiduciary relations, because something apart from the transaction itself is necessary."[36]

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[33] Assuming for the sake of argument only that Movants actually held such subjective beliefs and those beliefs were relevant, Movants' primary allegation is that PSZJ had "engag[ed] in numerous discussions with Mr. Dondero personally" and advised him to take certain actions to benefit Highland. Mr. Dondero was the CEO of PSZJ's sole client, Highland. If a debtor's counsel forms a personal attorney-client relationship with a debtor's CEO simply by discussing the debtor's bankruptcy case with that CEO, then no counsel could ever be "disinterested" under § 327(a) and would always be in breach of its duties to the debtor and its estate.

[34] *Kiger v. Balestri*, 376 S.W.3d 287, 291 (Tex. App. 2012); *see also Belliveau v. Barco, Inc.*, 987 F.3d 122, 133 (5th Cir. 2021) ("courts 'determine whether a[n] [attorney-client] contract can be implied using an objective standard ... and ... do not consider [the parties'] unstated, subjective beliefs'") (quoting *Span Enterprises v. Wood*, 274 S.W.3d 854, 858 (Tex. App. 2008)); *In re DISH Network, LLC*, 528 S.W.3d 177, 185 (Tex. App. 2017) ("A court cannot consider a client's or attorney's unspoken subjective beliefs about the relationship").

[35] *See, e.g.*, *Willis v. Maverick,* 760 S.W.2d 642, 645 (Tex. 1988).

[36] *Thompson v. Vinson & Elkins,* 859 S.W.2d 617, 623 (Tex. App. 1993).

39. The parallels between the *Thompson* case and the present Motion for Leave are instructive. The court in *Thompson* explained that "the record indicates that V & E's involvement with the trust itself was in representing one of the trustees, Johnson. [A written retention agreement existed between V&E and Johnson only.] Although a fiduciary relationship may exist between the beneficiary of a trust and a trustee, under the facts presented here, no fiduciary relationship exists between the beneficiary of a trust and the attorney representing a trust."[37] Here, the attorney-client relationship between PSZJ and Highland certainly created a fiduciary duty running from PSZJ to Highland but not to Highland's general partner (Strand) or the general partner's owner (Mr. Dondero).

40. The Proposed Complaint's single count for breach of fiduciary duty fails because it is predicated entirely on the existence of an attorney-client relationship between Movants and PSZJ. Movants' unstated, subjective belief—which is contrary to all the documentary evidence and their inconsistent conduct—is insufficient, as a matter of law, to create an attorney-client relationship.

D. Texas Law Does Not Permit Plaintiffs to a Recast Malpractice Claim as a Fiduciary Duty Claim Simply to Avoid the Shorter Malpractice Claim Statute of Limitations

41. Even if Movants could allege a colorable claim for breach of fiduciary duty (they can't), Texas law prohibits clients from "fracturing" a malpractice claim into an additional breach of fiduciary duty claim. Yet that is exactly what Movants attempt here for the transparent and legally improper purpose of avoiding the applicable statute of limitations.[38]

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[37] *Id.* at 623–24.

[38] The Proposed Complaint contains this self-serving provision:

> In the alternative, Plaintiffs specifically plead that all limitations periods (i) have been tolled during the bankruptcy period due to the inability to assert certain claims; (ii) tolled during the applicable discovery period during which Plaintiffs could not, in the exercise of reasonable diligence, discover the true nature of Pachulski's wrongdoing and/or (iii) equitably tolled.

42. "Legal malpractice is not the only cause of action under which a client can recover from her attorney. Texas law, however, does not permit a plaintiff to divide or fracture her legal malpractice claims into additional causes of action."[39] When a plaintiff's claim for breach of fiduciary duty is based on the same operative facts giving rise to a malpractice claim, Texas law does not permit the fiduciary duty claim to proceed when the malpractice claim cannot. "Breach of fiduciary duty by an attorney most often involves the attorney's failure to disclose conflicts of interest, failure to deliver funds belonging to the client, placing personal interests over the client's interests, improper use of client confidences, taking advantage of the client's trust, engaging in self-dealing, and making misrepresentations."[40] Here, Movants base their breach of fiduciary duty claim entirely on PSZJ's alleged conflict of interest. But, as the Court in *Goffney* noted, these "allegations in support of [the] breach of fiduciary duty claim constitute no more than a claim for

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Movants' argument that any statute of limitations should be equitably tolled because they "could not, in the exercise of reasonable diligence, discover the true nature of Pachulski's wrongdoing" is absurd. "[E]quitable tolling requires (1) that the plaintiff pursued his rights diligently and (2) some **extraordinary circumstances** stood in his way." *Martin v. Grehn,* 546 F. App'x. 415, 420 (5th Cir. 2013) (emphasis added). Equitable tolling is applied only "sparingly." *Id.* (quoting *Granger v. Aaron's, Inc.,* 636 F.3d 708, 712 (5th Cir. 2012)). Movants bear the burden to justify a claim for equitable tolling. *Martin,* 546 F. App'x. at 420. Movants admit that they became adverse to Highland (and, by extension, Highland's counsel, PSZJ) soon after the Independent Board was appointed in January 2020, and litigation between Mr. Dondero and his affiliated parties commenced in or around October 2020, more than three years ago. The Plan was confirmed, divesting Movants of their interests in Highland in February 2021 and it became effective in August 2021. Movants will never be able to credibly explain why they waited years to assert their purported breach of fiduciary duty claim against PSZJ. Movants have no defense to the application of Texas's two-year statute of limitations on malpractice.

[39] *Goffney v. Rabson*, 56 S.W.3d 186, 190 (Tex. App. 2001). In *Goffney,* the court held that the plaintiff's breach of fiduciary duty claims were "essentially legal malpractice claims." Because plaintiff had previously lost the right to pursue malpractice, the plaintiff's breach of fiduciary duty claim was likewise no longer viable. *See also Cuyler v. Minns,* 60 S.W.3d 209, 216 (Tex. App. 2001) ("we find that Cuyler's claims for breach of contract and breach of fiduciary duty represent an impermissible fracturing of her claim for legal malpractice. 'If a lawyer's error or mistake is actionable, it should give rise to a cause of action for legal malpractice with one set of issues which inquire if the conduct or omission occurred, if that conduct or omission was malpractice and if so, subsequent issues on causation and damages.' *Sledge v. Alsup,* 759 S.W.2d 1, 2 (Tex. App. 1988); *see also Ross v. Arkwright Mut. Ins. Co.,* 892 S.W.2d 119, 133-134 (Tex. App.—Houston [14th Dist.] 1994, no writ) (discussing state's public policy against splintering claims). We find that all these claims arise from the same set of facts and circumstances as the alleged malpractice; since summary judgment on that alleged malpractice was proper, summary judgment on these claims was proper. *See Smith v. Heard,* 980 S.W.2d 693, 697 (Tex. App.—San Antonio 1998, pet. denied)").

[40] *Goffney*, 56 S.W.3d at 193.

legal malpractice …. [T]hese allegations do not amount to self-dealing, deception, or misrepresentations in Goffney's legal representation … to support a separate cause of action for breach of fiduciary duty."[41]

43. Movants' proposed breach of fiduciary duty claim is based on the type of alleged conflict of interest that would give rise to a malpractice claim under Texas law and cannot be "fractured" into a breach of fiduciary duty claim, especially when the malpractice claim is no longer viable. The statute of limitations for legal malpractice in Texas is two years,[42] shorter than the four-year statute of limitations applicable to breach of fiduciary duty claims.[43] Just as the *Goffney* court would not permit the plaintiff to resurrect a lost malpractice claim by recasting it as a breach of fiduciary duty claim, Movants can't do so here. Even charitably pushing back the accrual of such a claim to March 2020, when Mr. Dondero's counsel filed its notice of appearance, the applicable statute of limitations for a malpractice claim against PSZJ would have expired in March 2022, almost two years ago.

E. The Colorability Standard Cannot Be Met

44. Under this Court's precedent, to be "colorable" a claim must not be (i) without foundation, (ii) without merit, or (iii) pursued for an improper purpose such as harassment. The Proposed Complaint and the Motion for Leave fail to satisfy any of the elements.

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[41] *Id.* at 194 (cleaned up) ("Because Rabson's breach of fiduciary duty claim is actually a claim for legal malpractice, which Rabson abandoned prior to trial, she may not recover for breach of fiduciary duty"). Similarly, one could suppose that a breach of fiduciary duty claim would lie if PSZJ had a conflict it didn't disclose to its client. But, here, Mr. Dondero necessarily knew of the alleged conflict because he was the party or controlled each party to the alleged conflict (*i.e.*, Mr. Dondero personally, Strand (which Mr. Dondero owned and controlled as President) and Highland (which Mr. Dondero controlled as President and CEO)), making PSZJ's supposed failure to disclose the conflict to the Bankruptcy Court would-be malpractice, not a breach of fiduciary duty.

[42] TEX. CIV. PRAC. & REM. CODE § 16.003(a).

[43] TEX. CIV. PRAC. & REM. CODE § 16.004.

45. **The Claim Lacks Foundation.** Movants' claim for breach of fiduciary duty lacks any foundation. Movants neither offer any evidence nor even allege that evidence exists that approaches the type of objective indicia of a mutual belief in the formation of an attorney-client relationship's formation that Texas law requires. Rather, Movants allege nothing but the type of secret, subjective, uncommunicated belief Texas courts disregard. In contrast, the Retention Agreement, the Employment Application, and the Pomerantz Statements, reinforced by Movants' multi-year silence about any supposed attorney-client relationship with PSZJ even as it repeatedly represented Highland against Movants, establishes that such a relationship never existed.

46. **The Claim Lacks Merit.** For the myriad reasons set forth above, Movants' claim also lacks any merit. A claim without merit is not colorable under this Court's established standard.

47. **The Claim Is Being Pursued for an Improper Purpose.** The Motion for Leave is the latest in a series of attempts by Mr. Dondero and his affiliates to interfere with the implementation of the Plan,[44] this time seeking to undermine Highland's ability to rely on PSZJ to litigate with Mr. Dondero and his affiliates. Had Movants actually believed that PSZJ represented them beginning in September 2019—instead of inventing the claim that it did so years later as a pretext for more litigation—they would have raised these claims long ago. Rather, running out of options after having lost on almost every issue in the more than three dozen appeals to the District Court, and more than a dozen appeals to the Fifth Circuit Court of Appeals (so far), Mr. Dondero now has pivoted to attacking Highland's long-time counsel with a frivolous lawsuit alleging that PSZJ violated fiduciary duties to Mr. Dondero by advancing the estate's interests rather than Mr. Dondero's parochial desires. The Motion for Leave and the Proposed Complaint

[44] Such interference takes several forms, among them: (a) preventing distributions to real creditors (unlike Movants) by necessitating cash reserves for ceaseless defensive litigation against Mr. Dondero and his entities; (b) distracting Highland's and the Creditor Trust's management by making them frequent targets of frivolous litigation; and (c) reducing recoveries to creditors by forcing the Creditor Trust to pay lawyers to defend it at every turn.

are yet another attempt to harass Highland and interfere with the implementation of the Plan, precisely the improper motive this Court used as an example when articulating its Gatekeeper Colorability Test.

F. Movants Have Waived Their Claim

48. Waiver is the knowing and intentional relinquishment of a known right.[45] Movants claim to have had an implied attorney-client relationship with PSZJ as early as September 2019. Although Movants would have had to know of this supposed attorney-client relationship if it actually existed, they never asserted, disclosed it, or contended that a "conflict of interest" arose from PSZJ's continued representation of Highland against them. Movants had every incentive and opportunity to raise this issue in the chapter 11 case and with the EOUST, but stayed silent. As a result of this inaction, they have waived any conflict-of-interest claim arising from the alleged attorney-client relationship with PSZJ.

49. After PSZJ started pursuing matters directly against Mr. Dondero on Highland's behalf in the fall of 2020—for example, by successfully seeking and obtaining two orders of contempt against him; deposing him multiple times; successfully objecting to every claim filed by him and entities he controls; and successfully suing him and his sister to collect on demand notes—Movants could have asserted their alleged rights arising from the supposed attorney-client relationship with PSZJ, and should have done so if such rights actually existed, but never did.

50. Neither Movant objected to the Employment Application on the basis that it incorrectly stated that PSZJ represented no one in relation to this case but Highland—or on any other ground. Neither Movant challenged the veracity of the three Pomerantz Statements. Neither

[45] *See, e.g.*, *Van Den Broeke v. Bellanca Aircraft Corp.,* 576 F.2d 582, 584 (5th Cir. 1978).

Movant raised the supposed conflict of interest issue in objections to PSZJ's Final Fee Application or in the EOUST Letters.

51. When a litigant is given ample and numerous opportunities to raise a ripe objection and doesn't, the objection is waived.[46] "It is well settled that a former client who is entitled to object to an attorney representing an opposing party on the ground of conflict of interest but who knowingly refrains from asserting it promptly is deemed to have waived that right."[47] "A motion to disqualify should be made with reasonable promptness after a party discovers the facts which lead to the motion."[48] A party waives an objection to a former client conflict "where the delay in moving for disqualification is for an extended period of time, or where it is done on the eve of

[46] *See, e.g., Gidner v. JPMorganChase Bank N.A. (In re Gidner),* 2013 Bankr. LEXIS 4273, *26 (Bankr. N.D. Tex. October 11, 2013)) (quoting *U.S. v. Shanbaum*, 10 F.3d 305, 310-11 (5th Cir. 1994)) ("If a party does not raise a claim or a defense in the prior action, that party thereby waives its right to raise that claim or defense in the subsequent action."); *First Union Commer. Corp. v. Nelson, Mullins, Riley & Scarborough (In re Varat Enters.),* 81 F.3d 1310 (4th Cir. 1996) (citing *In re Simmons*, 765 F.2d 547 (5th Cir. 1985)) ("a confirmed plan of reorganization acts like a contract that is binding on all of the parties, debtor and creditors alike … a party in interest's failure to object to a claim … prior to confirmation of the debtor's reorganization plan may operate as a waiver, barring the party from asserting the objection later"); *Dodson v. Huff (In re Smyth),* 2001 U.S. App. LEXIS 30164, *16, n.9 (5th Cir. August 7, 2001) (appellant "may well have waived" claims for malpractice by not raising them until well after a professional's final fee order was entered).

[47] *Cinco Bayous, LLC v. Samson Expl., LLC*, 2020 U.S. Dist. LEXIS 265754, at *24 (E.D. Tex. Aug. 17, 2020) (quoting *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, No. 2010 U.S. Dist. LEXIS 155196, at *5-6 (S.D. Tex. July 30, 2010); *Tr. Corp. of Mont. v. Piper Aircraft Corp*., 701 F.2d 85, 87 (9th Cir. 1983)); *see Cox v. Am. Cast Iron Pipe Co*., 847 F.2d 725, 729 (11th Cir. 1988) ("A failure to make a timely objection [to a violation of Canon 4] may also result in a waiver"); *In re Corrugated Container Antitrust Litig*., 659 F.2d 1341, 1348-49 (5th Cir. 1981) (a client may waive an objection regarding a violation of ABA Model Code of Professional Responsibility canons); *Redd v. Shell Oil Co.*, 518 F.2d 311, 315 (10th Cir. 1975) ("lawyer conflict of interest problems ought to be brought up long before the date of trial").

[48] *Cox*, 847 F.2d at 729 (quoting *Jackson v. J.C. Penney Co*., 521 F. Supp. 1032, 1034-35 (N.D. Ga. 1981)); *Pendergest-Holt*, 2010 U.S. Dist. LEXIS 155196, 2010 WL 11661414, at *5-6.

trial."[49] Timing matters. Waiting too long to claim malpractice—especially when circumstances (like the ones present here) tend to indicate that the delay is a strategic ploy—waives the claim.[50]

52. Here, neither Mr. Dondero nor Strand ever contended that PSZJ had a conflict of interest until now, despite countless opportunities to do so if such conflict actually existed. Consequently, Movants long ago waived the sole claim asserted in the Proposed Complaint. That claim is, accordingly, without merit and not colorable.[51]

G. As a Result of the Allowance of the Final Fee Application by a Final Order, Movant's Claim Is Barred by *Res Judicata*

53. The Proposed Complaint is barred by *res judicata* as a result of the allowance of the Final Fee Application by the Final Fee Order. *Res judicata* applies where "(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions."[52] "[T]he critical question for *res judicata*

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[49] *Pendergest-Holt*, 2010 U.S. Dist. LEXIS 155196, 2010 WL 11661414, at *5-6 (quoting *Abney v. Wal-Mart*, 984 F. Supp. 526, 530 (E.D. Tex. 2007)) (plaintiff waived claim after waiting one year after learning of potential conflict before filing motion to disqualify; motion filed one month before trial)); *Microsoft Corp. v. Commonwealth Sci. & Indus*., No. 2007 U.S. Dist. LEXIS 91550, 2007 WL 4376104 at *9 (E.D. Tex. Dec. 13, 2007) (waiver appropriate when movant waited two years to file motion to disqualify after it knew or should have known about [a conflict of interest], and even waited six months after movant claims that [the] conflict [of interest] arose).

[50] *Atasi Corp. v. Seagate Tech*., 847 F.2d 826, 832 (Fed. Cir. 1988) (waiver appropriate "when a motion to disqualify is used in an abusive manner as part of litigation tactics").

[51] Movants can show no damages in any regard. The October 2 Memo advised Highland (and, of course, Mr. Dondero in his capacity as Highland's CEO and ultimate decision-maker) of certain risks of filing chapter 11 that Mr. Dondero now assert as the basis for his damages. Mr. Dondero cannot contend that he was damaged because "Pachulski neither disclosed nor counseled Plaintiffs that the interests of HCMLP might become adverse to Plaintiffs in the future" (Motion for Leave at 11) when the October 2 Memo summarized the exact risks that Mr. Dondero claims caused his harm. ***Further, regardless of what happened to Highland, Mr. Dondero had no direct economic interest in the estate and Strand has only an infinitesimally small and deeply subordinated economic interest***. Unless Mr. Dondero is willing to finally admit that he was Highland's alter ego, he cannot allege that the loss of Highland caused him any harm; he had no direct interest in it.

[52] *Houston Pro. Towing Ass'n v City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016) (internal quotations omitted); *see also Comer v. Murphy Oil USA*, 718 F.3d 460, 467 (5th Cir. 2013) (same); *Dodson*, 2001 U.S. App. LEXIS 30164, at *5 (citing *Osherow v. Ernst & Young, LLP (In re Intelogic Trace, Inc.)*, 200 F.3d 382, 386 (5th Cir. 2000)) (same).

purposes is whether the party could or should have asserted the claim in the earlier proceeding."[53] All elements of *res judicata* are satisfied here.

54. **Identical Parties/Privity.** At the time of the Fee Hearing, Mr. Dondero controlled Strand and NexPoint. NexPoint objected to the Final Fee Application. There is privity.[54] Moreover, Movants were also parties-in-interest in Highland's chapter 11 case and could have objected to PSZJ's fees on their own behalf.[55]

55. **Jurisdiction/Final Judgment.** This Court indisputably had core jurisdiction to issue the Final Fee Order, and it was a final judgment on the merits of the Final Fee Application.[56]

56. **Same Claim.** To determine whether a claim is the "same claim," the Fifth Circuit applies "the transactional test of the Restatement (Second) of Judgments. The critical issue is … whether the two actions under consideration are based on 'the same nucleus of operative facts.'"[57] As in *Osherow*, this Court allowed PSZJ's fees under § 330.[58] "The compensation allowable under [§ 330] is subject to the provisions of sections 326, 328, and 329…."[59] Section 328(c) requires denial of fees if the professional is not "a disinterested person, or represent[ed] … an interest

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[53] *Osherow*, 200 F.3d at 383.

[54] *See, e.g., Sacks v. Tex. S. Univ.*, 83 F.4th 340, 345-46 (5th Cir. 2023) (finding privity "(1) where the non-party is a successor in interest to a party's interest in property; (2) where the non-party controlled the prior litigation; and (3) where the non-party's interests were adequately represented by a party to the original suit").

[55] *Dodson*, 2001 U.S. App. LEXIS 30164 at *1-3, 5-6 (finding *all* creditors barred by *res judicata* from subsequently bringing malpractice claims against an estate professional when they failed to object at the final fee hearing). Strand's senior officers, including Mr. Ellington and Mr. Waterhouse (through their personal counsel Baker McKenzie), Mr. Dondero (through his counsels Stinson and DLA Piper), and Strand itself (through its counsel DLA Piper, including Ms. Ruhland) were all served with the Final Fee Application via the Court's ECF system on October 8, 2021.

[56] *See* 28 U.S.C. § 157(a); 11 U.S.C. § 330.

[57] *Osherow*, 200 F.3d at 386 (citations omitted).

[58] *Id.* (finding that a state court malpractice claim against an estate professional was barred by *res judicata* because § 330 required a determination as to the quality of services provided).

[59] 3 COLLIER ON BANKRUPTCY ¶ 330.01.

adverse to the estate ....”[60] Movants' allegations of conflict of interest and resulting claims for breach of fiduciary duty thus arose from the "same nucleus of operative facts" as the matters necessarily adjudicated at the Fee Hearing.

57. Finally, Movants "could and should" have asserted their claim that they had an attorney-client relationship with PSZJ that might give rise to a conflict of interest on its part in opposition to the Final Fee Application. Movants knew of PSZJ's alleged conflict at the time of the Fee Hearing—*all* allegations arose well before then[61]—and, like in *Osherow*, Movants could have fully litigated their alleged claim at the Fee Hearing.[62]

58. Movants, through NexPoint, objected to PSZJ's fees at the Fee Hearing but said nothing about an alleged attorney-client relationship or conflict of interest. Now, two years later and after their appeals regarding the Final Fee Order have been exhausted, Movants seek to pry open a back door to object to PSZJ's fees again. Movants are barred from doing so by *res judicata*.

[60] 11 U.S.C. § 328(c); *see also In re Digerati Techs., Inc.*, 537 B.R. 317, 369 (Bankr. S.D. Tex. 2015) ("In the Fifth Circuit, failure to make required disclosures to a bankruptcy court can be grounds for total denial of a fee application .... Indeed, in *Delta Oil*, the Fifth Circuit denied all fees after finding that the professional failed to disclose an interest that would have been disqualifying").

[61] In fact, PSZJ included in the Final Fee Application a summary of the very actions alleged in the Proposed Complaint to have harmed Movants as further justification for the requested fee award.

[62] *Osherow*, 200 F.3d at 389-90 (finding that the fee hearing could have been converted to an adversary to adjudicate the malpractice claims or otherwise stayed to allow the malpractice claim to be adjudicated); *see also Charitable DAF Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 2022 Bankr. LEXIS 659, at *20-21 (Bankr. N.D. Tex. Mar. 11, 2022) (recognizing *Osherow* "barred claims that could have been asserted at a fee hearing").

IV. CONCLUSION

59. For the reasons stated above, the sole claim underlying the Proposed Complaint and the Motion for Leave is not colorable and should not be permitted to proceed under the Plan's gatekeeper provision. PSZJ respectfully requests that the Court deny the Motion for Leave and grant PSZJ any additional relief regarding the Motion for Leave that the Court deems just and proper under the circumstances.

Dated: December 26, 2023

PACHULSKI STANG ZIEHL & JONES LLP

By: */s/ Jeffrey N. Pomerantz*
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December 26, 2023

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Re: **In re Highland Capital Management, L.P.,**
Case No. 19-34054-sgj11

Dear Amy:

Earlier today, my firm, Pachulski Stang Ziehl & Jones LLP ("**PSZJ**"), filed its opposition (the "**Opposition**") to the *Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint* (the "**Motion for Leave**"), which you and your firm filed at Docket No. 3981 in Highland Capital Management, L.P.'s ("**Highland**") bankruptcy case.

For the reasons set forth in the Opposition, the Motion for Leave asserts a frivolous and fabricated claim against PSZJ that: (a) lacks any foundation, merit, or evidence to support it; (b) is directly contradicted by a mountain of publicly available information as well as your own letter to the Executive Office of the United States Trustee; (c) is barred as a matter of law by waiver, the statute of limitations, and *res judicata*; (d) was filed for no purpose other than to harass PSZJ and, by extension, Highland and the Claimant Trust; and (e) could never meet the Gatekeeper Colorability Test.

For the reasons set forth in the attached *Motion for Sanctions Under Bankruptcy Rule 9011* (the "**Sanctions Motion**"), which incorporates the Opposition by reference, we believe you and your firm failed to conduct "an inquiry reasonable under the circumstances" and have signed a pleading that violates Bankruptcy Rule 9011(b)(1)-(3).

PACHULSKI
STANG
ZIEHL &
JONES

If the Motion for Leave is not withdrawn with prejudice on or before January 16, 2024—21 days after the date of this letter—PSZJ will file and prosecute the Sanctions Motion and will seek to have it heard simultaneously with the Motion for Leave.

Sincerely,

PACHULSKI STANG ZIEHL & JONES LLP

John A. Morris

Attachments

cc: Jeffrey N. Pomerantz (by e-mail, w/ attachments)

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

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

PSZJ'S MOTION FOR SANCTIONS UNDER BANKRUPTCY RULE 9011

Pachulski Stang Ziehl & Jones LLP ("**PSZJ**"), restructuring counsel to Highland Capital Management, L.P., the reorganized debtor in this Chapter 11 case ("**Highland**"), moves the Court for an order imposing sanctions (the "**Sanctions Motion**") on Amy L. Ruhland ("**Ms. Ruhland**") and her law firm, Reichman Jorgensen Lehman & Feldberg LLP ("**RJLF**"), under Rule 9011 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). This Court should sanction Ms. Ruhland and RJLF (collectively, "**Dondero's Counsel**") for the reasons set forth below.

I. PRELIMINARY STATEMENT[1]

1. James Dondero has spent years making threats, launching frivolous litigation, filing baseless claims, and asserting contrived defenses against Highland and its fiduciaries to extract revenge and to otherwise frustrate the implementation of Highland's Plan.[2] He has been enabled by a cast of lawyers and law firms, too long to list, who—presumably against their better judgment—have been willing to assert meritless legal and factual contentions in exchange for compensation because there have been no consequences for doing so. That must end.

2. The Motion for Leave has crossed all boundaries and violates multiple sections of Rule 9011. The foundation of the Proposed Complaint—that PSZJ represented Mr. Dondero personally as well as Highland's general partner, Strand, and breached its fiduciary duty to them by fulfilling its fiduciary duties to Highland—is directly contradicted by documentary evidence and by four years of conduct by Mr. Dondero and Strand that is wholly irreconcilable with the newly-contrived claim that PSZJ acted as their counsel and owed them some duty. And Dondero's Counsel apparently knows it.

3. Just three months ago, Dondero's Counsel explicitly told the Executive Office of the United States Trustee that PSZJ only represented Highland in its bankruptcy case.[3] In the

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[1] This Court has jurisdiction over this case and this contested matter under 28 U.S.C. §§ 157(b) and 1334. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

[2] Capitalized terms not defined in this Sanctions Motion have the meanings ascribed to them in *PSZJ's Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint* (the "**Opposition**") that was filed on December 26, 2023, at Docket No. __. This Sanctions Motion was served on Dondero's Counsel on the same day PSZJ filed the Opposition and is being filed now because Dondero's Counsel refused to withdraw the Motion for Leave within the 21-day period prescribed under Rule 9011(c)(1)(A).

[3] On the eve of mediation, Highland learned that Dondero's Counsel sent a 24-page letter to the EOUST on September 8, 2023, in which they presented a litany of serious but demonstrably false allegations against Highland and its fiduciaries. This letter attached as exhibits three earlier letters sent to the EOUST on Mr. Dondero's behalf, all of which are directly relevant to PSZJ's waiver claim (*see* Opposition ¶¶ 28–31). The three earlier EOUST Letters are also directly relevant to this Sanctions Motion because they should have caused Dondero's Counsel to investigate why all of them purportedly addressed "serious abuses of the bankruptcy process" but none of them ever complained about any supposed "conflict of interest" on PSZJ's part or alleged that PSZJ violated Bankruptcy Code

background section of their EOUST Letter, Dondero's Counsel noted that "Mr. Dondero (who was then the acting CEO and sole director of Highland's general partner, Strand Advisors, Inc. ("Strand")), in consultation with counsel, determined that an orderly restructuring was in Highland's best interest. Accordingly, ***he retained [PSZJ] to file a Chapter 11 bankruptcy petition on Highland's behalf***." **Exhibit** 9 (emphasis added).[4] If this admission were not enough (and it is), Dondero's Counsel never informed the EOUST of Mr. Dondero's subjective belief that PSZJ represented him and Strand since 2019 and had violated its fiduciary duties by acting against their interests. In sum, Movants' claim is so untethered to the facts and the law that any responsible lawyer who engaged in any reasonable diligence should have refused to bring it—and for Dondero's Counsel to try to advance it just weeks after sending the EOUST Letter is beyond the pale.

4. Rule 9011 requires every attorney to certify "that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the pleading is not filed for an improper purpose; the claims and legal contentions are warranted under the law; and the factual allegations have or will have evidentiary support. Regrettably, Dondero's Counsel failed to comply with these basic but fundamental obligations.

5. As Highland's Opposition (and supporting documentation) and the years-long, consistent conduct of Mr. Dondero and Strand prove, PSZJ never represented any person or firm in this bankruptcy case other than Highland. No allegations are made, and no evidence exists, to

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§327(a) or Bankruptcy Rule 2014 by being "interested" as a result of its supposed attorney-client relationship with Movants.

[4] Citations to "Exhibits __" refer to the exhibits attached to the *Declaration of Hayley R. Winograd in Support of PSZJ's Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint* filed at Docket No. __.

support an "implied" attorney-client relationship. And the sole claim for breach of fiduciary duty is plainly barred by waiver, the statute of limitations, and *res judicata*.

6. Imposing Rule 9011 sanctions is an extreme remedy. But the filing of the baseless Motion for Leave and Proposed Complaint is extreme conduct of the type that Rule 11 was enacted to deter and, if not deterred, sanction. For the reasons set forth below, that is exactly what is required to force otherwise reputable lawyers to act professionally and ethically and refuse to file pleadings that make no objective sense merely because Mr. Dondero demands that they do so. Dondero Counsel's has plainly violated Rule 9011 and must be held to account.

II. BASIS FOR SANCTIONS[5]

7. Bankruptcy Rule 9011(b) ("**Rule 9011**"), the equivalent of Rule 11(b) of the Federal Rules of Civil Procedure ("**Rule 11**"),[6] provides in pertinent part:

> (b) **Representations to the Court.** By presenting to the court (whether by signing, filing, submitting, or late advocating) a … written motion, … an attorney … is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claim[ ] … and [ ] legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;
>
> (3) the allegation and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery …

An attorney's compliance with Rule 11 (and, therefore, Rule 9011) is "measured by an objective, not subjective, standard of reasonableness under the circumstances … 'An attorney's good faith

[5] PSZJ incorporates the Opposition by reference as if fully set forth in this Sanctions Motion.

[6] Bankruptcy Rule 9011 closely parallels Rule 11 such that caselaw interpreting Rule 11 applies to the interpretation of Bankruptcy Rule 9011. *See, e.g., In re Pratt,* 524 F.3d 580, 586 (5th Cir. 2008). "Rule 9011" and "Rule 11" are used interchangeably in this Motion.

is [not] enough to protect him from rule 11 sanctions.'"[7] An attorney's obligation to ensure that a reasonable inquiry into the facts has been made and that "the motion is not interposed for purposes of delay, harassment, or increasing costs of litigation" is a "continuing obligation to review and reevaluate his position as a case develops."[8]

8. The factors this Circuit has considered to determine whether an attorney has made a reasonable inquiry into the facts and applicable law sufficient to satisfy Rule 11 include:[9]

1. the **time** available to the signer for investigation;
2. the extent of the attorney's **reliance** upon his client for the factual support for the document;
3. the **feasibility** of pre-filing investigation;
4. whether the signing attorney accepted the case from another member of the bar or forwarding attorney;
5. the **complexity** of the factual and legal issues; and
6. the extent to which development of the factual circumstances underlying the claim **requires discovery**.[10]

9. Analyzing each of these factors in the context of the Motion for Leave, Dondero's Counsel clearly failed to make the reasonable inquiry required by Rule 9011.

a. ***First***, Dondero's Counsel had, at a minimum, nearly two years to investigate the alleged facts and legal bases underlying the Proposed Complaint. Ms. Ruhland was advised of PSZJ's position that it "acted solely as counsel to Highland Capital Management L.P. during Highland's chapter 11 bankruptcy case and has never represented Strand Advisors, Inc." in an e-mail dated February 11, 2022, written in response to her demand that PSZJ turn over its "client file" regarding Strand. *See* Opposition ¶ 26. Ms. Ruhland never responded to Mr.

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[7] *Thomas v. Capital Sec. Services, Inc.,* 836 F.2d 866, 873 (5th Cir. 1988) (*en banc*) (citations omitted). The *Thomas* case remains the seminal, guiding case from the Fifth Circuit on applying Rule 11 following the rule's significant amendment in 1983. Rule 11 has not been materially amended since *Thomas.*

[8] *Id.* at 874.

[9] *Childs v. State Farm Mut. Auto. Ins. Co.,* 29 F.3d 1018, 1026 (5th Cir. 1994) (citing *Thomas*) (emphasis added).

[10] *Id.*

Pomerantz and, as far as PSZJ could tell, dropped the matter until raising it just before filing the Motion for Leave.[11] Thus, Ms. Ruhland had nearly *two years* to conduct a reasonable inquiry, a task made both more critical and easier by Mr. Pomerantz's unequivocal statement in February 2022 that PSZJ had never represented Strand. Moreover, she had added reason to conduct an inquiry, since the information she was given that led her to think that there was an engagement letter between PSZJ and Strand proved to be false. Whatever "time available" for the reasonable inquiry the Fifth Circuit would deem adequate, nearly two years cannot possibly be close to the line.[12] And, it appears that Ms. Ruhland did not investigate anything during that time as the Proposed Complaint does not reference any evidence other than Mr. Dondero's "belief" that PSZJ represented him and Strand.

b. ***Second***, Ms. Ruhland apparently relied primarily (if not exclusively) on Mr. Dondero's own story in preparing the Proposed Complaint, while ignoring the absence of any corroborating written evidence—including a written engagement letter between PSZJ and either Mr. Dondero or Mr. Strand—and failing to take into account substantial, consistent, publicly-available contrary evidence including (a) the Employment Application and the Pomerantz Statements, (b) Mr. Dondero's years-long silence in the face of contentious, adversarial litigation between PSZJ (acting solely on behalf of Highland, the Claimant Trust, and Mr. James P. Seery, Jr. in his official capacity for Highland and the Claimant Trust) and Mr.

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[11] Before filing the Motion for Leave, Ms. Ruhland asked PSZJ whether it would consent to a tolling agreement, copying another lawyer, Jeffrey Tillotson of Dallas-based Tillotson Johnson Patton ("**Mr. Tillotson**"), who had never appeared in the Highland bankruptcy case. For many reasons, PSZJ declined to enter into a tolling agreement and expressly reserved the right to seek sanctions and/or sue for malicious prosecution if Movants followed through. *See* Motion for Leave, Ex. B (e-mail from John Morris to Amy Ruhland dated November 30, 2023). A few days later, Dondero's Counsel filed the Motion for Leave without Mr. Tillotson—who presumably thought better of signing on to an obviously meritless motion.

[12] Compare, for example, *In re Disciplinary & Sanction Proceedings Against Gillig,* 807 F. Supp. 2d 604, 622 (N.D. Tex. 2011), in which at attorney, Cleveland, was not sanctioned because "Cleveland had been retained for only ten days before the response to [the] motion … was due; and had approximately three days between the day he received copies of the documents in the file and the day the response in opposition to the motion … was due."

Dondero and his affiliates; (c) the Final Fee Application and Fee Hearing where the alleged conflict would have been directly relevant to the Bankruptcy Court's decision to enter the Final Fee Order; and (d) her own statements made in and absent from the EOUST Letter. In these circumstances, Dondero's Counsel's unquestioning reliance on unsubstantiated (and facially absurd) representations of a man with a richly-earned reputation for unrestrained litigiousness and fabrication cannot be considered reasonable for purposes of Rule 9011. *Compare, e.g., Seawright v. Charter Furniture Rental, Inc.*:[13]

> [Plaintiff's attorney] Johnson argues that "at the outset, it was reasonable to believe that other issues, such at [sic] the Defendant's knowledge of Mr. Seawright's roommate's illness, would have been developed favorably to Plaintiff through discovery." This is simply not true. [Defendant's] counsel notified [Plaintiff's] former counsel … thirteen months before Johnson filed suit, that Seawright's perception that he was fired because [Defendant] thought he was HIV-positive was utterly groundless. [Defendant] never wavered from that position, and [Defendant] told [Plaintiff] and Johnson again and again and again that its management had no knowledge of Seawright's true relationship with [his roommate], had no knowledge that [the roommate] died of AIDS, and had believed in good faith [Plaintiff's] elaborate deception about the situation. Cutting through Johnson's self-serving justification of her pre-filing "investigation," Johnson clearly filed this lawsuit based on nothing more than her client's speculation and their presumption that there is a lot of "talk" in a small office.

Here, Dondero's Counsel likewise relied on Mr. Dondero's "elaborate deception about the situation" and filed the Motion for Leave "based on nothing more than her client's speculation," which stood in stark contrast to (a) four years' worth of court filings, (b) PSZJ's frequent, consistent statements to the Bankruptcy Court that it represented Highland, and only Highland; (c) more than three years' worth of litigation in this Court, the District Court, and the Fifth Circuit Court of Appeals in which PSZJ consistently represented Highland adversely to Mr. Dondero and Strand, and in which they just as consistently never mentioned their alleged

[13] 39 F. Supp. 2d 795, 806–07 (N.D. Tex. 1999).

representation by PSZJ or any conflict of interest stemming from that representation;[14] and (d) the statements made (and not made) in the EOUST Letter. Dondero's Counsel's reliance on Mr. Dondero's "beliefs" is especially egregious since—as Dondero's Counsel knew or should have learned in the two years before filing the Motion for Leave—***one party's subjective beliefs cannot form the basis of an "implied" attorney-client relationship under Texas law***. Opposition ¶¶ 36–38.

c. ***Third***, a pre-filing investigation was easily feasible given that substantial information was publicly available that flatly contradicted Mr. Dondero's contentions. Moreover, Dondero's Counsel also could have—and should have if they wanted to fulfill their obligations under Rule 9011—asked (a) Dondero's Other Lawyers (*see* n.14 above) why none of them ever asserted a conflict or sought to disqualify PSZJ,[15] and (b) Mr. Dondero why he omitted from his extensive malpractice suit against Bonds Ellis any claim or allegation that they negligently failed to seek PSZJ's disqualification on the grounds of a "conflict of interest." *See* Exhibit 9. Dondero's Counsel cannot credibly argue that a reasonable inquiry was infeasible over the last two years.[16] And, it bears repeating that Ms. Ruhland never bothered to respond to Mr. Pomerantz's unequivocal statement in February 2022 that PSZJ never represented Strand.

[14] A quick review of the docket shows that Mr. Dondero and his affiliates have been represented over the years by Bonds Ellis, Stinson, Heller Draper & Horn, LLC, K&L Gates LLP, Munsch Hardt Kopf & Harr, P.C., and Sbaiti & Company (among other firms, collectively, "**Dondero's Other Lawyers**")—none of whom ever contended that PSZJ previously represented Mr. Dondero or Strand or asserted that PSZJ had a conflict of interest or should be disqualified on that basis. Didn't Dondero's Counsel wonder why? Did Dondero's Counsel even bother to ask or did they just blindly accept Mr. Dondero's story?

[15] If Dondero's Other Lawyers knew about Mr. Dondero's newly announced belief concerning PSZJ's alleged representation of him and Strand and did nothing about it, then PSZJ's waiver defense becomes even stronger (and those lawyers themselves may have committed malpractice). If they did not know about Mr. Dondero's belief, then it becomes even more certain that Movants' claim is fabricated and is being pursued to harass PSZJ and interfere with the implementation of Highland's Plan. Either way, Dondero's Counsel had an affirmative duty to inquire given the available and contrary facts.

[16] Relying on "good faith" alone without reasonably reviewing relevant and available documents is grounds for sanctions. *See, e.g, generally, Insurance Benefit Adm'rs, Inc. v. Martin,* 871 F.2d. 1354 (7th Cir. 1989).

d. ***Fourth***, Dondero's Counsel has been "on the case" regarding PSZJ's supposed representation of Strand since at least February 2022, and there is no evidence that Dondero's Counsel inherited this matter from other counsel (*e.g.,* a notice of substitution of counsel was never filed).

e. ***Fifth***, there is nothing complex about determining whether PSZJ was or was not counsel to the Movants, especially not for Ms. Ruhland, an experienced trial lawyer, managing partner of RJLF's Austin office, and formerly a partner in a large and sophisticated law firm, DLA Piper. Surely Dondero's Counsel understands the basics of forming an attorney-client relationship under Texas law and the implications of how PSZJ's sworn statements and those of Strand's officers concerning PSZJ's sole representation of Highland (*e.g.*, the Retainer Agreement, the Employment Application, the Pomerantz Statements, and the Final Fee Application) conflicted with Mr. Dondero's story. Whether an attorney-client relationship has been formed cannot fairly be regarded as a complex issue for Ms. Ruhland, the author of the *Attorney-Client Privilege Answer Book* published by the Practising Law Institute, and a member of the Board of the Texas General Counsel Forum.[17]

f. ***Sixth***, nothing about the fundamental allegation that PSZJ was somehow counsel to either Mr. Dondero or Strand in late 2019 and early 2020 requires discovery as part of the reasonable inquiry mandated by Rule 9011. Dondero's Counsel already had access to enough evidence establishing that Movants' claim is meritless and barred by obvious defenses: Mr.

[17] Under Rule 9011, Dondero's Counsel also had a duty to conduct a reasonable inquiry into PSZJ's obvious defenses such as waiver, the statute of limitations, and *res judicata*. "[T]he 'reasonableness' of the rules requires a party to consider 'whether any obvious affirmative defenses bar the case.' *White v. General Motors Corp.,* 908 F.2d 675, 682 (10th Cir.1990), *cert. denied,* 498 U.S. 1069, 111 S. Ct. 788, 112 L. Ed. 2d 850 (1991)." *FDIC v. Calhoun,* 34 F.3d 1291, 1299 (5th Cir. 1994). The Proposed Complaint's suggestion that if the statute of limitations expired grounds exist to support "equitable tolling" shows that Dondero's Counsel was aware of the statute of limitations defense PSZJ raised in its Opposition. But the claim that equitable tolling might apply here is so utterly devoid of merit that it should be sanctionable in its own right.

FDIC v. Calhoun, 34 F.3d 1291, 1299, 1994 U.S. App. LEXIS 28971, *20, 30 Fed. R. Serv. 3d (Callaghan) 868

Dondero's story; the absence of any written evidence corroborating Mr. Dondero's story, including the lack of any engagement agreement between PSZJ and Mr. Dondero or Strand or other document referring to any attorney-client relationship between PSZJ and the Movants; PSZJ's receipt of payment only from Highland in connection with the chapter 11 case; Mr. Pomerantz's email responding to Ms. Ruhland's letter in February 2022 and Ms. Ruhland's conspicuous silence to that e-mail; PSZJ's unchallenged representations under penalty of perjury in the Pomerantz Statements; PSZJ's representations in the Employment Application and Final Fee Application; the failure of Mr. Dondero and Strand to raise the issue of PSZJ's alleged representation of them or the conflict of interest that would have resulted from that representation in any of the multiple litigations in which PSZJ represented Highland against Mr. Dondero or Strand, or in opposition to the Final Fee Application; the failure to address the "conflict of interest" question or PSZJ's alleged violation of Bankruptcy Code §327(a) or Bankruptcy Rule 2014 in any of the EOUST Letters; or Mr. Dondero's failure to contend that Bonds Ellis committed malpractice by not seeking PSZJ's disqualification. No "discovery" was needed for Dondero's Counsel to understand that their clients' contentions, lacking supporting evidence or other substantiation, were contradicted by four years' worth of documentary evidence, court filings, and their clients' own conduct (and silence). Everything Dondero's Counsel needed to know to spark a reasonable inquiry into the veracity of the factual allegations at the heart of the Motion for Leave was already known or was readily available to Dondero's Counsel. This was never a situation in which a suit had to be filed simply to obtain discovery to substantiate a good-faith belief in the merits of a claim.[18]

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[18] *See, e.g., Seawright,* 39 F. Supp. 2d at 806 ("Johnson argues that 'at the outset, it was reasonable to believe that other issues … would have been developed favorably to Plaintiff through discovery.' This is simply not true."; calling Johnson's justification of her pre-filing investigation "self-serving" and placing the word "investigation" in derisive quotation marks).

10. Dondero's Counsel prepared, signed, and filed a Motion for Leave (and the Proposed Complaint) without ever engaging in the type of reasonable inquiry Rule 11 requires. If Dondero's Counsel had made reasonable inquiry, they would have readily seen how utterly baseless and meritless the Motion for Leave and Proposed Complaint were, and how hopeless their efforts to satisfy the Gatekeeper Colorability Test would prove when the Motion for Leave saw the light of day. That reasonable inquiry also would have engendered a strong suspicion that Mr. Dondero was attempting to manipulate his lawyers into filing an action based on a recently-fabricated story contradicting obvious reality as part of his years-long, vindictive litigation assault on Highland, the Creditor Trust, their management and their professionals that had already resulted in numerous meritless, unsuccessful motions, objections, and appeals up and down the federal court system. Instead, Dondero's Counsel either looked the other way or chose not to look at all.

11. Bankruptcy Rule 9011 applies not only to the signing of a pleading, but also to the continued advocacy of a meritless position contained within a pleading.[19] "As the Advisory Committee Notes to Rule 11 explained, a litigant's Rule 11 obligations include reaffirming to the court and advocating positions contained [in pleadings] after learning that they cease to have merit."[20] Having had an opportunity to consider the Opposition and supporting documentation, and having still failed to withdraw the Motion for Leave, additional sanctions should be imposed for continuing to advocate meritless, evidentiarily unsupportable, frivolous, and harassing positions in this Court.

[19] *See* FED. R. BANKR. P. 9011(b) ("By presenting to the court (whether by signing, filing, submitting, **or later advocating**) …") (emphasis added).

[20] *Theokary v. Abbatiello* (*In re Theokary*), 468 B.R. 729, 746 (Bankr. E.D. Pa. 2012) (citing *Turner v. Sunguard Bus. Sys. Inc.*, 91 F.3d 1418, 1422 (11th Cir. 1996)).

III. CONCLUSION

12. For the reasons stated above, PSZJ respectfully requests that the Court impose sanctions under Rule 9011 because the Motion for Leave and Proposed Complaint (a) is not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; (b) the allegations and factual contentions are not warranted by the evidence and never will be; and (c) were filed for an improper purpose, such as to harass and interfere with Highland's implementation of the Plan. PSZJ also respectfully requests that the Court grant any additional relief the Court deems just and proper under the circumstances.

Dated: December 26, 2023

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
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Counsel for Pachulski Stang Ziehl & Jones LLP

EXHIBIT 14

From: John A. Morris
Sent: Tuesday, January 16, 2024 4:04 PM
To: Amy L Ruhland <aruhland@reichmanjorgensen.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>
Subject: Highland: Request to Extend Time to File Rule 11 Motion (TIME SENSITIVE)

Amy:

Thank you for your call and for letting me know that you and your firm will not move forward with Mr. Dondero and Strand's motion for leave to sue PSZJ (the "Motion").

We have considered your request that PSZJ refrain from filing the Rule 11 motion for seven (7) days but decline to do so.

We therefore reiterate what we have told you for a couple of weeks: PSZJ will file the Rule 11 motion tomorrow if your Clients' Motion is not withdrawn by 11:59 p.m. Central Time today.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
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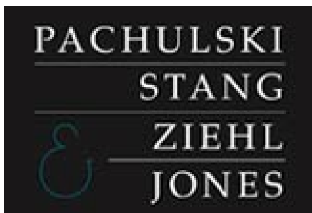

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

EXHIBIT 15

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

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Monday, August 8, 2022 9:30 a.m. Docket
UBS SECURITIES, LLC, et. al., Plaintiffs, v. HIGHLAND CAPITAL MANAGEMENT, LP, Defendant.	**Adversary Proceeding 21-3020-sgj** HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO WITHDRAW ITS ANSWER AND CONSENT TO JUDGMENT FOR PERMANENT INJUNCTIVE RELIEF [169]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Plaintiff UBS Securities, LLC:	Andrew Clubok Shannon Elizabeth McLaughlin LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004-1304 (202) 637-2335
For Plaintiff UBS Securities, LLC:	Kathryn (Katie) George LATHAM & WATKINS, LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611 (312) 876-6567

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14 Dallas, TX 75242
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25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - AUGUST 8, 2022 - 9:47 A.M.
2 THE COURT: 21-3020. Mr. Clubok, I saw you out there
3 earlier. Are you appearing for UBS?
4 MR. CLUBOK: Yes. Good morning, Your Honor. Andrew
5 Clubok; Latham & Watkins; on behalf of UBS. And I'm here also
6 with my colleagues Kathryn George and Shannon McLaughlin.
7 THE COURT: Okay. Thank you.
8 All right. For the Debtor, Mr. Morris, are you appearing?
9 MR. MORRIS: Yes. Good morning, Your Honor. John
10 Morris; Pachulski Stang Ziehl & Jones. I'm joined by my
11 colleagues Jeffrey Pomerantz and Greg Demo for the reorganized
12 Highland Capital Management, LP. And we have today with us
13 Mr. Seery, who will present some live testimony today.
14 THE COURT: Okay. Good morning to all.
15 All right. The Committee was an intervenor, I believe, in
16 this adversary. Is there any appearance by the Committee? Or
17 I should -- well, --
18 MR. MORRIS: I think that was before the effective
19 date, Your Honor.
20 THE COURT: That was --
21 MR. MORRIS: Yeah.
22 THE COURT: I guess we have no Committee anymore.
23 The Liquidating Trustee. I don't know if the Liquidating
24 Trustee stepped in the shoes of the Committee.
25 (No response.)

1 THE COURT: Okay. Anybody I've missed?
2 MR. SODERLUND: Your Honor, this is -- good morning,
3 Your Honor. This is Eric Soderlund with Ross & Smith. We
4 represent nonparties to this adversary: Scott Ellington,
5 Isaac Leventon, Katie Lucas, J.P. Sevilla, Matt DiOrio, and
6 Stephanie Vitiello. We're just monitoring the hearing, but I
7 did want to make an appearance and let the Court know we're
8 here.
9 THE COURT: Okay. Thank you.
10 All right. Well, if there are no other appearances, Mr.
11 Clubok, you may proceed.
12 MR. CLUBOK: Thank you, Your Honor. Technically, I
13 think --
14 THE COURT: Oh, actually, let me -- it's Highland's
15 motion to withdraw --
16 MR. CLUBOK: Yeah.
17 THE COURT: -- its answer, so I was thinking
18 Plaintiff go first, but actually it makes more sense for
19 Highland to go first. So, go ahead.
20 MR. CLUBOK: Yes.
21 MR. MORRIS: Thank you, Your Honor. Again, John
22 Morris from Pachulski Stang for Highland.
23 We're here today on Highland's motion to withdraw its
24 answer and to consent to the judgment that has been requested
25 by UBS.

1 We thought it was very important, Your Honor, to create an
2 evidentiary record to enable the Court to rule on that motion.
3 As Your Honor will recall, at the time this adversary
4 proceeding was commenced, Highland had just recently
5 discovered and had shared with UBS certain facts that it had
6 identified with respect to the transfer of certain assets that
7 appeared to belong to entities against which UBS had obtained
8 a judgment.
9 And at the time the action was commenced, the Reorganized
10 Debtor -- I guess at that time it was really still the Debtor
11 -- did not feel that it had sufficient personal knowledge in
12 order to address the merits of the allegations that were made.
13 And so we specifically told the Court and all parties in
14 interest that we felt we needed a fulsome evidentiary record.
15 And having concluded that, Mr. Seery on behalf of the
16 Reorganized Debtor seeks to terminate this litigation and
17 confess to judgment.
18 I've got a brief opening statement that I'd like to make,
19 but before I do that, Your Honor, there has been one
20 meaningful development since we last met with the Court that
21 I'm going to defer to Mr. Clubok to report at this time.
22 THE COURT: All right. Mr. Clubok?
23 MR. CLUBOK: Yes, Your Honor. Sometimes we --
24 development is a euphemism for something bad, but in this case
25 it's something good. And that is we, on Friday morning,

1 reached a memorandum of understanding with Sentinel that we
2 believe will ultimately result in several papers that we will
3 be -- that will be submitted to the Court I believe through
4 the 9019 process, hopefully in a matter of weeks.
5 Now, that's going to resolve a large portion of what we're
6 doing here today, but really it sort of highlights the fact
7 that what UBS has always wanted in this proceeding is for the
8 Court to issue a permanent injunction so that all of these
9 assets are frozen, the ones we know about now and probably the
10 ones we keep finding. Every time we turn around, we find a
11 new one. By permanent, we mean until a court orders the
12 disposition through a proceeding or pursuant to a settlement.
13 So this new news from Friday is good, and it really sets
14 the table for this proceeding so that we can do this once and
15 for all, ideally, where the Court hopefully agrees with what
16 apparently Highland agrees, there should be an injunction,
17 that we've met the standard, assuming we can present the
18 evidence to you. And I would note that public interest is a
19 factor, too, so that's another reason why we just want to make
20 sure we have a full evidentiary record.
21 We will not then need to repeat this record, we can then
22 use the same record and refer to it for the expected 9019
23 process, and we can be very efficient.
24 Also, in light of that and in light of other stipulations
25 we've reached, I just wanted to advise the Court we do think

1 we can have a relatively streamlined process here. For
2 example, I am going to defer my opening statement and just let
3 Mr. Morris make his opening statement and his presentation,
4 and I'll defer until the back half.
5 We've also agreed to stipulate to I believe all of the
6 exhibits on each other's lists. If Your Honor would like me
7 to specifically read out the numbers, I can do that for
8 housekeeping. If it's more convenient, just very quickly I
9 can identify the exhibits, at least on UBS's list, and then
10 Mr. Morris can add his as well, so we don't have to keep doing
11 that as Mr. Seery testifies.
12 THE COURT: All right. Thank you for that report.
13 Let's go ahead and get the exhibits on the record before we do
14 anything else.
15 Mr. Morris, it looks like you had, at Docket No. 176,
16 Exhibits 1 through 10 designated. Is that correct?
17 MR. MORRIS: That's correct. And with Mr. Seery
18 available to testify, we'd also respectfully move into
19 evidence his declaration, which can be found at Docket No.
20 170.
21 THE COURT: All right. So I'm hearing, Mr. Clubok,
22 no objection to that?
23 MR. CLUBOK: No objection, Your Honor.
24 THE COURT: So the declaration at 170, as well as the
25 10 exhibits at 176, will be admitted.

1 (Defendant's Exhibits 1 through 10 and the declaration of
2 James Seery are received into evidence.)
3 THE COURT: And then turning to UBS's exhibit list,
4 UBS at Docket 177 had it looks like 41 or 42 exhibits,
5 including the declaration of Mr. Seery. There's no objection,
6 Mr. Morris, to all of those coming in?
7 MR. CLUBOK: Your Honor, briefly, we did file an
8 amended --
9 THE COURT: Oh.
10 MR. CLUBOK: -- exhibit list this morning that we
11 have -- that we have provided in advance to Mr. Morris. It's
12 obviously not made its way to you yet. It's Docket No. 179.
13 And we -- if you haven't gotten hard copies yet, you won't
14 need them for the purpose of this hearing, but you'll have
15 them shortly if you don't have them yet. We have extra for
16 the relevant exhibits that we'll put up on the screen each
17 time we refer to them.
18 THE COURT: All right. So, are they filed on the
19 docket or did you deliver hard copies?
20 MR. CLUBOK: Yes. I believe both, Your Honor. It's
21 179. I have Docket 179.
22 THE COURT: Okay. I'm pulling it up.
23 MR. CLUBOK: And the hard copies, I guess -- maybe
24 the hard copies haven't yet been delivered, but they're on
25 their way and you should get them by -- by the end of the

1 hearing.
2 THE COURT: Okay.
3 MR. CLUBOK: Or shortly thereafter.
4 THE COURT: Bear with me.
5 (Pause.)
6 THE COURT: Okay. There they are. 179. Okay. It
7 looks like you've added some exhibits, so we're now up through
8 51 exhibits. Is that correct?
9 MR. CLUBOK: I believe that's right, Your Honor. I
10 can -- just because there's a couple of gaps, maybe if it
11 would help I can just read the numbers of the ones that we
12 wish to move into -- for the record, so the record's clean,
13 I'll just read off the numbers?
14 THE COURT: Okay.
15 MR. CLUBOK: So, we -- UBS would like to move into
16 evidence Exhibits 1 through 12, Exhibits 14 through 23,
17 Exhibits 25 through 35, Exhibits 37 through 53. And with the
18 one caveat being, Your Honor, that some of those exhibits are
19 deposition transcripts. For those, we have designated the
20 portions that we'd like to move into evidence through
21 highlighting. And you'll, if you haven't already, you'll be
22 receiving those as well. And so it's the -- for the
23 deposition transcripts of those exhibits I just identified,
24 it's the highlighted or designated portions.
25 THE COURT: Okay.

1 MR. CLUBOK: And all this has been shared with
2 Highland.
3 THE COURT: Very good. And Mr. Morris, do you
4 confirm you're okay with those coming in?
5 MR. MORRIS: I do. I just want to make a very brief
6 note that the reason we have no objections to the exhibits
7 today isn't because we don't have views as to the evidentiary
8 rules. We actually exchanged exhibit lists on Thursday before
9 they were filed with the Court. Highland did object to a
10 number of exhibits that were on UBS's proposed exhibit list
11 and they withdrew them. And so that's really the reason why
12 there is no objection today, is because we actually took the
13 time to meet and confer and to go through any evidentiary
14 concerns prior to today.
15 So, with that background, Highland has no objection.
16 THE COURT: Okay. So these UBS exhibits named will
17 be admitted.
18 (UBS Securities, LLC's Exhibits 1 through 12, 14 through
19 23, 25 through 35, and 37 through 53 are received into
20 evidence.)
21 THE COURT: All right. Well, are we ready for
22 opening statements? Mr. Morris?
23 MR. MORRIS: Yes, Your Honor.
24 THE COURT: You may proceed.
25 MR. MORRIS: Thank you very much.

1 OPENING STATEMENT ON BEHALF OF THE DEFENDANT
2 MR. MORRIS: Good morning, Your Honor. John Morris;
3 Pachulski Stang; for Highland.
4 We're here today on Highland's motion to withdraw its
5 answer and to confess to judgment. And I want to just cover
6 certain facts that we believe will be reflected in the record
7 and to share with Your Honor certain perspectives that we
8 have.
9 The facts here I think are largely not in dispute. They
10 concern the August 2017 transfer of assets from certain funds
11 that were under the control of James Dondero to a Cayman
12 Islands putative insurance company that was owned by Mr.
13 Dondero and Mr. Ellington.
14 The evidence will show that the funds that transferred
15 their assets to Mr. Dondero's -- at Mr. Dondero's direction
16 were defendants in a lawsuit that was brought by UBS in New
17 York and that the transfers were effectuated immediately after
18 the New York court denied the Highland entities' motion for
19 summary judgment.
20 The evidence will show that the Debtor's independent board
21 was unaware of these transfers until they were uncovered in
22 late January and early February 2021, and that the reason for
23 the transfers was unknown until that time by the independent
24 board precisely because certain former Highland employees
25 actively and intentionally worked to conceal them.

1 I don't have a PowerPoint presentation today, Your Honor.
2 I want to just look at three documents. The first one is an
3 insurance policy. And the reason for the transfers ostensibly
4 was to purchase what is called after-the-fact insurance. And
5 what's on the screen now is Highland's Exhibit 1. And if we
6 can go to the first page, you'll see that it's an email from
7 Isaac Leventon to someone named Chris Dunn. It's dated
8 October 2017. So this is just a few months after the court in
9 New York has denied summary judgment, and it follows on the
10 heels of an analysis that was prepared that I think is at UBS
11 Exhibit No. 7, an analysis of settlement options and
12 optionality following that decision.
13 Mr. Leventon attaches an insurance policy. He labels it
14 privileged. He says that all communications related to the
15 project are privileged.
16 You know, Your Honor, he's attaching an insurance policy.
17 I know of no basis to assert any privilege of any kind, but
18 this is the litigation team, if Your Honor will recall, that
19 was found to be subject to the crime fraud exception in
20 Delaware. It's the team that was found by the arbitration
21 panel in Redeemer, the Redeemer arbitration, to have engaged
22 in misleading conduct.
23 Again, it's troubling to find this document. And here's
24 the thing, Your Honor. You may be aware that UBS took
25 numerous depositions in this case. This particular document

1 wasn't uncovered -- actually, no, I'm confusing it with a
2 different document. So this document is sent by Mr.
3 Ellington, and he attaches the insurance policy.
4 If we could go to Page 19 of 20 of the PDF, and let's just
5 see exactly what this policy is. It's to insure certain
6 funds. These are the funds that are the Defendants in the UBS
7 action. The appointed representative is Paul Lackey, an
8 attorney now with the Stinson firm. Mr. Lackey is the
9 representative here. It's a policy that was effective as of
10 August 1, 2017. And it specifically covers the UBS action.
11 You'll see below, Your Honor, that it's supposed to be for
12 a $100 million policy with a premium of $25,000. $25 million.
13 So think about it. The New York court comes out with its
14 decision. They transfer all the assets from the Defendants
15 other than Highland to Mr. Dondero's captive insurance company
16 in the Cayman Islands. And they don't tell anybody.
17 And if we can go to the next page, you can just see Mr.
18 Dondero's signature on behalf of the various entities. And
19 the important point for us here, Your Honor, as the Debtors,
20 the former Debtors, the reorganized Highland, is that Highland
21 CDO Opportunity Master Fund is one of the insureds here, and
22 they're signing the document -- it's being signed by Highland
23 CDO Opportunity Fund GP, its general partner; Highland CDO
24 Opportunity GP, LLC, its general partner; and Highland Capital
25 Management, LP, its sole member.

1 So the acts that are being undertaken here, unbeknownst to
2 the independent board, Mr. Seery, and the postpetition
3 professionals, is that there was a transaction back in August
4 of 2017 in which the assets of the Defendants were put beyond
5 the reach of UBS.
6 The $25 million insurance payment premium was funded at
7 the same time, if we can go to Exhibit 2, with what's called a
8 purchase agreement. This purchase agreement, you can see,
9 Your Honor, is dated as of August 7, 2017. It's between
10 Sentinel Reinsurance and the two funds that were Defendants.
11 It is through this agreement that the funds transferred their
12 assets to Sentinel.
13 Sentinel is, I think I mentioned, a Cayman -- right, no
14 dispute about these facts -- is a Cayman Islands entity owned
15 by Mr. Dondero and Mr. Leventon.
16 And if we could go to Pages 4 and 5, we'll see again Mr.
17 Dondero signing on behalf of all of the Highland entities.
18 MR. SODERLUND: Your Honor, this is Eric Soderlund.
19 I just want to interrupt here. I think Mr. Morris said that
20 Sentinel was owned by Mr. Leventon.
21 THE COURT: Actually, I heard the same --
22 MR. SODERLUND: I don't think that's true.
23 THE COURT: I heard the same thing. Did you mean
24 Ellington?
25 MR. MORRIS: Right. Thank you. I did mean

1 Ellington.
2 THE COURT: Okay.
3 MR. MORRIS: Thank you so much.
4 THE COURT: Thank you.
5 MR. MORRIS: Appreciate the clarification. We -- I
6 do need to get this right.
7 So, you can see that Mr. Dondero is signing on behalf of
8 all of the Highland entities on Pages 4 and 5.
9 And if we can go down to Pages 7 and 8, you'll see
10 attached is a schedule. And what's really interesting, Your
11 Honor, is that if you add up the assets that are being
12 transferred to Sentinel, they don't equal $25 million. They
13 equal something approaching $300 million. And there will be
14 other evidence in the record that shows the fair market value
15 at the time was over $100 million.
16 In other words, the Defendants in the UBS action, the
17 evidence, and there really can never be a dispute about this,
18 transferred what appears to be all of their assets, with a
19 value in excess of what the benefit is under the so-called
20 insurance policy.
21 Why are these issues -- we can take this down now. Why
22 are these issues important, Your Honor? At Mr. Dondero's
23 direction, the funds were left judgment-proof. The only
24 assets it apparently had was this insurance policy.
25 This became critical in the spring of 2020, postpetition,

1 when the New York court entered judgments against the two
2 funds in amounts in excess of $500 million each. So those
3 judgments early in 2020 were for over a billion dollars. But
4 these transfers by these Defendants were never disclosed to
5 the board.
6 The evidence will show and Mr. Seery will testify and the
7 documents will corroborate his testimony that the transfers
8 were not only never disclosed, but that the independent board
9 relied specifically on Scott Ellington and Isaac Leventon to
10 learn about the UBS claim, to determine the defenses that the
11 Debtor asserted. And as Your Honor will recall, in 2020 the
12 Debtor spent enormous time, money, and effort, as the Court
13 did, defending against the claims against Highland. We took
14 -- we didn't really have an interest in the claims against
15 these two funds, but as to Highland at that point we had no
16 reason to believe that Highland had been engaged in any
17 wrongdoing, and we litigated accordingly. That's why this is
18 all so terribly important, Your Honor.
19 The evidence will show that, at the independent board's
20 direction, the Debtor's professionals pressed the Debtor's
21 employees for information relating to the funds' assets, only
22 to be effectively stonewalled.
23 I don't want to take the time to go through all of the
24 emails, but at Exhibits 5, 6, and 7 there is evidence in the
25 record that will show the Court -- to me, it just, you know,

1 it jumps out -- the answers that were given, you know, to Mr.
2 Demo and DSI's dogged and persistent inquiries. And you'll
3 see, Your Honor, that these employees did nothing but
4 obfuscate, engage in misdirection, and feign ignorance as to
5 basic matters. We just had a judgment entered for over a
6 billion dollars, and nobody told us about the transfer of
7 these assets in 2017, or the existence of the insurance
8 policy.
9 And we think that we know why. Because -- and this is the
10 document that we uncovered after the depositions, so nobody
11 has ever been asked about this -- but we found a document late
12 last year that's called an indemnification agreement. It's a
13 secret indemnification agreement between these employees and
14 Sentinel, and it was dated June 18, 2020. It is hard to think
15 of a document that could convey a consciousness of guilt more
16 than an indemnification agreement entered into weeks after the
17 New York court enters a billion-dollar judgment against
18 Defendants who have transferred all of their assets to the
19 indemnitor. Hard to imagine.
20 Mr. Dondero does not act alone. We've spent two years
21 talking about Mr. Dondero. Mr. Dondero does not act alone.
22 He is assisted by a group of loyalists who do his bidding in
23 exchange for substantial compensation and protection.
24 June 2020. At the very moment that Mr. Dondero is making
25 those $10 million of payments that he admitted to in open

1 court back in April, his insurance company is also
2 indemnifying Highland employees. And the source of the
3 indemnity are the assets that have been -- that were
4 transferred in 2017 from these Defendants to Sentinel.
5 Let's look at the indemnity agreement. It's Exhibit 9 on
6 the Debtor's exhibit list. And you'll see, Your Honor, in
7 Exhibit 9, if we could just scroll down, you can see that it's
8 sent to an entity called SAS Asset Recovery. You'll see in
9 the emails that I cited to earlier that Mr. Demo and DSI asked
10 numerous questions of the indemnitees, unknown to them at the
11 time, about what SAS was, and they all said they had no idea.
12 And yet this is an agreement dated June 18, 2020, on behalf of
13 Sentinel Reinsurance, where they -- where Sentinel indemnifies
14 six individuals.
15 And the language is startling, Your Honor, because while
16 Mr. Ellington has an ownership interest and Matthew DiOrio is
17 a director of Sentinel, the other signatories to this
18 indemnity agreement, to the best of our knowledge, have
19 absolutely no formal relationship with Sentinel in any way,
20 shape, or form, and yet Sentinel is thanking them for their
21 efforts, including as an agent in connection with the
22 preparation of documents and reports and, quote, other
23 activities as requested by Sentinel.
24 Postpetition, undisclosed, and it's issued at the time
25 huge payments of money are being made after the New York court

1 has issued its judgment and as Mr. Demo and DSI began -- begin
2 making very substantial inquiries as to the location of these
3 assets.
4 If we could go to Page 5, please. I want the Court to be
5 aware of the names of the signatories to this indemnity
6 agreement. We have Matthew DiOrio. Next page. Stephanie
7 Vitiello. Next page. Katie Irving. Next page. Isaac
8 Leventon. Next page. Scott Ellington. Next page. J.P.
9 Sevilla.
10 Your Honor, those six individuals are all over Exhibits 5,
11 6, and 7, the emails where Mr. Demo and DSI and Mr. Seery are
12 trying their hardest to find out whatever information they can
13 about SAS, Sentinel, and the assets of these two funds. These
14 are the six people who signed the indemnity, and they're the
15 six people are responding to the inquiries with no meaningful
16 factual information.
17 The transfers and the cover-ups have substantially harmed
18 the Debtor. The actions taken in 2017, in our view, were
19 plainly wrongful. They left Defendants judgment-proof. They
20 transferred assets to the Cayman Islands. They supposedly
21 paid over a hundred million dollars for a hundred-million-
22 dollar policy.
23 The Debtors spent significant time, money, and efforts,
24 substantial resources. They stand accused all the time of, oh
25 my god, they're spending so much money. Think about what --

1 and Mr. Seery is going to testify to this -- about how much
2 time, money, and effort went to defending against UBS's claim
3 against Highland. The mediation where we didn't have this
4 information. The motion for partial summary judgment. The
5 3018 proceeding. Right? And we finally got to a settlement
6 with them without this information.
7 The damage caused to the Debtor and the independent board.
8 We sat there and we made representations to the Court. You
9 know, in hindsight, they were not accurate. They just
10 weren't. And they weren't accurate. They weren't accurate to
11 UBS, they weren't accurate to the mediators, they weren't
12 accurate to the Court, because we just didn't know. We didn't
13 know anything about the policy. We didn't know anything about
14 the asset transfers. Substantial damage. Chasing nothing.
15 Most critically, Your Honor, it deprived the Debtor of
16 currency to settle its claim with UBS on favorable terms, and
17 that is the greatest damage of all. Highland was forced to
18 renegotiate its settlement with UBS because, based on Mr.
19 Dondero's signature under the Highland Capital name back in
20 2017, and based on the conduct of those six employees,
21 Highland had liability where it believed there was none. And
22 consequently, it had to -- had to increase very substantially,
23 by tens of millions of dollars, the allowed claim with UBS.
24 And then -- and then stand as a Defendant in these
25 proceedings.

1 We've been damaged hard. This is not -- this is not the
2 way the process is supposed to work. The massive transfer of
3 assets that leave Defendants judgment-proof. Undisclosed and
4 secret indemnity agreements that in and of itself constitutes
5 a massive breach of duty. The cover-up that immediately
6 followed the execution of the indemnity agreement.
7 We are just bankruptcy lawyers, Your Honor. Our duty is
8 only to maximize recovery for creditors. We're not
9 prosecutors. We're not the SEC. We're not the U.S. Trustee's
10 Office. We're not the Texas Committee of Attorney Discipline.
11 There's only so much that we can do. We'll continue to do our
12 jobs, and we're not presenting everything that we have here
13 today, and our investigation continues. But if nobody is held
14 accountable for this type of conduct, then the system is
15 broken. And I hope that's not the case.
16 So, we had expected Sentinel and its owners to intervene
17 and defend their conduct in this matter, but they chose not
18 to, although I'm grateful that their attorney or at least the
19 attorney of the individuals are here.
20 I do want to point out just one clarification. And Mr.
21 Clubok or Mr. Seery may correct me. But the directors at
22 Sentinel today who authorized the entry into the MOU are new
23 directors, and Mr. DiOrio and the others resigned as the heat
24 was being turned up last spring. They were replaced by new
25 directors. And that's, in our opinion -- this is not fact --

1 in our opinion, that's what enabled Sentinel to reach this
2 agreement that Mr. Clubok described.
3 But make no mistake. We don't pretend that we know where
4 all assets are. We don't pretend that we know the value of
5 the assets that may have been transferred. But based on the
6 evidence that Mr. Clubok and his team adduced during this
7 adversary proceeding, the Debtor, Highland, does not believe
8 it can defend against the claim, and therefore is prepared to
9 withdraw its answer and confess to the permanent injunction
10 that was sought by UBS.
11 That's all I have.
12 THE COURT: All right. Well, Mr. Clubok, I
13 understood you were waiving your opening statement, correct?
14 MR. CLUBOK: Yes, Your Honor.
15 THE COURT: Okay.
16 MR. CLUBOK: I'll defer it to my presentation.
17 THE COURT: All right. Mr. Morris, you may call your
18 first witness.
19 MR. MORRIS: With that, we'll call James Seery.
20 THE COURT: All right. Welcome back, Mr. Seery.
21 MR. SEERY: Good morning, Your Honor.
22 THE COURT: Please raise your right hand.
23 (The witness is sworn.)
24 THE COURT: All right. Thank you. Mr. Morris?
25 JAMES SEERY, DEFENDANT'S WITNESS, SWORN

1 DIRECT EXAMINATION
2 BY MR. MORRIS:
3 Q Good morning, Mr. Seery. Can you hear me okay?
4 A I can, yes.
5 Q Okay.
6 A Apologies on my end. There is some construction in the
7 background. If it interferes, please let me know. I'll try
8 to speak loudly.
9 Q Okay.
10 MR. MORRIS: Your Honor, we're not going through
11 every fact, and I actually don't even plan to share with Mr.
12 Seery any particular exhibits, so that we can try to get
13 through this fairly quickly. But if Your Honor has any
14 particular questions, of course, feel free to interrupt.
15 BY MR. MORRIS:
16 Q Mr. Seery, can you please just describe at a general level
17 your involvement with the Highland bankruptcy, including the
18 timing and titles that you've obtained?
19 A Yes. In the beginning of 2020, January 9th, I was
20 appointed as an independent director by the Court. Prior to
21 that, I didn't have any involvement with Highland. Prior to
22 2008, the business I ran at Lehman did business with Highland,
23 but between 2008 and 2020 I had no involvement whatsoever with
24 Highland. Was appointed as an independent director on January
25 9th, working with John Dubel and Russ Nelms, who were also

1 appointed as independent directors. And then in July, I
2 believe, of 2020, I was appointed by the Court as the interim
3 CEO and CRO of Highland Capital.
4 Q Okay. Did there come a time that you learned of the UBS
5 claim in this case?
6 A Yes. I learned of the UBS claim before I was even
7 appointed as an independent director. UBS had gotten a
8 decision prior to judgment in I believe November of 2019.
9 Prior to my apartment, I did diligence, and one of the
10 diligence items was to read that decision.
11 Subsequently, in I believe it was February of 2020, UBS
12 obtained an actual judgment against the two subsidiaries, both
13 indirect, but CDO Funds, which was a little bit more direct
14 subsidiary fund of Highland's, managed by Highland, and SOHC,
15 which was a direct subsidiary of HFP, which is Highland
16 Financial Partners, an indirect subsidiary of Highland.
17 Q And after being appointed, did the independent board do
18 any work to try to understand, you know, the merits and
19 potential defenses of the UBS claim?
20 A Absolutely. This was one of the critical issues in the
21 case. This, as I said, was a billion-dollar judgment against
22 subsidiaries, and the question was, was Highland liable?
23 There was really no question that the subsidiaries were
24 liable. There was already a decision and a judgment in
25 February. But was Highland going to be liable for that

1 decision?

2 UBS had theories, and we -- me, specifically -- did

3 hundreds of hours' worth of research and work around the

4 claims, and I'm sure my fellow directors read and analyzed

5 documents similar to the way that I did.

6 Q And did Mr. Leventon and Mr. Ellington make any

7 presentations to the board concerning the UBS claim?

8 A Yes. Mr. Leventon was the point person at Highland

9 managing the UBS litigation. He had been, as he described to

10 me directly on my first day, one of his chief jobs and one of

11 the reasons he was hired was to help manage the UBS

12 litigation. He reported directly to Mr. Ellington, who was

13 the general counsel and an officer of the general partner of

14 Highland. Mr. Ellington described himself as the person

15 chiefly responsible for all negotiations with UBS.

16 So, everything to do with the underlying transaction, the

17 ten years of litigation, and the various stops and starts in

18 potential settlements was encompassed by the knowledge held by

19 Mr. Ellington and Mr. Leventon.

20 Q Can you describe for the Court kind of your understanding

21 of the structure of the Highland legal department, the

22 hierarchy and who reported to whom and who was there?

23 A Yes. The legal department at Highland was a large group,

24 headed by Mr. Ellington as general counsel.

25 Mr. Leventon was responsible for all litigation.

1 Mr. Sevilla was a senior attorney who handled
2 predominantly transactions.
3 Mr. DiOrio was not an attorney but worked in the legal
4 department.
5 Ms. Irving was not an attorney but worked in the legal
6 department.
7 In addition, tangentially, or dotted-line, I think,
8 basically report, the CCO, Thomas Surgent, was connected to
9 the legal department.
10 And Tim Cournoyer was a transaction lawyer in the legal
11 department.
12 Other lawyers had come in and out, and there was a
13 paralegal, Helen Kim.
14 Stephanie Vitiello was also an attorney in the legal
15 department.
16 But that was the core group when I became an independent
17 director.
18 Q And I think you mentioned this at a very high level, but
19 how did the board educate -- how did the board interact with
20 the Highland legal group to educate itself on the merits of
21 the UBS claim against Highland, the potential defenses that
22 there was? Just give us a sense of, you know, what the
23 interaction was and what the interface was.
24 A Well, day-to-day -- and right at the beginning of the
25 case, as I say, a critical issue -- a ton of time spent with

1 Mr. Leventon going through every aspect of the case.
2 In addition, as I mentioned earlier, I read every document
3 related to the transaction and every one of the court
4 decisions that had been previously issued. Many of those
5 raised questions, and I'd address those generally to Mr.
6 Leventon as the point person.
7 There came a time in January or early February, pre-COVID,
8 so on the premises of Highland, that there was at least one,
9 possibly two, multi-hour meetings about the UBS litigation.
10 Mr. Leventon led those discussions, really educating myself as
11 the lead director, but also Mr. Nelms and Mr. Dubel as
12 independent directors about this critical issue.
13 Very specifically, Mr. Leventon provided a detailed
14 PowerPoint deck which he went through. And I recall it
15 because it'll come up later on with another deck that we found
16 from 2017 that had an unusual font, one that you typically
17 don't seem in PowerPoints. So Mr. Leventon presented that and
18 walked through every step of the transaction, what in his
19 view, or at least what he communicated to us, had happened,
20 how the subsidiaries were set up, his statements that they
21 were special purpose entities and that they had no assets, and
22 how the litigation then unfolded after the default in 2000 --
23 late 2008, early 2009.
24 Q And based on the review that you've described and your own
25 due diligence, based on the facts that you had at the time,

1 did the independent board form a view as to its perception of
2 the merits of UBS's claim against Highland Capital Management,
3 LP?
4 A Yes. I and the rest of the board, based upon the -- both
5 the documents we reviewed and the description of the
6 circumstances and the litigation provided to us by Mr.
7 Leventon primarily and Mr. Ellington and the other people in
8 the legal department -- and I should just, as an aside, say
9 the ones in that meeting are Sevilla, DiOrio, Irving,
10 Ellington, Leventon, nobody else. I don't recall Stephanie
11 Vitiello being in that particular meeting or meetings. But
12 our view that we developed from those -- from that work and
13 from the independent work we did was that Highland didn't have
14 any liability for the UBS judgments. It was clear that the
15 subsidiaries did, and the underlying documents made clear that
16 they were responsible to UBS. But our perspective from that
17 work and the information we received from the legal department
18 was that UBS was reaching, its claims were only against subs
19 that never had any assets, and that Highland should not be
20 held responsible for any of the damages from the transaction.
21 Q And do you recall, at around the time of the mediation in
22 the summer of 2020, did UBS press their informational requests
23 for documents concerning the assets of the funds? Do you
24 recall that at all?
25 A Yes, they did. They actually started earlier, and we took

1 the perspective initially that we didn't need to provide any
2 documents to them because we were going to really move for
3 summary judgment. We took a very aggressive posture in
4 respect of that position.
5 When we came to the mediation, there was a slightly
6 different structure and relationship in that you're trying to
7 work towards an understanding, so you really weren't able,
8 between the parties and the mediators, you know, you weren't
9 really able to say, we're not going to give you anything, so
10 we took the perspective that we should just turn over
11 everything because we've got nothing to hide.
12 And UBS took that very directly and made pretty
13 substantial discovery requests on us with respect to their
14 claim and the mediation, particularly with respect to the
15 underlying assets that they claimed that the CDO Fund and SOHC
16 had and wanted to know what happened to them. And the
17 Highland legal department, as previously described, led by
18 Leventon, said they didn't exist and there were no assets.
19 Q Did they in fact, though, identify, I think, two assets?
20 A Ultimately, --
21 Q (overspoken) and the Multi-Strat?
22 A Ultimately, they identified, and this was Mr. Leventon,
23 cash that had been used for -- purportedly used for legal
24 fees. And it was a significant amount. And that was a bit
25 startling, because previously we'd been told there was no --

1 there were no assets there, so it was startling that all of a
2 sudden, well, there was cash, but it was spent. And we
3 pressed Mr. Leventon on that.
4 In addition, they identified interests in -- potential
5 interests in an entity called Greenbrier. And that was a very
6 confusing description from Mr. Leventon, and it didn't make a
7 lot of sense. But if there was an asset in CDO Fund or SOHC
8 that was owned and had value, then it should have been
9 incumbent on Highland to discover that asset and use that
10 asset in settlement, because, from our perspective, if there
11 was anything in those subsidiaries, we should turn it over to
12 UBS and try to use that to settle the litigation, because it
13 would never come to Highland since these entities had
14 judgments in excess of a billion dollars against them.
15 Q All right.
16 MR. MORRIS: Your Honor, just so the record is clear,
17 the emails that relate to these issues can be found at
18 Exhibits 5 and 6. They're from August 2020.
19 THE COURT: Okay.
20 BY MR. MORRIS:
21 Q And do you recall, in the fall, based on the information
22 that the independent board had at the time, that the Debtor
23 proceeded with their motion for summary judgment and their
24 3018 hearing with UBS?
25 A Yes. And previous to that, we'd gone through the

1 mediation with two experienced mediators. It was a very
2 intense experience. Aggressive from both our side and UBS's
3 side. So we had gone through that mediation.
4 We had endeavored during the mediation to provide
5 discovery around this Greenbrier and any other assets. Both
6 Mr. Leventon and Mr. Ellington made very specific
7 representations to me and to the board and to our counsel
8 regarding lack of assets and the ability to find any assets
9 and that there was really nothing there.
10 So we went through the mediation and were unable to
11 resolve anything with UBS. The parties were incredibly far
12 apart. And we decided to move for summary judgment. And that
13 became a very tall order because of the complexity of the
14 claims and the complexity of the underlying litigation.
15 We dug in really hard on that, and ultimately had a
16 hearing both with respect to summary judgment -- partial
17 summary judgment as well as with respect to estimating UBS's
18 claim.
19 Q And as the calendar rolled towards the end of the year, do
20 you recall that the Debtor was preparing for confirmation?
21 A Yes. We had developed the monetization plan in the late
22 fall of 2020. We were at the same time trying to structure
23 potential settlements with the creditors. We took the
24 perspective with respect to UBS that it was unlikely we were
25 going to get a settlement. And so as we moved forward with

1 the plan, when looking at it, can see there's a lot of
2 mechanisms that basically assumed that we won't be settled
3 with UBS. They'll be on an oversight board, but that
4 ultimately we're going to be litigating with them to determine
5 what their claim could be.
6 Q I'm not testifying, but I do remember there was an awful
7 lot going on in January 2021. Did you and the independent
8 board ultimately reach an agreement in principle with UBS on
9 the resolution of their claim?
10 A Yes. And coming into -- your statement about January 2021
11 is absolutely correct. But it really went through the fourth
12 quarter and then January 2021.
13 As the Court will recall, we had a number of hearings in
14 December of 2020 that were intense: contempt, injunction,
15 preliminary to the plan process, disclosure statement. There
16 were depositions. There were challenges -- there were
17 significant challenges to Highland's management of both its
18 assets and managed fund assets.
19 We discovered some significant problems with what we
20 thought was going on in the legal department at that juncture,
21 which led to the termination of Mr. Ellington and Mr. Leventon
22 on January 5, 2021. And then January 2021 was chockful of
23 hearings from contempt to HarbourVest to preliminary
24 injunction, and ultimately confirmation at the beginning of
25 February.

1 Q Did the termination of Mr. Leventon in particular have any
2 impact on the independent board and management's ability to
3 access information?
4 A Well, both Mr. Leventon and Mr. Ellington then opened up
5 -- which we probably could have done before -- but opened up
6 our access to their email accounts. And in respect of Mr.
7 Leventon, an interesting thing happened when I went to send
8 him his termination notice. Microsoft Outlook thankfully
9 filled an entity called SAS Management into the address bar.
10 And I didn't know what SAS Management was. I had no
11 familiarity with it. It wasn't something I'd seen. So I
12 tasked outside counsel, Mr. Demo, as well as DSI, Mr. Romey,
13 to figure out what SAS was and why that was showing up for Mr.
14 Leventon. That led us to do reviews of their email, and
15 particularly Mr. Leventon, a significant amount of information
16 that we developed over the next several months.
17 Q And did you instruct my colleague, Mr. Demo, and DSI to
18 continue to pursue, you know, any information relating to SAS?
19 A Absolutely. What we did was we -- at the same time we
20 were doing this, we were trying to settle with UBS. One of my
21 fellow directors was really leading that. I didn't think
22 there was much chance of settling with them, primarily because
23 I thought there was no way to bridge the gap. And frankly, I
24 was of the firm, firm view that Highland shouldn't have any
25 liability because the allegations that Highland had prevented

1 UBS from recovering on its judgments really didn't have any
2 basis based on the facts that I had at the time.
3 But as we continued to look at what SAS might be and
4 whether that was an asset of the Debtor and what it meant to
5 the Debtor, whether Debtor employees were involved, we started
6 finding more and more information about other assets and other
7 dealings with respect to UBS.
8 We did find that this SAS entity had been around for quite
9 some time. It was, in essence, a secret entity. The legal
10 department -- Ellington, Leventon, Sevilla, Vitiello, I
11 believe, Irving, DiOrio -- all had SAS, my recollection is all
12 had SAS Management emails. They were stored on a separate
13 server so we couldn't uncover those. We could only find
14 things that were sent to the SAS server.
15 Q And did any of those individuals share with you or the
16 Debtor's professionals any substantive information concerning
17 SAS at the time?
18 A None at all. What we did do, though, is because we could
19 then use SAS to search through the entire Highland databank,
20 we did find -- let's see how to describe it; we have a
21 colloquial term that I won't use -- but charts that showed the
22 ownership of SAS and the -- and that led to the ownership of
23 Sentinel. And we didn't know what Sentinel was, but one of
24 our outside professionals recalled Sentinel is a redeemer out
25 of the Multi-Strat fund. So that got us looking at who is

1 Sentinel and who owns Sentinel.
2 The records were ultimate beneficial owner, what they call
3 UBOs, but because of the requirements of the Cayman
4 authorities, ultimately Mr. Ellington and Mr. Leventon -- Mr.
5 Dondero had to produce their passports and information to show
6 the ultimate beneficial owners, but they're never actually
7 listed as Mr. Ellington and Mr. Dondero. They're only listed
8 on the charts as UBO 1 and UBO 2.
9 And that shows a whole bunch of different entities,
10 including SAS. And apparently, Ms. Irving worked on a lot of
11 this stuff in the Caymans for either SAS or for these other
12 entities, notwithstanding being a full-time employee of
13 Highland in the legal department.
14 Q Was -- do you recall if Matt DiOrio was involved in
15 responding to the requests of you and your team in January and
16 early February 2021?
17 A Yes. So, after Mr. Leventon's termination, Mr. DiOrio was
18 tasked by Mr. Demo and Mr. Romey to help figure out what SAS
19 was, what Sentinel was, and any information regarding these
20 Cayman entities.
21 He professed ignorance. We now know that he was a
22 director at the time of his protestations of no knowledge.
23 And in addition, he, with respect to other people on the email
24 chain, texted some and said, I've got this, notwithstanding
25 that he didn't produce any information, even though he had

1 been directly asked for it.
2 Q When you say that --
3 MR. MORRIS: Ms. Canty, can you put up Exhibit 10?
4 It's just a text message. I just want to make sure the Court
5 understands the context for Mr. Seery's testimony.
6 But Your Honor, while she's doing that, I would just point
7 the Court to Highland's Exhibits 7 and 8, which are other
8 lengthy email strings from late January 2021 where, at Mr.
9 Seery's direction, the Debtor's professionals were seeking
10 information about these matters.
11 And if we could just scroll down here, what's on the
12 screen now is Exhibit 10, Your Honor.
13 BY MR. MORRIS:
14 Q Mr. Seery, can you just describe for the Court what your
15 understanding of this text message is?
16 A See if I can see it. This is a text message from DiOrio
17 to Thomas Surgent. Thomas, as I said, is in the legal
18 department tangentially, but is really the CCO. This is Mr.
19 DiOrio telling Mr. Surgent, I've got the request, you don't
20 have to worry about it.
21 And so that led to a number of obfuscating emails as well
22 as a failure to respond and significant delays. Ultimately,
23 when -- and I'm not sure if this was before Mr. DiOrio was
24 terminated or after he was terminated, as soon as we went to
25 Mr. Surgent directly, he quickly provided the documents --

1 searched for them and found the documents that we needed on
2 the Highland system.
3 Q Okay. So let's --
4 MR. MORRIS: We can take that down now. Thank you
5 very much.
6 BY MR. MORRIS:
7 Q Let's just go to the next step. What does the independent
8 board learn in late January or early February -- withdrawn.
9 Did there come a time when the independent board made a
10 disclosure to UBS?
11 A Yes. So, as we were doing this work in January and early
12 February -- and remember, as I said earlier, this is while
13 there's probably five to ten hearings going on that are
14 crucial in the case. I'm giving multiple depositions. We're
15 trying to figure out assets. We're terminating employees.
16 We're negotiating or attempting to negotiate a transition
17 agreement for the businesses. It was incredibly busy.
18 But we came across this Sentinel entity, and we came
19 across the fact that it was a redeemer in Multi-Street, and
20 then ultimately led us to find the after-the-event insurance
21 policy, this ATE policy, which I'm not an insurance expert but
22 I know enough that it's not really a thing. There's after-
23 the-event policies that typically cover attorneys' fees in a
24 loser-pays jurisdiction. There's no such thing as a policy
25 where you go to an insurance company and take $100 million

1 worth of assets and buy $100 million worth of coverage. It
2 doesn't provide you any benefit. It's not a thing.
3 Q So, we did --
4 A But my point -- sorry, John, I digressed. We have -- we
5 have the contempt, we have all these different things going
6 on, and we're finding different information. And we find out
7 about this policy as negotiations at the same time is going on
8 with UBS to try to reach a settlement on their claim. And
9 that was directed by one of the other directors as this was
10 going on.
11 And recall that the policy was purchased by CDO Fund and
12 SOHC. As I said, SOHC is an indirect subsidiary. So is CDO
13 Fund. But CDO Fund was controlled by Highland. Highland
14 controlled the GP. Highland controlled SOHC. That policy was
15 the only asset -- I mean, CDO Fund. That's the only asset of
16 CDO Fund. Highland's control of that is a valuable asset of
17 Highland, but it's been hidden from Highland. Completely
18 hidden.
19 We discover it. We had reached a settlement with UBS
20 while we were doing this work, but we didn't -- we hadn't
21 discovered this, all of this information. I think we
22 announced the settlement with UBS at the -- at the
23 confirmation hearing. I think it was on February 2nd. And
24 later on in the month, as we were working on documenting that
25 settlement -- and documenting a settlement with UBS and the

1 Latham team is not an easy thing. Not because they're not
2 good to their word; they're just (audio gap), as maybe I am.
3 And so that getting that deal documented was taking a while.
4 And we discovered this information, and I couldn't go forward
5 with a deal with UBS, knowing the information I had without
6 sharing that information with them, because it would have been
7 fraudulent, in my opinion.
8 And so we told them we're not going to enter the
9 settlement agreement. They were a bit shocked. And we told
10 them, well, we need to tell you why. And then we laid out the
11 information to them, which initially set them back to figuring
12 out what they wanted to do, and then ultimately came back to
13 the table to renegotiate the settlement agreement with them.
14 Q And as a result of the information that the Debtor shared
15 with UBS, did UBS and the Debtor renegotiate the deal that
16 they had presented to the Court at the confirmation hearing?
17 A We did. And the dates on that are March 21 into April.
18 So we've got a decent amount of information. Not everything,
19 but we've got a decent amount of information that maybe some
20 of their allegations about Highland interfering with their
21 judgment activities was true. And we renegotiated that
22 settlement, upping the claims by about $50 million, the
23 allowed claims that they would get.
24 Q Why did the independent board decide to share this
25 information with UBS at the time that it did? Why not just

1 take the deal that you had?
2 A Well, number one, first and foremost, we're fiduciaries.
3 And we're fiduciaries to the estate. Our job is not to
4 defraud the creditors. It's to fight hard to make sure that
5 legitimate claims are allowed but that illegitimate claims are
6 kept out. And we thought, both myself and the other
7 directors, that we couldn't enter into a settlement in good
8 faith when we have knowledge that the underlying facts that
9 the counterparty were relying on were untrue and that we'd
10 provided a lot of that information to them. We had
11 represented to them that there were no assets based upon the
12 information we had been given by Leventon and Ellington in
13 particular.
14 Q Do you recall that right around the time the parties
15 presented their proposed settlement to the Court UBS also
16 commenced this action?
17 A Yeah. I think it was -- it was probably the next day.
18 Q Uh-huh.
19 A And recall that all of this is while the transfer took
20 place two years prior to filing. All of this cover-up. All
21 of this misdirection. All of the expenditure and the
22 additional damages that Highland suffers is postpetition by
23 officers and attorneys at Highland. In-house senior attorneys
24 on the payroll full-time at Highland.
25 Q After the action was commenced -- withdrawn. Did the --

1 did Highland agree to temporary and preliminary injunctive
2 relief?
3 A I believe we agreed to the temporary preliminary
4 injunction. But we had not yet settled the action completely.
5 Q And why is that? Why did the Debtor agree to the
6 temporary relief but not the permanent relief?
7 A Well, the information that we had certainly justified at
8 least a preliminary injunction, in our opinions, because there
9 were -- we didn't have all the information, but it was very
10 clear that there had been material asset transfers and that
11 funds were going to continue to run through the assets that
12 either Highland had or Highland managed that would continue to
13 flow to this Cayman entity.
14 And those funds had flowed during the case. And in fact,
15 during the case, some of these same individuals, during the
16 bankruptcy case, moved assets around in the Caymans. It
17 wasn't as if they'd forgotten about them.
18 So we felt that at least a preliminary injunction to keep
19 the status quo and prevent further leakage of assets and
20 protect potentially liability for Highland was appropriate.
21 That subsequently led us to do additional work, and we really
22 didn't have enough at that time to just agree to consent to
23 the judgment.
24 Q And with respect to discovery, are you aware of any
25 additional documents that were uncovered after the action was

1 commenced?
2 A Yes. UBS commenced discovery, both document discovery and
3 depositions. And while discovery in the Caymans is not
4 usually that easy, or any foreign jurisdiction, in my
5 experience, the manager, the accounting manager for Sentinel
6 was actually a U.S. entity called Beecher Carlson. And UBS
7 and Latham did a significant amount of discovery with respect
8 to those entities, both depositions and documents, many of
9 which we've seen, one of which you alluded to today which we
10 didn't know about prior to that, which is this indemnification
11 agreement from June 2020.
12 And by the way, that indemnification agreement has been
13 used. Sentinel paid Baker & McKenzie fees, Sentinel paid Ross
14 & Smith fees, from what we've seen and what we've seen in the
15 depositions. I think it was prior to the indemnification,
16 there's hundreds of thousands of dollars of hit to the policy
17 from personal expenses of Scott Ellington postpetition run
18 through Sentinel.
19 So we learned about the indemnification. We learned about
20 the payments. We learned about more of the transfers. We
21 learned about attempts during the case to move assets out of
22 Sentinel, calling them worthless. And it became very clear
23 that this was a really organized, orchestrated attempt to hide
24 these assets from the estate and prevent Highland as the
25 Debtor from controlling a CDO Fund asset that really would

1 have changed the dynamic of the case completely. We wouldn't
2 have been spending tens of millions of dollars fighting with
3 UBS, thousands of hours fighting with UBS, if we could have
4 used an insurance policy or the assets to help arrange a
5 settlement.
6 Q There was a suggestion early on after this adversary
7 proceeding was commenced, I think it was in the context of a
8 motion to quash, that maybe this is a friendly litigation and
9 it's not really adversarial. Do you have a view as to whether
10 or not this has been an arm's length adversary proceeding?
11 A Everything with UBS and with Latham & Watkins is very
12 arm's length. This is a pretty aggressive group. And I say
13 that respectfully. I don't say that in a negative way at all.
14 It's been that way from the start. And even in this
15 litigation post our settlement with UBS, we have a number of
16 material disputes regarding costs, regarding the breadth of
17 the depositions and the discovery they want from us. They're
18 pretty exhaustive. And we have worked through a number of
19 those disputes, but it has not been easy. It's certainly
20 arm's length.
21 Q All right. Finally, Mr. Seery, why are we making this or
22 why is the Reorganized Debtor making this motion now?
23 A We have spent a tremendous amount of time and money on
24 disputes with UBS, both prior to settlement and with respect
25 to this lawsuit. From what we see now -- and I'm sure we

1 don't know everything; we continue to do work -- there is no
2 benefit to the estate, the reorganized entity, from continuing
3 to fight this dispute. I don't think we have a good faith
4 basis to do so.
5 And to the extent that the injunction, a permanent
6 injunction subsequent -- subject to a resolution can help
7 finally resolve the issues with Sentinel -- as you mentioned,
8 Mr. Morris, the directors at Sentinel are new directors.
9 There has -- we've spent a lot of time working with the
10 parties with respect to our claims from CDO Fund under the
11 policy, a mediation in that action as well. And if that
12 resolution can get done, that'll be of benefit to Highland and
13 all of the respective parties.
14 MR. MORRIS: I have nothing further, Your Honor.
15 THE COURT: All right. Mr. Clubok, any questions?
16 MR. CLUBOK: A very brief follow-up, Your Honor, just
17 to clarify a couple of points.
18 THE COURT: Okay.
19 MR. CLUBOK: May I proceed?
20 THE COURT: You may
21 MR. CLUBOK: Okay.
22 CROSS-EXAMINATION
23 BY MR. CLUBOK:
24 Q Mr. Seery, I want to take you back to the document
25 requests that UBS made once we had gotten to the point where

1 you had made it clear to both UBS and to your team that you
2 were going to provide whatever information you had.
3 A This was around the summer of 2020, prior to the
4 mediation, or as we were going through the mediation?
5 Q Exactly.
6 A Okay.
7 Q Exactly. Okay. And just to orient you, I would like to
8 put up what we've marked as Exhibit 57. Exhibit 57 was not
9 previously marked explicitly, but it is a deposition exhibit.
10 You'll recognize it, Mr. Seery and Mr. Morris. It was
11 Deposition Exhibit 69 to your deposition, Mr. Seery. And we'd
12 like to mark it, for the purpose of this hearing, Exhibit 57.
13 This was UBS's first request for production of documents to
14 Debtor Highland Capital Management, which is I think what
15 you're referring to. Do you recognize that document?
16 A I do, yes.
17 Q Okay. And I'm going to specifically turn your attention
18 to Request No. 8. Request No. 8 asked for all documents
19 pertaining to the assets and liabilities of HFP, CDO Fund, and
20 SOHC, including but not limited to -- and then there's a
21 number of subparts. Do you see that?
22 A Yes.
23 Q And if we can turn -- and, actually, in the very first
24 one, A, you can see it talks about consolidating standalone
25 financial statements from December 2007 through December 2019,

1 or the most recent period available. Do you see that?
2 A Yes.
3 Q And there's a number of other requests, but --
4 THE COURT: Mr. Clubok, let me interrupt a minute.
5 Do you have an exhibit up on the screen? I am not seeing it.
6 But I can pull it up off the docket if you tell me again which
7 one it is.
8 MR. CLUBOK: I'm sorry. Exhibit 57. It's showing up
9 on my screen. Ms. George has put it up. Does it not show up
10 on your screen, Your Honor? Oh.
11 THE COURT: No. Do you know what -- just a moment.
12 (Pause.)
13 MR. CLUBOK: If I may, Mr. Morris, can you see it?
14 THE COURT: Okay. Yes. We're -- the court reporter
15 informs me we have --
16 MR. MORRIS: I can.
17 THE COURT: -- something frozen on -- where we're
18 supposed to get the document. She's called IT. But I can
19 pull it up on the ECF, I hope. So, you said 57? No?
20 MR. CLUBOK: Well, unfortunately, Your Honor, this is
21 the one exhibit that we didn't explicitly mark in our amended
22 179. It is referred to because it was an exhibit to the
23 deposition of Mr. Seery.
24 THE COURT: Okay.
25 MR. CLUBOK: So we didn't individually mark this one.

1 So I'll just narrate it. I don't think you need to see it.
2 THE COURT: Okay. Okay.
3 MR. CLUBOK: You can confirm later.
4 THE COURT: Okay.
5 MR. CLUBOK: It is -- Exhibit 57 is the -- is UBS's
6 first request for production of documents to Debtor Highland
7 Capital Management. And it is a series of requests -- I'm
8 sorry, is the first official request, or I should say the
9 first document request, but I think even before this we had
10 exchanged information requests as well.
11 BY MR. CLUBOK:
12 Q Is that correct, Mr. Seery?
13 A That's correct. Do you recall the date on this document,
14 Mr. Clubok?
15 Q This particular document is dated September 28, 2020. So
16 this would have been the formal document request that
17 encapsulated our discussions that were either communicated
18 more informally or as information requests.
19 A That's my recollection. I think this would have been
20 during the mediation. I think the first session had already
21 happened, and there was discussion informally or during the
22 mediation that this would have been a document request. My
23 recollection is it's more from UBS to more formally
24 crystallize requests that had been made during the mediation
25 -- during and before the mediation.

1 Q All right.
2 MR. CLUBOK: And by the way, Your Honor, I do see
3 that this is Bankruptcy Docket 1345, I believe, if that's
4 helpful.
5 THE COURT: Okay. Could you repeat the number again?
6 MR. CLUBOK: 1345.
7 THE COURT: Okay.
8 BY MR. CLUBOK:
9 Q Mr. Seery, I just want to -- I want to direct your
10 attention to, in particular, Subparts I and J. And this, in
11 Subpart I, if we can hopefully get it on the screen, but if
12 not I'll read it, it asks for a monthly roll-forward of the
13 itemized asset listing and corresponding values requested
14 above from December 31, 2007 through August 31, 2020 or the
15 most recent period available. Here we go. And we now have it
16 on the screen, hopefully, and I just read part of Subpart I.
17 Up on the screen.
18 Also, Subpart J asked for all activity associated with the
19 itemized assets requested in Items H and I. For each one, a
20 transaction listing of all related parties or affiliated
21 transactions, including date and amount of transaction, et
22 cetera.
23 Do you see that?
24 A Yes.
25 Q In a nutshell, these requests and the prior requests that

1 we had been discussing for the months leading up to that, in
2 sum and substance is it fair to say that you understood that
3 what UBS was looking for was the complete financial picture of
4 the assets that these funds -- namely, HFP, CDO, and SOHC --
5 had from the time of the original dispute through the present?
6 A Yeah. I think that's fair.
7 Q And that was, in fact, very clear to you, that that's what
8 UBS was asking for in a paraphrased nutshell?
9 A Yes.
10 Q Okay. And it's true that you tasked your in-house legal
11 team with coming up with a substantive -- or, identifying the
12 information that could form the response to these requests?
13 A Yeah, that's true, with -- with outside counsel as well.
14 Q Right. But you in particular tasked Mr. Leventon and Mr.
15 Ellington in the first instance for identifying that
16 information to provide to your outside counsel to be provided
17 to UBS, correct?
18 A Yeah. I think that's fair. They were working together,
19 though. It was going to be -- Ellington and Leventon had
20 access to the systems and the ability to get the information.
21 How to present it and making sure that it was compliant with
22 discovery requests would have been more of an outside counsel
23 task.
24 Q Now, prior to getting these requests, even, or maybe when
25 you initially got these requests, Mr. Ellington and Leventon

1 had advised you, in words or substance -- I'm not quoting
2 them, but I want to get the gist of what they said -- that, in
3 fact, these entities had lost all of their value during the
4 financial crisis of 2008 and the years thereafter, correct?
5 A That's correct.
6 Q And they told you that these entities had basically no
7 remaining value at all, no assets left at all. Correct?
8 A That's correct. Even more than that, initially, these
9 were described to us as shell entities. The only assets they
10 would have had were assets that were moving in and out of the
11 UBS warehouse. So it was -- they weren't going to be entities
12 that ever were, as described to us, asset -- entities that
13 held any sort of material assets at all.
14 And then subsequent to the financial crisis, the
15 information they gave us was that there was no -- there was no
16 -- there were no assets there.
17 Q Yes. It wasn't just that there was a net negative value;
18 it was that there were no assets at all, supposedly. Correct?
19 A Correct.
20 Q And yet when UBS pressed harder for information about
21 assets, eventually Mr. Leventon started to disclose that in
22 fact there were at least some assets in these entities, and
23 specifically CDO Fund. Correct?
24 A That's correct. As I mentioned earlier, he showed us a
25 spreadsheet with expenditures, millions of dollars of

1 expenditures for legal fees, which was surprising based upon
2 the fact that if these -- the prior statements that these
3 assets had no value, or these entities had no value, how,
4 then, did they have cash to spend millions of dollars on legal
5 fees?
6 Q But even when he -- and by the way, it came as a surprise
7 to you to learn that, in fact, instead of zero assets, there
8 were at least some assets remaining, correct?
9 A That's correct.
10 Q And then even when Mr. Ellington disclosed that additional
11 information, he never disclosed anything about the hundreds of
12 millions of face value in assets that had been transferred out
13 of these funds just a few years prior. Correct?
14 A That's right. Yes. It was never disclosed to either me
15 or my independent -- fellow independent board members, or, to
16 my knowledge, to counsel or outside consultants.
17 Q Okay. Mr. Seery, I just want to end with a clarification
18 of your role and why this injunction is proper. It's correct
19 to say that Highland is the portfolio manager of an entity
20 we've been calling Multi-Strat, correct?
21 A That's correct. I'm not sure if under the docs it's
22 called portfolio manager or collateral manager, but Highland
23 is that entity, yes.
24 Q And as the CEO, you are responsible for directing the
25 efforts of Highland with respect to its role as the manager of

1 Multi-Strat, correct?
2 A That's correct, yes.
3 Q And just -- I think the Court has heard these names below
4 -- the entity that we're calling Multi-Strat has also been
5 called Credit Opportunities in the past? That's
6 interchangeable for purposes of this proceeding; is that
7 correct?
8 A Yeah. But there's a number of different Credit
9 Opportunity-type funds that Highland has had over the years,
10 but you'll see that in a number of the documents before the
11 name was changed to Multi-Strat.
12 Q Okay. And with respect to CDO Fund, it is fair to say
13 that Highland Capital Management had control of CDO Fund as a
14 director and as a direct owner of the CDO Funds through its
15 general partner, correct?
16 A Yeah, through the general partner interest, yes. So,
17 Highland owns CDO Funds GP, which can direct CDO Fund. I
18 believe we had LP units as well, but there were also third-
19 party limited partners in that entity pre-financial crisis.
20 Q And with respect to Multi-Strat, in addition to acting as
21 Multi-Strat's investment manager, Highland Capital also is the
22 indirect hundred-percent owner of Multi-Strat's general
23 partner as well, correct?
24 A Of the GP, that's correct, and we own about roughly 55 to
25 60 percent of the LP interests.

1 Q And finally, Mr. Seery, you knows there's a TRO or
2 temporary restraining order already issued by the Court in
3 connection with this proceeding?
4 A Yes. And we've adhered to that order.
5 Q But absent having that order, you would have had -- you
6 would have felt obligated previously to transfer funds that
7 are currently being restrained by this order, correct?
8 A That's correct. Our perspective of the documents and the
9 role of the collateral manager is that, at least with respect
10 to Multi-Strat, but also with respect to funds that we turn
11 over to trustees on certain CLOs, which then flow to -- could
12 flow to Sentinel without the TRO, those would have flowed,
13 those funds.
14 Q Okay. Thank you, Mr. Seery.
15 MR. CLUBOK: I have nothing further.
16 THE COURT: All right.
17 MR. MORRIS: No redirect, Your Honor.
18 THE COURT: Okay. Then I have a couple of questions.
19 EXAMINATION BY THE COURT
20 THE COURT: I just want to make sure I understand the
21 relevance of this line of questioning about Multi-Strat. I
22 remember Multi-Strat. There was an adversary proceeding that
23 I just had in front of me last week, a motion to dismiss. So
24 I remember what it is. It was a fund that, among other
25 things, or maybe it mainly owned the viaticals. But I'm

1 trying to understand the significance of Multi-Strat to these
2 two funds we're talking about right now.
3 THE WITNESS: So, I'll be happy to walk you through,
4 Your Honor. Multi-Strat, when the case started, owned certain
5 life policies.
6 THE COURT: Right.
7 THE WITNESS: It owned some other assets as well, and
8 it owned a lot of MGM. The life policies -- and it's not fair
9 to call them a portfolio. They are -- they were eleven
10 policies on eight lives. When the case started, the premiums
11 on those policies were substantial, and we didn't have the
12 funds to make payments. Multi-Strat didn't, and Highland
13 didn't, with the Committee's involvement, other than an
14 initial payment and to keep the policies alive, didn't have
15 the funds to invest in Multi-Strat.
16 So Multi-Strat ran an auction and sold those policies
17 above the market value. So it was a full, open auction, it
18 was a successful auction, and it was sold for more than the
19 values that had been maintained by Highland prior to the
20 filing.
21 As an aside, or there's two asides, one is part of the
22 reason you had to get rid of the -- or sell the Multi-Strat
23 policies was that they were security for a loan to NexBank.
24 And so that loan had to get paid off to free up value to
25 Multi-Strat. Multi-Strat is a separate fund that Highland

1 manages that, in addition, fast forward, no one -- there
2 hasn't been an event on those policies since we sold them in
3 the first quarter of 2020. That means no one passed away up
4 until at least a month or so ago, and premiums would have been
5 in excess of $22 million by now, which Multi-Strat didn't
6 have. So that's the life policy part of that.
7 In addition, as I said, Multi-Strat owned other assets,
8 including MGM. Also, some of that was secured or provide
9 security to NexBank for a loan that Multi-Strat had taken out
10 previously.
11 The reason Multi-Strat took out a loan, my recollection
12 is, a number of investors in Multi-Strat had tried to redeem.
13 Most of those were offshore investors in either Australia or
14 Japan, and basically Highland told them, Thanks for your
15 redemption, but we're not paying you. We're not closing the
16 fund down. And the documents allowed those redeemed interests
17 to sit out there, and they basically functioned like non-
18 cumulative preferred, meaning they didn't increase in interest
19 rate but they had a fixed claim.
20 Amongst those redeemers was Sentinel. And so when we
21 learned about the Sentinel involvement, we didn't really know
22 who Sentinel was, one of our outside advisors said, They're
23 one of the redeemers in Multi-Strat. That got us looking even
24 further.
25 But Multi-Strat's involvement in this litigation, or the

1 UBS litigation, relates to some fraudulent conveyances that
2 UBS alleged that happened back in 2009, 2008-2009, where
3 Multi-Strat and other funds were making contributions in to
4 try to support the UBS transaction from the Highland
5 perspective, and then when it looked like that transaction
6 wasn't going to work out, a bunch of those assets went back
7 out.
8 There was a so-called -- it was very oddly named -- but
9 basically a note transaction. A bunch of assets went in,
10 Multi-Strat and other entities got a note, and then there was
11 basically -- I forget what they called it, but it wasn't a --
12 they didn't call it satisfaction. It was basically they
13 ripped up the trade and gave the assets back. And UBS had
14 issues with that.
15 So when we sold the life policies, it was actually very
16 difficult, because one of the buying entities had done their
17 diligence and they saw that UBS had a claim against Multi-
18 Strat, and unless we could get a stipulation with UBS we
19 weren't going to be able to sell those policies. If we
20 weren't able to sell those policies, we didn't have the money
21 to pay the premiums, they would have expired worthless. So we
22 cut an initial deal with UBS.
23 So they -- they've been in and around the Multi-Strat for
24 14 years. And ultimately Multi-Strat settled with UBS for
25 $18-1/2 million. That was in the original UBS settlement.

1 THE COURT: Okay.
2 THE WITNESS: When we learned of all the Sentinel
3 issues and these transfers, UBS took the position that we
4 should start over and we took the position that, no, based on
5 what we see, we've -- Multi-Strat has settled, but these other
6 allegations relate more to Highland liability, CDO and SOHC
7 liability, not to Multi-Strat liability.
8 So that $18-1/2 million piece didn't change. The extra
9 $50 million in claims was just claims against Highland, not
10 against Multi-Strat. And Multi-Strat has subsequently settled
11 its issues with UBS by paying the $18-1/2 million. It had
12 previously sold the life policies, freeing up the liens from
13 NexBank and paid off NexBank. And it subsequently made
14 distributions and redeemed all of the redeemers save Sentinel.
15 That money is set aside because of the TRO.
16 And some day there will be more about Multi-Strat and the
17 attempts to, according to the Multi-Strat investors, rip them
18 off for their interests, redeemed interests. And we do have
19 signed documents evidencing that. But we'll get to that
20 another day.
21 THE COURT: All right.
22 MR. MORRIS: Your Honor, if I may, can I just ask a
23 --
24 THE COURT: Go ahead.
25 MR. MORRIS: -- question or two, a follow-up

1 question?
2 REDIRECT EXAMINATION
3 BY MR. MORRIS:
4 Q Mr. Seery, just to make this clean, does Sentinel have a
5 redemption interest in Multi-Strat?
6 A Yes.
7 Q And does Highland control Multi-Strat?
8 A Yes.
9 Q And is the TRO or now the permanent injunction designed to
10 prevent Highland from paying anything to Sentinel on account
11 of its redemption interest?
12 A That's my understanding, yes.
13 Q Okay.
14 MR. MORRIS: Your Honor, does that clear it up for
15 you?
16 THE COURT: It does. And I think probably some of
17 this was explained to me way back when I --
18 MR. MORRIS: Yeah.
19 THE COURT: -- was presented with the 9019 settlement
20 with UBS. But, shockingly, I'm a little -- I was a little
21 fuzzy on the Multi-Strat part of that.
22 MR. MORRIS: There's a lot.
23 THE COURT: Mr. Seery, --
24 MR. CLUBOK: Your Honor, may I ask just one -- may I
25 ask just one follow-up question, just to tie this up in a bow,

1 to make it extra clear? There's one other element to this --
2 THE COURT: All --
3 MR. CLUBOK: -- that I just want to make sure is
4 clean.
5 THE COURT: All right. You may.
6 RECROSS-EXAMINATION
7 BY MR. CLUBOK:
8 Q And Mr. Seery, that redemption interest that is currently
9 on the books as being in favor of Sentinel, that is one of the
10 assets that was transferred by CDO Fund to purportedly buy
11 this so-called insurance policy, correct?
12 A Part of that is. It has multiple parts. It's all covered
13 in the memorandum of understanding. But the big piece of it
14 is, yes.
15 Q Thank you.
16 THE COURT: All right. And another loose end I want
17 to tie up.
18 EXAMINATION BY THE COURT
19 THE COURT: I just want to be clear on the $100
20 million of market value of transferred assets. I think I
21 heard that they were not all transferred in August 2017.
22 There had even been some transfer of value postpetition. Is
23 that correct?
24 THE WITNESS: So, the transaction was structured so
25 that all of the assets would transfer in 2017. The value --

1 the face amount of those is north of $300 million. The fair
2 market value, according to a Highland tax memorandum, we
3 didn't value it in 2 -- as of -- we didn't retroactively look
4 back and try to put a value on it. But according to a
5 Highland tax memorandum written by one Shawn Raver, is north
6 of $100 million.
7 The -- all of the assets didn't -- didn't effectively
8 transfer. It looks like certificates were lost in transit,
9 which just doesn't happen very often, but in this case it
10 seems to. So some of the assets didn't transfer.
11 So, pre- and postpetition, while that was going on,
12 Highland employees were advising the trustees for those assets
13 -- these are Highland-managed CLOs where there's a trustee in
14 place, and the assets are preferred shares in the CLOs -- when
15 those preferred shares were due cash, they would go to the
16 trustee. The trustee would see that CDO Fund still owned the
17 asset because the transfer didn't make it all the way to
18 Sentinel, and the trustee would deposit those into a CDO Fund
19 account. Highland employees were directing that those pre-
20 and some postpetition, that those assets -- those accounts be
21 swept to Sentinel.
22 MR. MORRIS: Your Honor, if I may, I think that --
23 Mr. Clubok, it would be helpful here. I think some of the
24 documents that they have admitted into evidence relates to
25 these postpetition transfers. So Mr. Seery can correct me if

1 I'm wrong -- and I'll call this argument -- that there are
2 certain assets, including Greenbrier, that didn't make their
3 way, even though they were intended to make their way to
4 Sentinel, did not because their certificates were lost. And
5 as, you know, that assets and any other that didn't actually
6 make its way as intended, as they generated income, it was the
7 income and other dividends or distributions that those
8 interests received that were then transferred to Sentinel. Do
9 I have that right, Mr. Seery?
10 THE WITNESS: Yes, you have. That's correct.
11 MR. MORRIS: Yeah.
12 THE COURT: Okay. That's all the follow-up I had.
13 Anything else of Mr. Seery?
14 MR. MORRIS: No, Your Honor. Highland at this point
15 rests.
16 THE COURT: Okay. Thank you, Mr. Seery.
17 MR. MORRIS: I'll turn the podium over to Mr. Clubok.
18 Yeah.
19 THE WITNESS: Thank you, Your Honor.
20 THE COURT: Thank you.
21 (The witness is excused.)
22 THE COURT: Mr. Clubok, any more evidence from UBS?
23 MR. CLUBOK: Yes, Your Honor. We do have evidence.
24 This is where we have probably a good 45 minutes. I don't
25 know if you want to take a break or if you want me to just

1 launch into it.
2 THE COURT: Oh, okay. I appreciate getting that time
3 estimate. We will go ahead and take -- let's make it a 10-
4 minute break, please.
5 THE CLERK: All rise.
6 (A recess ensued from 11:18 a.m. until 11:31 a.m.)
7 THE CLERK: All rise.
8 THE COURT: All right. Please be seated. Thank you.
9 We're back on the record in UBS v. Highland, Adversary 21-
10 3020. Mr. Clubok, are you ready to proceed?
11 (No response.)
12 THE COURT: All right. You must be on mute.
13 MR. CLUBOK: Sorry. Thank you.
14 THE COURT: Okay. Gotcha.
15 MR. CLUBOK: Your Honor, can you see the title page
16 of the presentation we're about to walk through?
17 THE COURT: I can. Thank you.
18 MR. CLUBOK: Terrific. Okay. I will be -- you know,
19 again, for efficiency's sake, we can call the first few
20 minutes the opening, if you'd like. But really I just want to
21 get right to presenting the evidence for our part of this
22 proceeding.
23 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF
24 MR. CLUBOK: Your Honor, again, Andrew Clubok, Latham
25 & Watkins, on behalf of UBS.

1 Your Honor, we start with how did we get here. And you've
2 heard this before. But UBS had a $1 billion judgment. And
3 very specifically, the judgment that I spent so much time that
4 Mr. Seery has alluded to that really was the impetus of a lot
5 of discovery initially was specifically against two entities,
6 approximately 50 percent to each. About $531 million, the
7 judgments against Defendant Highland CDO Opportunity Master
8 Fund, which we've often shorthanded as CDO Fund, and about
9 $510 million against Defendant Highland Special Opportunities
10 Holding Company, which we often call SOHC.
11 These judgments were the product of a so-called Phase I of
12 the New York litigation that UBS instituted back in 2009
13 against Highland Capital Management and some of these other
14 funds.
15 Phase II was supposed to take on Highland Capital
16 Management and the other Defendants' liabilities, but
17 restructuring intervened, and as a result those proceedings
18 were stayed and Your Honor knows the rest.
19 We have, as Your Honor knows, settled with most of the
20 Defendants, but there was one important Defendant remaining,
21 and that was the parent company of Highland Special
22 Opportunities Holdco. That SOHC is a hundred-percent
23 subsidiary of Highland Financial Partners.
24 And just recently, after a damages inquest and other
25 proceedings in New York -- well, this was the total judgment,

1 the $1.042 [billion] that Your Honor is familiar with, before
2 additional interest -- but recently we obtained a judgment in
3 the so-called Phase II portion of what remains in New York,
4 and amongst other judgments, most importantly for the purpose
5 of today, is that we have now obtained a judgment against
6 Highland Financial Partners as an alter ego of the Defendant
7 SOHC. So HFP is responsible for that same $510 million, plus
8 additional interest.
9 And I'm getting a request to annotate, but I guess I have
10 to hit approve, too. Which is fine with me.
11 In any event, the HFP alter ego judgment is now also
12 completed.
13 As was well known, and you'll see that, in particular, Mr.
14 Dondero, Mr. Ellington, and their associates all have
15 anticipated for years that one day SOC's liabilities, SOHC's
16 liabilities, would also be HFP's liabilities, as they now
17 officially are.
18 Sorry. I've got this request to annotate that has created
19 some curious issues here.
20 (Pause.)
21 MR. CLUBOK: A moment, Your Honor.
22 (Pause.)
23 MR. CLUBOK: Well, unfortunately, I -- someone asked
24 me if I could annotate. I'm going to try to annotate. Okay.
25 There we go.

1 In any event, we start with the judgments. Then the next
2 thing to know about, as you've heard a little bit, is there
3 was this so-called ATE, or after-the-event policy. And
4 Exhibit 1 is a copy of this so-called policy. As you can see,
5 the insurer is Sentinel Reinsurance. The legal action that
6 this policy was aimed at, the only one identified in the
7 policy, is the New York action, the *UBS Securities v.*
8 *Highland Capital Management* and others. The limit of
9 indemnity was intended to be $100 million. And the premium
10 was identified as $25 million.
11 Well, Your Honor, you heard a lot about how the ultimate
12 consideration for this policy exceeded even the coverage
13 limits of $100 million. But, of course, that's -- you don't
14 pay for an insurance policy with the coverage limits, you pay
15 for it with a premium, and this premium was supposedly set at
16 $25 million. So the transfer of assets, which you've heard
17 already testimony exceeded $100 million and had a face value
18 of $300 million, far exceeded the so-called premium limit.
19 And, of course, exceeded the limit of indemnity itself.
20 The policy is fairly straightforward, fairly simple. It
21 said that the insurer agrees to indemnify the insured in
22 respect to any legal liability occurring during the period of
23 insurance, up to and including but not exceeding the limit of
24 indemnity, provided that either the Court or any Appellate
25 Court makes an order of liability relating to the legal action

1 that's insured. Notably, also if there was a settlement would
2 be another way that the policy would be triggered.
3 As you've seen, this policy was signed by James Dondero in
4 his -- what has become the typical fashion that we've seen in
5 which he signs on behalf of every relevant Highland-related
6 entity. Here, he signs for all the insureds, which are
7 identified as CDO Opportunity Master Fund, Highland CDO
8 Holding Company, which we'll come back to, and then Highland
9 Special Opportunities Holding Company.
10 At the same time, there was an asset transfer, a so-called
11 purchase agreement whereby all of these funds, and other funds
12 at Highland, pooled their assets and transferred them all to
13 Sentinel, supposedly so that Sentinel could purchase them, so
14 that in turn these Highland funds could then pay the supposed
15 $25 million premium.
16 And then the premium, as set forth in Exhibit 2, was
17 agreed to be all of the assets listed in Schedule A hereto as
18 a hundred percent payment of the premium. And Schedule A,
19 which you saw briefly during Mr. Morris's presentation,
20 identified every single asset from CDO Fund, from SOHC, from
21 HFP, and also from some other entities that we'll talk more
22 about in a moment.
23 One thing of note of these assets, and I'll just point out
24 because Your Honor asked about it, is that there is the so-
25 called Multi-Strat asset. Remember, Multi-Strat was then

1 called Credit Opportunities CDO Limited Partnership Interest.
2 You can see that CDO Fund, this is the Highland CDO
3 Opportunity Master Fund asset, so CDO Fund, which is the
4 entity -- one of the entities that we have over a half-
5 billion-dollar judgment directly against now, had this
6 interest in what was then called Credit Opportunities but is
7 now known as Multi-Strat. That is the interest that is now
8 currently the subject of the restraining order, and had not
9 the restraining order entered, those monies would have
10 already, as Mr. Seery testified, been distributed on to
11 Sentinel.
12 Just like with the insurance policy, with the asset
13 transfer agreement, Mr. Dondero just signs on behalf of
14 everybody. You will see all the transferors he signs on
15 behalf of.
16 It turns out, or as known from the get-go, that this was a
17 massive overpayment. Remember, the aggregate purchase price
18 paid by Sentinel for these assets was $25 million. That was
19 what the premium supposedly was set for -- was set as at the
20 outset.
21 At this time, and this is according to a tax memo that
22 Shawn Raver wrote, you know, about a year later when he's
23 trying to evaluate the tax consequences of the Sentinel
24 acquisition of -- notably of HFP/CDO Opportunity Assets,
25 you'll note even internally they describe this not as SOHC and

1 CDO Fund assets but as HFP CDO Fund assets. This is when they
2 were challenging alter ego at that time, and they continued to
3 challenge alter ego right up until we got the judgment. But
4 you can see that internally they certainly treated it as an
5 HFP liability, not an SOHC liability.
6 In any event, you'll note that the purchase price for the
7 assets was $25 million, but the aggregate fair market value of
8 the assets on the date of the transaction was $105 million and
9 change. So, from the get go, they're paying, you know, more
10 than quadruple the premium price, and more even than the
11 limits of coverage.
12 As you noted, as Mr. Seery testified already, this was
13 from his deposition, we're here because Highland Capital
14 Management controls Multi-Strat in two ways, both as indirect
15 hundred-percent owner, also as investment manager, and also
16 controlled CDO Fund.
17 And then we're here because Your Honor, having entered a
18 TRO, otherwise it may have already been too late to stop a lot
19 of this.
20 So, what now? What now is that UBS asks for what it's
21 always asked for, is an ultimate -- a permanent injunction.
22 And we set forth in our response to this motion -- and,
23 really, this is what we've asked for from the get go -- this
24 requires a slightly different form of order than what Highland
25 submitted, but I hope that after they hear the rest of this

1 evidence they will agree that our form of order is
2 appropriate.
3 By permanent, as you can see in our order, it means not
4 permanent for the rest of time, but permanent until either a
5 court adjudication of what actually happened here or a
6 settlement agreement. And we now hope that the latter will be
7 what triggers it, at least for the assets that we now know
8 about.
9 So, what are the factors? Obviously, success on the
10 merits. Irreparable injury. Weighing of harms. And the
11 public interest. And these are the familiar factors recently
12 articulated in the *Environmental Texas Citizen Lobby* case from
13 the Fifth Circuit, 824 F.3d 507.
14 So, let's talk about success on the merits. Why will UBS
15 win? Not just likely to, but will win on the merits if we
16 proceed?
17 There's really two ways for UBS to prevail here. You
18 could look at it either way. Either the policy was just pure
19 fraud and everything needs to be unwound. Or the policy was
20 valid, valid, but there was about an $80 million
21 (indecipherable) overpayment. In other words, it may well be
22 fair that a $25 million ATE policy could have purchased a $100
23 million -- a $100 million after-the-event coverage at that
24 time. As we've seen, they didn't pay $25 million. They paid
25 $105 million.

1 So these are two different theories that both result in
2 effectively the same place.
3 Now, we're not claiming simply constructive fraud, or we
4 wouldn't be claiming simply constructive fraud at the end of
5 the day. This is -- this goes into actual fraud. And as a
6 result, we're going to go through the factors, the so-called
7 badges of fraud. And these badges are from New York
8 precedent. And they are from the *Matter of Gard Enter. v.*
9 *Block*, most recently articulated, 2012 N.Y. Misc. LEXIS 4175.
10 But they very much overlap with the badges of actual fraud
11 that Texas and the Fifth Circuit have identified very recently
12 in the *Matter of Alabama & Dunlavy*, 983 F.3d 766. That's a
13 Fifth Circuit 2020 case.
14 These particular ones that we have on the screen on Slide
15 12 are the actual ones identified from -- by New York, and we
16 think New York law applies because the fraud was conducted
17 through the Bank of New York and was directed at the New York
18 proceedings. However, you could also argue that Texas law
19 applies because clearly the continuing fraud that continued
20 even after the restructuring has affected this bankruptcy.
21 So, under either way of looking at it -- and normally you
22 don't need to, of course, show each one of these; you show
23 some of these -- you'll see that literally every one of these,
24 and every one to the extent it's slightly articulated
25 differently in Texas, have all been demonstrated by the

1 evidence that we've obtained. So we're going to briefly walk
2 through those.
3 We begin with knowledge of the claim. This is obvious.
4 That the timing -- and by the way, a lot of these factors
5 overlap, because it's like one factor is whether you had
6 knowledge of a claim in anticipation of a transfer. Another
7 is suspicious timing of a transfer. So some of these, as you
8 can see, overlap.
9 But certainly knowledge of the claim. In March of 2017,
10 UBS had defeated all or virtually all of Highland and the
11 Funds' arguments on summary judgments. And they had a host of
12 supposed defenses on liability that they claimed they were
13 going to win on summary judgment. They were, I believe, all
14 or virtually all overruled. That ultimately was appealed, and
15 in New York you can take interlocutory appeals much more
16 liberally than other jurisdictions, so they were able to delay
17 the trial for another year through interlocutory appeal of the
18 denial of summary judgments.
19 This is the world they were facing in March of 2017. In a
20 very thorough opinion, Justice Friedman and the Supreme Court
21 of New York had overruled their -- rejected their summary
22 judgment claims.
23 So remember that date, March -- that's March 2017.
24 So we asked Mr. Leventon, let's start with liability and
25 then we'll talk about damages. Did you ever give a

1 recommendation that UBS was likely to win on its breach of
2 contract claim against CDO Fund and SOHC in Phase I?
3 Answer, Yes, I did.
4 Question, What was that recommendation?
5 Answer, That liability was likely to be found.
6 Question, Who did you make that to?
7 Answer, I don't recall. It certainly would have been --
8 well, I don't recall who it was.
9 Question, You said certainly would have been.
10 And then he answered, No, I believe it probably was Mr.
11 Ellington and Mr. Dondero.
12 Later in his deposition he was asked, How many times did
13 you have discussions with Mr. Dondero in which you expressed
14 your view that liability was likely to be determined against
15 CDO Fund and SOHC? He claimed he didn't recall. And then he
16 said, Well, it would have been more than one and probably less
17 than five.
18 Likewise, Mr. Ellington testified. We asked him, You said
19 a number of times that it didn't surprise you at all about the
20 size or the magnitude of the damages verdict, correct?
21 He answered, Correct.
22 Question, And you had warned Mr. Dondero, in words or
23 substance, that this was likely to occur before the verdict
24 came, correct?
25 Answer, Yes.

1 So, not only did they obviously know about the claim, but
2 they had, you know, the individuals, Mr. Ellington and Mr.
3 Leventon, who were tasked with responding to the claim and
4 running the litigation in-house, had formed opinions about the
5 likely loss and had shared those with each other and certainly
6 with Mr. Dondero.
7 In the course of purchasing this after-event, you know,
8 so-called after-the-event policy, they were asked by Beecher
9 Carlson -- you're going to find out that Beecher Carlson is
10 the managing -- insurance managing agent for Sentinel. And
11 they were asked at some point, well, you know, what's up with
12 these claims? Or can you give us an analysis of them? And
13 there's an email exchange between Mr. Leventon and then Mr.
14 Sevilla, who at the time was another former assistant general
15 counsel in the Highland legal department. And in that
16 exchange, which they prepared to be able to send on to
17 Sentinel's representative, Mr. Leventon notes, The claims
18 against CDO Fund and HFP and affiliates are very strong. They
19 are guaranty claims. The Defendants' primary responsibility
20 will be to contest the amount of damages.
21 And they note that it's $686 million at that time from
22 February of 2009, accumulating interest. And obviously the
23 billion-dollar judgment, much of it is interest. And they
24 noted how CDO Fund was a guarantor of 49 percent. And, again,
25 by the way, HFP/Affiliates are 51 percent guarantors.

1 At this time, they were insisting, demanding, putting on
2 evidence in court that supposedly HFP and SOHC were not at all
3 alter egos, that they were not related, they shouldn't be
4 treated as one. But internally, when they wanted to pool the
5 assets of HFP and SOHC to purchase this so-called policy, and
6 then when they wanted to justify it to Beecher, they're always
7 talking about it as if -- as if it's HFP, as one unified alter
8 ego.
9 So that's just a -- one of the many sort of side let's
10 just say issues that are uncovered by this whole series of
11 events.
12 In any event, that's our main story. At that point, and
13 the next thing to see or badge of fraud is the transferor's
14 inability to pay.
15 Well, at this time, these funds, the HFP and CDO Funds,
16 who are the main Defendants, HFP through its alter ego, SOHC,
17 at that time, were insolvent. And they were insolvent -- at
18 least, they had declared to their investors they were
19 insolvent back in 2009. And check -- and look at this. This
20 is the HFP letter that went to its investors in 2009: Due to
21 events and circumstances described in this letter, we've
22 concluded that as of December 31, 2008, it's likely that all
23 future inflows of cash to HFP will be used to pay creditors
24 and there is no prospect of return to holders of HFP.
25 So, first of all, they're telling their holders of HFP,

1 hey, all we've got left are creditors. And by the way, other
2 documents, and we've submitted them into the record
3 (indecipherable) and they're talked about in the depositions,
4 the only major creditor left is UBS. If UBS's claim had
5 really been denied or if they had prevailed, HFP would have
6 actually finished in the black, not in the red.
7 So they're telling their investors, hey, we can't pay you,
8 we're insolvent because we have this giant claim to UBS. Of
9 course, they've never paid a single penny to UBS. HFP has not
10 directly.
11 Meanwhile, CDO Fund, the same thing. They're telling
12 their investors, yes, we're also insolvent. And explained to
13 their investors, of, look, all of the Fund's available assets
14 will be distributed to the Fund's remaining (indecipherable)
15 and counterparties and other senior and trade creditors in an
16 orderly liquidation.
17 Of course, that doesn't happen. None of CDO Funds -- and
18 you've seen the CDO Funds that were belatedly identified to
19 Mr. Seery in 2020, and you've also seen that lengthy list of
20 funds or assets that CDO Fund had back in 2017. They
21 obviously had this post-2009. They have told their investors,
22 hey, everything we've got left is going to be distributed to
23 our creditors, but instead we know now that they've funneled
24 it to Mr. Dondero and Mr. Ellington's Cayman entity.
25 Another badge of fraud. Suspicious timing in anticipation

1 of litigation. This plan was all hatched -- remember, March
2 '17 is when they lost summary judgment. This plan is hatched
3 just a few weeks later, in April of '17. And this is the so-
4 called settlement analysis that sort of lays out the scheme.
5 And this is a document that I believe was prepared by Mr.
6 Leventon and Ms. Vitiello, at Mr. Ellington's direction, I
7 believe. And it's Exhibit 7 in the record.
8 And it notes -- this is why they were trying to justify
9 why they should do this ATE policy. And they say, well, if
10 UBS wins, Highland is going to lose all the assets again in
11 HFP and CDO Fund.
12 And by the way, of particular note, the one asset they
13 made particular note of: HFP assets include a $32 million DAF
14 note payable. Put a pin in that. And remember, why are they
15 so intently concerned? Of all the $300 million of face value
16 assets, the one that gets particular attention in this
17 presentation is a $32 million DAF note payable.
18 That note, by the way, we now have come to learn, is an
19 entity which Your Honor is familiar with, I think it's been
20 called CLO Holdco or CLO entity, and it's also known as the
21 DAF. That note was owed to CDO Fund because of a prior
22 transfer, probab... you know, of -- or I do know that we're --
23 I'm sure we'll dig into. And so they're holding this $32
24 million note that the DAF owes them, and they note that, if
25 Highland doesn't settle, Highland is going to lose all the

1 assets, including that particular $32 million DAF note.
2 It's also noted that Highland will face years of
3 fraudulent transfer claims through the Highland structure, and
4 HCMLP will face clawback of $9 million and liability to
5 backstop HFP CDO Fund for up to $1.2 billion.
6 This was the view of the legal department. Obviously,
7 never shared with us during the litigation, but we've come to
8 understand never shared with Mr. Seery or with Mr. Morris,
9 right? Their team, right? This is -- this is all -- this
10 document is uncovered after Mr. DiOrio is fired, after
11 everyone is fired, I believe, related to this, and then they
12 happen to find this document either on a desk or through that
13 email search that you heard about.
14 Side note. If Highland were to win, you can see below,
15 then it would show that HFP is solvent. That would have
16 reduced -- reversed the tax write-off and would have perhaps
17 exposed them to tax fraud or to at least a massive payment for
18 prior taxes.
19 So, a lot going on here. But, again, let's get back to
20 the direct impact on UBS and then, later, Highland.
21 So, this is the settlement analysis that was prepared to
22 support this whole ATE scheme. And here's the structure
23 that's laid out. Okay. And this is before the actuaries have
24 gone to work. This is before they've put together the actual
25 documents. This is April of 2017, when the scheme is first

1 hatched. And it says, Step 1. HFP -- once again, HFP, CDO
2 Fund -- will buy a $100 million ATE policy from Sentinel. The
3 ATE premium will be all assets in HFP CDO Fund.
4 It doesn't say, gee, we'll go find out what the premium
5 is, or we'll go check with an actuary and see what it should
6 be, or we'll price this thing out and find out what the
7 likelihood is of buying such a helpful insurance policy at
8 this time. Nope. It's just, The premium is going to be
9 whatever assets are left that we can round up. That's the
10 plan from the get go. And it's suspiciously timed right after
11 summary judgment has been lost in anticipation of trial.
12 The close relationship amongst the parties who devised
13 this plan. Mr. Ellington -- that's putting it mildly. Mr.
14 Ellington is the one who devised the plan. Says the idea --
15 we asked him, Who had the idea? He said, I had that initial
16 conversation with Mr. Leventon because it was my idea.
17 Question, It was your idea to have Sentinel issue an
18 insurance policy with respect to the UBS litigation that was
19 then pending in New York, correct?
20 Answer, Yes.
21 This is from Mr. Leventon's deposition transcript, 86:21
22 through 87:6, which has been marked and included as part of
23 the designations for Mr. Ellington.
24 Mr. Leventon was then asked, Who made the decision to
25 obtain the policy? So, Mr. Ellington had come up with the

1 idea, but of course, we all know who's the ultimate decider at
2 Highland.
3 Mr. Leventon says, My understanding is that it was Mr.
4 Dondero who made that decision.
5 What's that understanding based on?
6 That was communicated to him by Mr. Ellington.
7 When?
8 Back around the time, probably right after the policy was
9 implemented.
10 Of course, there is a very close relationship, because
11 Dondero and Ellington own several. This is Mr. Ellington.
12 This is a -- this is an org chart for Sentinel. And you can
13 see it was notarized -- this was produced to Sentinel back in
14 -- or provided, I believe, to the regulators in the Caymans in
15 January of 2018.
16 So this is the way things looked back at the end of '17
17 when these actions were taken. And you can see that Mr.
18 Ellington has a 30 percent ownership interest in Sentinel,
19 although he was only given a 9 percent vote. Mr. Dondero had
20 a 70 percent ownership interest ultimately through a bunch of,
21 you know, intermediary entities, but yet a 91 percent vote in
22 how Sentinel would be operated.
23 And that's it. These are the two so-called UBOs or
24 ultimate beneficial owners. Sometimes they're listed on org
25 charts as UBO 1 and UBO 2. But UBO 1 and UBO 2 are simply Mr.

1 Ellington and Mr. Dondero, who collectively own a hundred
2 percent of Sentinel.
3 Remember, this is the scheme. We're going to pool all of
4 HFP and CDO Fund's assets, whatever they amount to, send them
5 off to Sentinel, supposedly for this hundred-million-dollar
6 ATE policy.
7 And this was Beecher Carlson. Again, it's Sentinel's
8 insurance manager. He was deposed in these proceedings. And
9 we asked, Was it common that employees of Highland Capital
10 would do things on behalf of Sentinel? This goes, again, to
11 whether there's a close relationship between HCM and Sentinel.
12 Mr. Carlson -- or Mr. Adamczak, who is the representative, the
13 corporate representative of Beecher Carlson, says, Well, a
14 captive insurance company does not generally have any
15 employees, so all of the employees are typically from a
16 sponsoring organization. In this case, it was Highland
17 Capital that was the sponsoring organization.
18 Now, when you look at the deposition transcripts, you can
19 see that, one by one, the former Highland employees denied to
20 various degrees their involvement with Sentinel. Meanwhile,
21 though, Sentinel has no employees, and it was these Highland
22 former employees who did everything for Sentinel while they
23 were being paid by Highland.
24 But, again, this just -- for purposes of this factor, this
25 just goes to the close relationship between HCM and Sentinel.

1 Obviously, Mr. Dondero, who ultimately controls HCM, also
2 ultimately controlled Sentinel. You've got Mr. Ellington.
3 And then you've got all of the Highland former employees doing
4 the work of Sentinel.
5 Here is an example of each of the key figures who were at
6 Highland who've now been fired. Mr. DiOrio. He was the
7 former managing director of Sentinel, but he was also a
8 Sentinel director. And that included right up until after
9 even he was fired by Highland and finally tendered his
10 resignation. But he was made a director in the wake of this
11 transaction.
12 Mr. Sevilla. He was the former assistant general counsel
13 at Highland. And he was described by Mr. DiOrio as the point
14 person, I guess, for things that had to happen with Sentinel.
15 He helped with the formation. He, as I understand it, he was
16 part of the team. And he's also described as the point person
17 by everybody except for Mr. Sevilla, who disavows the same
18 kind of involvement that everyone else said he had and that
19 the documents show he had.
20 Then you've got Mr. Leventon. He was another former
21 assistant general counsel.
22 By the way, all these folks are in the legal department.
23 They have fiduciary duties. They're all in the legal
24 department, and they presumably have fiduciary duties
25 throughout, and they're all, as you can see, right in the

1 thick of this.
2 Mr. -- the corporate representative of Beecher Carlson
3 talked about how Mr. Leventon, each year-end, would work with
4 Sentinel's actuaries to determine the scenarios for the
5 outcome of the case -- he's talking about the UBS litigation
6 -- with the end goal being to determine what the loss,
7 ultimate loss would end up being that Sentinel would record in
8 their financial statements.
9 So Mr. Leventon is working hand-in-glove with Sentinel
10 from the time the policy is issued -- even before; you know,
11 he was one of the drafters of that memo -- but certainly for
12 years after, including after the restructuring. Of course,
13 with never a word to Mr. Seery or his outside counsel.
14 And then you have Katie Irving. She was a former managing
15 director. She's, again, one of these people who, in her
16 deposition, tried to effectively say she really didn't have
17 much to do with Sentinel. But at the Beecher deposition, they
18 noted that she was someone who had been knowledgeable of all
19 the activities centered around Sentinel, and she attended
20 multiple meetings between Sentinel and CIMA, which is the
21 regulatory authority in the Caymans. She had traveled to the
22 Cayman Islands several times for these meetings, yet somehow
23 it's all apparently slipped her mind when she was being
24 examined or asked about this kind of information directly or
25 indirectly by Mr. Seery and his team.

1 Back to the Beecher Carlson representative. In terms of
2 the unusualness of the transaction, Beecher has lots of
3 insurance companies that they help manage. We asked if they
4 have any other clients that issue ATE policies. Answer is no.
5 Sentinel is the only one.
6 Just how many ATE policies did Sentinel actually produce?
7 Just the one.
8 Just the one we're looking at here?
9 Correct.
10 So this is very outside the ordinary course of business.
11 And here's why. At the time of the transaction -- this is the
12 financials at the end of 2016. Remember, the transaction is
13 summer of 2017. Things haven't changed much for Sentinel in
14 those few months.
15 (Interruption.)
16 MR. CLUBOK: That's -- the total assets are $19
17 million. Okay?
18 A VOICE: Sorry. I didn't mean to get --
19 THE COURT: I'm sorry. Who's speaking?
20 MR. CLUBOK: Okay.
21 THE COURT: Who is that voice?
22 MR. MORRIS: I think that was one of ours, Chris, I
23 think you went off mute.
24 THE COURT: Okay.
25 MR. CLUBOK: That's okay.

1 THE COURT: Continue.
2 MR. CLUBOK: That's fine. Back on Slide 30. Slide
3 30 is UBS Exhibit 9, and that's from Sentinel's financial
4 statements year end of 2016. And you can see that as December
5 2016 Sentinel's total assets were only about $19 million. So
6 how are they issuing a $100 million ATE policy in good faith?
7 Well, the only way to even try to justify it is if you get
8 more than $100 million in transfers, which we know they
9 ultimately did. But, again, this just shows how unusual and
10 outside the ordinary course of business this whole transaction
11 was, even for Sentinel, even if someone were to try to portray
12 it as just a, you know, normal insurance company, just your
13 everyday normal captive insurance company in Highland run by
14 Mr. Dondero and Mr. Ellington.
15 You can see the total cash was only about $5.8 million.
16 And of course, the policy doesn't -- isn't supposed to pay off
17 the claim in cash and prizes. It's supposed to pay just cash.
18 But they only had about less than $6 million on the balance
19 sheet at the time.
20 Unusualness of the case, case, is another factor that
21 indicates fraud. And of course, we asked -- this is the
22 former chief accounting officer, Mr. Stoops. At Mr. Sevilla's
23 instructions, did you transfer all the assets of the relevant
24 funds?
25 Answer, Yes. That is my recollection.

1 And in that instruction, he wanted all funds or all assets
2 transferred, regardless of the value of those assets?
3 Yes. That's right.
4 Mr. Ringheimer, who was the former management or manager
5 of operations, I guess, is his title at Highland, he was
6 asked, To the extent there's a transfer of all of the funds of
7 a particular entity, would you say it was common while you
8 were at Highland for Highland to transfer all of the assets
9 out of a Highland entity?
10 Answer, I don't believe I -- so, I have seen funds wind
11 down before, but I don't believe I've seen another transfer
12 like this before.
13 Then we asked, Do you recall what the urgency was for
14 executing a transfer that day?
15 Answer, I do not.
16 Never communicated to you why it was urgent?
17 Answer, If they did, I don't remember.
18 And remember, you've already heard testimony that it was
19 done in such haste that some of the assets weren't even
20 properly transferred.
21 Use of dummies. This is a -- you know, it's always hard
22 to unpack how Highland -- entities. But if you look at
23 Exhibit 1, you will note three insureds. CDO Fund and SOHC,
24 which you would expect, but also, oddly, CDO Holding Company.
25 When you look at the Defendants, though, you don't see CDO

1 Holding Company. That was not one of the Defendants in the
2 litigation, and yet somehow they're becoming an insured
3 pursuant to this policy. That's curious.
4 Meanwhile, who paid for the insurance? There are six
5 entities who paid for the insurance, and three of them are the
6 insureds. That's double-curious, right?
7 And so all of this just adds to the suspiciousness of this
8 whole transaction.
9 So, what about the consideration? Well, obviously, you've
10 heard a lot. It was inadequate. This was, going back to that
11 settlement analysis that was done, you know, hastily a few
12 weeks after summary judgment was lost, out there it was
13 identified that HFP CDO Fund would send all their assets, and
14 they said, parentheses, $94 million, as the ATE premium, and
15 that would let them write a $100 million ATE policy for UBS
16 liability. They had roughly estimated that there was about
17 $94 million left between HFP and CDO Fund, and that would
18 justify this $100 million policy.
19 Well, it turns out that the aggregate purchase price paid
20 was actually $25 million. Okay? So the premium gets set at
21 $25 million, for other curious reasons. And meanwhile, the
22 aggregate fair market value of all the assets -- because the
23 plan was always to transfer all the assets, regardless of the
24 value -- turns out to be $105 million. So that original plan,
25 transfer all the assets to get us $100 million, that never

1 changed, even though it turned out the assets were worth more
2 than $100 million and the so-called premium had to be set at
3 $25 million.
4 Now, the Cayman Islands Monetary Authority, CIMA, found
5 this suspicious. And they asked about it. And here you'll
6 see, they catch Sentinel in a complete lie. This is a report
7 that was done May 19th, when they're saying -- they're asking
8 for information about what happened here. And they say, Those
9 changed with Licensee's governance could not explain the basis
10 upon which the investments had been valued on or about August
11 20 -- August 1, 2017 for the purpose of premium settlement.
12 And this is Page 78819, Bates label, that is, of UBS Exhibit
13 11. Sort of a question/answer. It's like CIMA will say,
14 Well, here's the question we raised, and then they will say,
15 Well, how did management respond? And this is how management
16 responded when CIMA raised this question. They said, you
17 know, basically, how'd you set the policy? How'd you set the
18 premium? And management -- this is management's comments, was
19 that, At the time the ATE policy was drafted, premium had been
20 established at $25 million based on a pricing study conducted
21 by Licensee's actuary.
22 So they told CIMA, Hey, no problem, we had an actuary set
23 the price, and $25 million was the price. Let alone the
24 overage of payment, but at least $25 million was supposedly
25 the premium price pursuant to this actuary.

1 Well, CIMA didn't just take their word for it. They
2 continued their investigation, and this is how CIMA in this
3 report, Exhibit 11, responds to this management comment. They
4 say, Well, on April 4, 2019, the Authority held a telephone
5 interview with Mr. Jason Stubbs of Risk International, the
6 Licensee's actuary. During the interview, Mr. Stubbs informed
7 the Authority he was not involved in the determination of
8 premium pricing for the Licensee to any extent at all.
9 It goes on to say, The Authority notes with concern that
10 the management's assertion that the ATE policy premium of $25
11 million was established based on a pricing study conducted by
12 the Licensee's actuary contradicts the actuary's position.
13 So the actuary is basically outing them for having just
14 simply lied to CIMA.
15 But you still -- even all that is suspicious, but the
16 problem is we know the assets were worth way more than $25
17 million. And by June of 2018, there was already questions
18 being raised. And Mr. Adamczak at Beecher Carlson had written
19 an email to J.P. Sevilla and Matt DiOrio, copied one of his
20 colleagues, and he said, Look, the problem is the premium was
21 only $25 million, creating a ding on the transaction. This is
22 from Exhibit 12. Because there is no return of overpayment of
23 premium, it gives rise to the question, is this an arm's
24 length transaction?
25 This is the managing agent for Sentinel raising these

1 concerns.
2 So what do they do? They change -- they change the
3 policy. And this is -- this is way after the fact. This ends
4 up being in 2018. This is like June of 2018. Remember, this
5 is about a year after the policy which was -- it was issued in
6 2017.
7 And what they do is they just say, you know what, let's
8 just adjust the premium. Now let's say the premium is $68
9 million. Okay? And now let's say that the limit of indemnity
10 is down to $91 million. Okay? Remember, previously, they had
11 a fair market value of $105 million. They've now got the fair
12 market value supposedly down to $68 million. P.S., because
13 they're now treating that note from DAF as worthless, amongst
14 other things.
15 But they say, Well, the premium is $68 million. We had
16 said if it was a $25 million premium, we at Sentinel would
17 have to take a gain on that difference. Well, what if we just
18 after-the-fact changed the premium up to match exactly the
19 supposed new fair market value, and then lower the limit of
20 indemnity at the same time down to $91 million?
21 So they cook up this scheme, they do it. Of course, they
22 forget to have the insureds sign it, which is, again, a series
23 of, I would say, fully unusual transactions. And this is, you
24 know, again, a year after. So they're just continuing to do
25 things to dig deeper into this hole.

1 We asked Mr. Adamczak, Is this something you've done
2 before in other policies, changed the premium to reflect
3 assets transferred?
4 Answer, This is the first situation like this we've seen
5 where there are assets that were taken in as opposed to cash.
6 And have you ever seen anything like it since?
7 I have not.
8 Beecher Carlson is a nationally renowned, you know, large
9 entity that works with insurance companies, I believe, you
10 know, all over the world, I think, but certainly they have
11 many clients. They've never seen anything like this. And
12 certainly it has never been done before by Sentinel.
13 So, again, this goes to how it's an unusual transaction,
14 and also it goes to the fact that this is not just one mistake
15 or one event but a whole series of things in a pattern.
16 By the way, he was asked, Did any one of the insureds
17 actually agree with the policy premium increasing by three
18 times without increasing the coverage amount?
19 He said, I'm not aware if that was presented to the
20 insureds.
21 Now, we know that a couple of those individuals at
22 Highland Capital Management were in the mix on this, but it
23 was never formally presented, I guess, to the insureds.
24 Somebody at Highland just said, Yeah, go ahead and do this.
25 Then, in 2019 -- and note, this is Exhibit 15, the date of

1 this is December 31, 2019, months after the bankruptcy in this
2 case has opened. And then what happens? There's an asset
3 transfer agreement because Sentinel had this collection of
4 assets that they want to get out of even Sentinel and
5 basically to transfer all these assets to another Dondero/
6 Ellington-affiliated entity -- I believe it was to Sebastian
7 Clark, allegedly -- all of these assets for $3. That's in
8 December of 2019.
9 Now, this is -- you know, they've already moved the assets
10 from CDO Fund, HFP, and Sentinel in 2017. They disposed of
11 some of them in other ways, but some they still have in the
12 Caymans. And what they do is they hustle or try to hustle and
13 get them out after the restructuring to an entity connected or
14 owned by Ellington for $3.
15 You'll note that amongst these assets there's that $32
16 million CLO Holdco also known as the DAF note. Remember the
17 one that they had so much emphasis on when they originally
18 hatched the scheme, that they were really worried that this
19 note could ultimately end up in the hands of UBS if UBS were
20 to prevail? Well, they now try to double-transfer it away.
21 After, by the way -- here's another asset. Aberdeen.
22 This is an interest in a CLO. We now know this is -- millions
23 of dollars, I believe, are currently restrained in connection
24 with this Aberdeen asset by the New York court. But, again,
25 they're just transferring all these assets, supposedly for $3.

1 Why? Well, Mr. Adamczak said they were told they were
2 worthless. And we asked, Who told you they were worthless?
3 And he said, That direction would have come from Matt DiOrio.
4 This is December of '19, after the bankruptcy.
5 Then we asked, Well, as part of the valuation service the
6 Valuation and Research Corp. had done, had they determined
7 these assets were worthless? Had this VRC group, this -- the
8 group that previously they had used to try to give them at
9 least some argument of fair market value. Mr. Adamczak said,
10 Well, they -- VRC had not been engaged to perform valuations
11 on those investments, and it was discussed that if those
12 investments were worthless there's no point in obtaining a
13 valuation.
14 So just think about that. And this is his deposition at
15 276, Line 17, through 277, Line 6.
16 Basically, Matt DiOrio says, Hey, these assets are
17 worthless. Transfer them to this entity for $3. And they
18 say, Well, shouldn't we have VRC value them? And DiOrio
19 basically says, No need to value them. I told you they're
20 worthless. Why spend money valuing them when I've already
21 told you they're worthless? Even though they include a $32
22 million note payable by the DAF and they include at least
23 other assets that we know are worth millions of dollars. We
24 asked if Beecher had done anything independent, and they
25 explained that had no way of confirming anything.

1 Now, luckily, those assets had been transferred back to
2 Sentinel. And, luckily, the current directors, I believe, did
3 listen to our arguments, and also had, I think, some pretty
4 sharp instructions from CIMA. And as a result, those assets
5 or those purported transfers have been unwound and those
6 assets have been returned to Sentinel.
7 But this just shows the danger and risk that at every --
8 every opportunity, these individuals will try to keep moving
9 these assets and try to keep evading them from judgment.
10 And by the way, this has happened before. Mr. Seery was
11 testifying a little bit about what started all this. This --
12 Slide 43 just has a compilation from UBS Exhibit 52, which
13 just showed the asset transfer or the fraudulent transfer that
14 we alleged back in 2009.
15 And for UBS, this is just déjà vu all over again, because
16 what we alleged in the New York case was, at the time, there
17 was a whole bunch of assets that were pooled into HFP and then
18 distributed to the winds right after default was declared in
19 the contract and at the outset of this litigation.
20 Actually, after UBS had sued Highland, a couple months
21 later they did this, you know, then face value of a couple
22 hundred million dollars in assets that we had argued was
23 fraudulently transferred.
24 What we see now happened in 2017 was basically the follow-
25 on to that, like, everything that was left, let's put it all

1 together and send all that to Sentinel. So, to us, it is a
2 pattern. And it is, as I said, déjà vu all over again.
3 And back then, just like in 2017, of course, Mr. Dondero
4 signed on behalf of everybody. That's the typical pattern.
5 That's the series of continued fraudulent transfers that had
6 been -- UBS, but also really speak to what we've seen from
7 Highland in connection with many of the creditors.
8 Sentinel again looked at all of this -- later, and they
9 say, with respect to some of the other practices, they say
10 that, Those charged with the Licensee and licensing at
11 Sentinel governance could not explain the basis upon which the
12 investments have been valued in August 2017.
13 They also couldn't explain the reason why the information
14 that was relied on to value the investments for the purpose of
15 premium couldn't be readily provided to the auditors upon
16 request, considering that the policy inception and the
17 financial statements on it was only a few months apart.
18 CIMA also noted, and this is Exhibit 11 at Bates 78819,
19 that those charged with governance could not explain why the
20 premium was adjusted without a commensurate adjustment to the
21 indemnity limit provided or why the initial pricing was
22 subsequently deemed not sufficient.
23 And they say, In addition, in any case, to amend an
24 insurance policy to artificially inflate the premium amount to
25 equal the value of investments transferred to the licensee

1 without any justifiable business purpose and economic
2 substance is, at the very least, questionable.
3 In sum, the above matters cast significant doubt on the
4 economic substance and business purpose of the transactions
5 relating to the ATE coverage.
6 According to CIMA, it was Sentinel's own lawyers. They
7 hired a lawyer in Cayman to look at this, and they tried to
8 get some help -- this was back in 2017 -- to just effectuate
9 this plan once it had been cooked up. And even back then the
10 Cayman lawyer noted, Has any thought been given as to the
11 legal validity of such a transfer, bearing in mind that these
12 assets will then be put beyond the reach of the Plaintiffs in
13 the U.S. litigation against the Fund. Obviously, the last
14 thing you want to find is that the "premium" has to be
15 returned or set aside as some unlawful preference or similar.
16 Obviously, an issue for U.S. counsel, but just thought I
17 should raise it. Well, you can imagine U.S. counsel at the
18 time in 2017 did nothing, but this was obviously flagged by
19 their Cayman counsel.
20 So, one factor that I skipped over but you've heard a lot
21 about is the secrecy. And, really, the secrecy is a -- just
22 sort of it wraps everything up. You know, we know the
23 bankruptcy was in October 2019. We know that we got a
24 decision that notified the world or at least notified Highland
25 and Mr. Dondero and even Mr. Seery before he became a director

1 that there was this looming $1 billion judgment.
2 It was first issued as a decision. It was not made public
3 so that the parties could have some time to try to negotiate
4 settlement, which we -- you heard testimony in other
5 proceedings that we started to with Mr. Ellington.
6 So Highland obviously had received it from the Court and
7 knew all about the billion-dollar judgment.
8 February 10th, it -- I'm sorry, the billion-dollar then-
9 decision.
10 By February 10, 2020, it is reduced to a judgment for
11 Phase I. And yet from 2019 until the beginning of 2021,
12 everyone -- all these ex-employees of Highland now who knew
13 about this actively concealed it.
14 And of course, we start with Mr. Dondero. This is Mr.
15 Ellington saying, Did you ever tell Mr. Dondero that there was
16 an insurance policy issued by Sentinel that could potentially
17 satisfy the judgment?
18 That was kind of an obvious question.
19 Ellington said, Well, I didn't need to tell Mr. Dondero.
20 He was aware of it since the inception.
21 And, of course, Mr. Dondero signed it. So it just goes
22 without saying Exhibit 1 shows that Dondero knew about it.
23 And, of course, Mr. Dondero never said anything about it
24 throughout, as you can see by his deposition.
25 Meanwhile, though, Mr. Sevilla also covered it up. We

1 asked Mr. DiOrio about Mr. Sevilla's role, and as we noted, he
2 was the point person for things that happened on Sentinel. He
3 knew everything about Sentinel.
4 We asked Mr. Sevilla, in his deposition transcript, 278,
5 Line 20, to 279, Line 3: So, between the time the independent
6 board was appointed and your departure from the company, did
7 you ever disclose to any of the members of the independent
8 board that you were aware the existence of a Sentinel
9 insurance policy ostensibly provided for coverage for the loss
10 of the UBS litigation?
11 Answer, no.
12 Mr. Leventon. Mr. Leventon doesn't just omit information,
13 he -- well, you'll see for yourself. This is one of the
14 documents where he had been tasked with tracking the assets
15 through on SOHC. He says, this is Exhibit 16, and in one of
16 his emails to Mr. Seery and to Mr. Demo and others, he claims
17 he had been tracking the assets through an SOHC and CDO Fund.
18 He was putting together a report with supporting
19 documentation. And he claims that there's just this small
20 account of cash and a few worthless securities.
21 Now, he's claiming he's tracking the assets through.
22 Okay. He knows what happened to the assets of SOHC and CDO
23 Funds. He helped devise the scheme to transfer them in 2017
24 to Sentinel. He has also been, every year, talking to
25 Sentinel or their actuaries about the prospects of the

1 litigation. And yet when Mr. Seery, Mr. Demo, and others task
2 him with tracking the assets, he just, you know, says what's
3 there, doesn't ever mention this. You know, this would be, at
4 a minimum, a material omission.
5 I think if you read the documents and you look in Exhibit
6 16, you'll see things that are even more concerning. This is
7 not an accidental omission.
8 This is the list he provides, without identifying at all
9 that there is, in fact, all of this other -- all these other
10 assets that were transferred and a $10 million supposed
11 insurance policy just available for the asking.
12 And he was asked, Well, you knew there was a schedule that
13 showed Sentinel having an interest in Multi-Strat that
14 specifically said, parentheses, from Highland CDO Fund. There
15 was a schedule that showed that.
16 And he said, Well, I think that's fair. December 2017, I
17 think that's fair.
18 And we asked, Well, when you were tasked with helping
19 trace the assets of CDO Fund and HFP, you even talked to Mr.
20 Ellington, in words or substance, about whether or not you
21 should mention Sentinel, correct?
22 And this is an email exchange that Mr. Ellington had had
23 with Mr. Leventon back in December of 2017. This is Exhibit
24 46. This showed -- this is of Highland Credit Opportunities.
25 In other words, the Multi-Strat list of -- of interests in

1 Multi-Strat.
2 And you can see, back in the end of 2017, it was
3 identified, the first one on the list is an interest of
4 Sentinel in Credit Opportunities, also called Multi-Strat.
5 Okay. That's the interest that right now is being restrained
6 by Your Honor's order. And this interest was being -- was on
7 the books as being settled but it said right in their
8 document, parentheses, from Highland CDO Fund, because it had
9 only been transferred a few months ago, in August. Right?
10 So Leventon and Ellington know this. They know that
11 Sentinel has an asset that came from CDO Fund. Of course, not
12 just because of this document. This is just one of many. But
13 back then -- and, again, if you look at those documents, Mr.
14 Leventon was asked, You never told anyone at the Pachulski
15 firm that assets of CDO Fund held with respect to Multi-Strat
16 may have been transferred to Sentinel, correct? And he says
17 yes, that's correct. Just never -- never mentioned it.
18 We asked, What was the information you had about the
19 assets of SOHC and CDO Fund from March of 2009 to the present
20 that you chose not to provide to the Pachulski firm? He says,
21 Answer, I knew that there had been a transaction in 2017
22 sometime with respect to an after-the-event insurance policy
23 with Sentinel.
24 Then we asked, Did you ever disclose the existence of this
25 policy to any of the independent directors?

1 Answer, I never discussed with them one way or the other.
2 This is all while he has been tasked with, as Mr. Seery
3 put it, generally speaking, to trace the assets from 2009
4 through the present.
5 Mr. Ellington goes even further. He really tries to
6 divert things. And you'll see in an email exchange where he
7 jumps in and tries to cloud the issue by using a phrase he's
8 used over and over again as he explains so-called ghost funds.
9 This is an August 15, 2020 exchange that's got Mr. Ellington,
10 Mr. Demo, Mr. Leventon, Mr. Seery, and others on it. And this
11 is Exhibit 17.
12 Mr. Ellington jumps in. If you read the Exhibit 17,
13 you'll see how he jumps in and he says, Look, stop, stop all
14 this. You know, basically, he says, There's not much more to
15 do.
16 He goes, I have personally discussed at length this
17 situation with the head of KPMG Cayman Islands and he
18 expressed to me there are currently more than 6,000 ghost
19 funds such as these target entities -- the target entities, of
20 course, are not just random funds out of the so-called 6,000
21 ghost funds, but CDO, SOHC, HFP -- stemming from the 2008
22 crisis that do not have directors, custodians, administrators,
23 bank accounts, et cetera, that sit dormant, and, capital, NO
24 ONE, capital letters, knows what they truly retain, et cetera.
25 He then said, I know that UBS is aware of the situation,

1 and I know Andy Clubok -- that's me -- knows of this
2 situation, the so-called situation of everything being ghost
3 funds because I've personally discussed it with him several
4 dozen times, including as recently as this year.
5 He goes on to say, Oh, this process is a Herculean task.
6 He and I just spent 100 hours, or excess of 100 hours, trying
7 to piece together everything they can to create a true and
8 accurate document record, based record, of what happened with
9 these target entities.
10 He is affirmatively telling Mr. Seery, Mr. Demo, and
11 others that, you know, not just waiving those funds and trying
12 to trick them with that, but claiming that he is doing
13 everything with Leventon to piece together everything they can
14 to create a true and accurate document, at least record of
15 what happened to these entities. And the simple thing that
16 happened to those entities, the most important thing, frankly,
17 the only really relevant thing, is that all of their assets
18 were transferred or tried to be transferred in 2017 to
19 Sentinel.
20 Now, by the way, some of those assets weren't transferred.
21 So CDO Fund still had some accounts and still did have some
22 assets, even when Mr. Ellington is claiming this. So the
23 whole thing is, you know, inaccurate, but, frankly, just a
24 downright -- well, I won't characterize it. I think it speaks
25 for itself.

1 We deposed Mr. Ellington in this proceeding. This is at
2 Deposition Transcript 83, Line 15, to 84:24. I asked him, Did
3 you ever tell me that there was an insurance policy issued by
4 Sentinel that potentially could satisfy that judgment?
5 Answer, No.
6 Did you ever tell Mr. Seery anything at all about the
7 insurance policy that was issued by Sentinel with respect to
8 the UBS litigation in New York?
9 Answer, No.
10 Question, Did you tell Mr. Nelms, Judge Nelms, anything at
11 all about the insurance policy that was issued by Sentinel
12 with respect to the UBS litigation in New York?
13 Answer, No.
14 Mr. Leventon was asked, Well, did you, in words or
15 substance, ever ask Mr. Ellington whether you should disclose
16 the policy?
17 And we got kind of a hard-to-understand answer, but it's
18 Leventon Deposition Transcript 154, 217. The gist of it is
19 Ellington told him not to.
20 The answer specifically says, So, the conversation was, is
21 the policy relevant to the task I'm working on? And the
22 answer, Mr. Ellington said he didn't believe that it was and
23 therefore didn't need to be included as material because part
24 of that past.
25 And then I asked, You know, you've been in conversations

1 with Mr. Seery. I don't talk to Mr. Seery hardly ever. So is
2 there any other thing that any other -- anything else that I
3 should know of or -- or any other reason, you know, outside of
4 my task that I should include in the materials, and Scott said
5 no. Okay?
6 Basically, this is a very narrowly defined -- it's an
7 effort by Mr. Leventon to somehow define his task down so
8 narrowly that he and Mr. Ellington could somehow have a
9 conversation and believe in good faith, while they are lawyers
10 working for the estate that's in bankruptcy, that somehow this
11 is something they should affirmatively not disclose to Mr.
12 Seery and his team.
13 And then we get to Mr. DiOrio. And Mr. DiOrio tried and
14 tried to hide it, but ultimately I believe it was his
15 documents that left -- were left behind or that were found
16 that helped unravel the scheme. But back in January of '21,
17 when he was still here, he repeatedly lied to Highland
18 Capital.
19 This is an email exchange from January 28, '21. Remember,
20 Mr. DiOrio is a Sentinel director at that time. Okay? He's
21 getting paid exclusively by Highland Capital Management, but
22 on Highland Capital Management time he has this side gig of
23 being a Sentinel director. And he's asked -- he was asked to
24 figure out what are the -- what are the assets that didn't
25 make its way to actually be transferred. There's an asset

1 that's called Greenbrier. It's an interest in a CLO. And
2 with respect to that particular asset, he claims he was
3 working to reissue physical certificates, he'll keep everyone
4 in the loop on the timing. Does not appear to be a swift
5 process, but we're moving forward. The shares are still
6 registered to Hare & Co., with CDO Opportunity Fund as
7 beneficial owner.
8 So this is one of those assets where they, just because of
9 the haste, had not -- not competently effectuated the transfer
10 as they tried to do.
11 He talks about how BONY has a custody account in CDO
12 Opportunity Fund's name, and been receiving past waterfall
13 payments.
14 By the way, I think this has amounted to over $10 million,
15 and these have been ultimately now paid to UBS and we're
16 continuing to get it as part of the prior settlement
17 agreement, but, you know, obviously only because it was
18 identified at the last minute.
19 Anyway, Mr. DiOrio says, Well, these certificates were
20 transferred in error in 2017 by Carter Chisholm, who no longer
21 works at HCM. Now, Mr. DiOrio knows exactly what happened
22 with these transfers, okay, but he just kind of gives this
23 weird answer, it was transferred in error.
24 And then Mr. Demo says, Okay, but do we have any
25 visibility into who Sentinel Reinsurance is? Who owns them?

1 What do they do? Et cetera.
2 Because this is about the time, as Mr. Seery testified,
3 that it's all kind of starting to unravel. They've seen a
4 ledger that showed that Sentinel actually had some interest in
5 Multi-Strat, and that's kind of weird, and it sparked some
6 memory, and certainly they really start fussing Mr. DiOrio,
7 who is a director of Sentinel. And Mr. Demo asks him this
8 January 27, 2021. This is Exhibit 18. What does Mr. DiOrio
9 say? He says, It's a nondebtor, non-affiliate reinsurance
10 company, but I do not know who or how it's owned. That's what
11 he tells Mr. Demo and the others. Okay?
12 Now, we asked him about that, and we said, Well, you knew
13 it was owned in part by Dondero?
14 Yes.
15 And you knew it was owned at least in part by Mr.
16 Ellington?
17 This is when he gets under oath. His deposition
18 transcript at Page 336, Lines 3, to 338, Line 1.
19 He said, yeah, he knew it when he told them that he
20 didn't.
21 And we say, Well, he asked -- talking about Mr. Demo --
22 who owns Sentinel Reinsurance, right?
23 Answer, Yes.
24 Okay. And you didn't tell him Mr. Dondero and Mr.
25 Ellington owned part of it, right?

1 Right.
2 Question, Well, why didn't you just explain this to Mr.
3 Demo?
4 Answer, I wanted as little to do with Pachulski as
5 possible, so I answered the questions and waited for the next
6 one.
7 Okay? Now, to be sure, he wasn't under oath in Exhibit
8 18, I guess. But he's a member of the legal department, he's
9 a Sentinel director, he's working for the bankruptcy estate at
10 that time, and he just flat lies. There's no getting around
11 it. And then when we're talking under oath, he admits the lie
12 and, you know, basically just didn't want to -- didn't want to
13 have anything to do with Pachulski, I guess.
14 Well, that's when luckily Mr. Seery now stepped in. And
15 seeing all of this, I think he fires the last of these
16 individuals who were still there. And then just, you know,
17 weeks later makes a claim on behalf of CDO Fund to Sentinel
18 for that $100,000 million, which, of course, he clearly would
19 have done, and his deposition testimony reflects this, from
20 the get go had he known about it, since we had a judgment and
21 the insurance policy was intended to benefit UBS.
22 So that's secrecy.
23 Turning back to the factors, I'll run through the rest of
24 these quickly. Transfers retain control. Well, of course.
25 It is the case that Beecher had been servicing Sentinel --

1 throughout the time that Beecher worked for Sentinel, Dondero
2 and Ellington were the ultimate beneficial owners, called
3 UBOs. Mr. Adamczak testified to that on Pages 22, 24, and 25
4 of his deposition.
5 He was asked, What's the role of the ultimate beneficial
6 owner? And as he understood it, the ultimate person would
7 call the shots for the captive. And we asked him if that was
8 true with respect to Dondero and Ellington, that they were the
9 ones ultimately calling the shots. He said, To the best of
10 our knowledge, that's correct.
11 Everything that was done -- remember, Sentinel doesn't
12 have employees, so everything is either done by a Highland
13 employee working for Sentinel or being executed by Beecher,
14 which is sort of the agent that executes stuff. And they just
15 did everything that Dondero and Ellington told them.
16 So, with all of that, where has this money gone? Okay?
17 At least the money that has not been restrained. Where has
18 some of the other money gone? And you heard a little bit
19 about this, but I am sure you can't -- will not believe some
20 of this.
21 Basically, the transferors, and that's Dondero and
22 Ellington, retained control and have used that money that they
23 transferred out of CDO Fund and HFP and all the others as
24 their own personal piggybank. Here is just a sampling of some
25 of the expenses that have been approved since that transfer.

1 And by the way, these are post-bankruptcy, November of 2019
2 through January of 2020 expenses that, unbeknownst to Mr.
3 Seery and our understanding is unbeknownst to the Pachulski
4 firm, were just being authorized by Mr. DiOrio and others
5 post-bankruptcy with money out of Sentinel that should have
6 been used to pay UBS's judgment.
7 First of all, here's an expense report from January 15,
8 2020 through January 19, 2020. It's UBS Exhibit 19. And in
9 there you will see Ellington expenses for a London and Paris
10 trip of over $78,000. At least one of these trips, I think
11 it's this one, or maybe others, he went with his girlfriend.
12 There are some emails that we have submitted that are in the
13 records that show her, like, talk about which restaurants she
14 wants to dine at, what hotels they want to stay in. All
15 that's in the exhibits to the depositions. One of the -- one
16 of the visits they did was a place called Sexy Fish. Sounds
17 good. This is all being charged to Sentinel, okay?
18 Then there's another expense report to Toronto, $97,000.
19 Interesting. There, they spent about $12,000 at the Rebel
20 nightclub. Okay? Again, this is all instead of using the
21 money to satisfy the judgment.
22 Meanwhile, there's another one. This is December of 2019.
23 Scott Ellington. A $318,000 expense report. Okay. Now, this
24 is before Mr. Seery has been appointed but post-bankruptcy.
25 And I'm sure that the Pachulski firm had no idea about this.

1 A huge expense on this one was the Sapphire. This is a trip
2 to Las Vegas. Somehow they spent $318,000 in Las Vegas. And
3 there's five entries that total, you know, something like
4 almost $50,000 or something to Sapphire. So we said, Well,
5 what's Sapphire? This is Sapphire. And you can see inside
6 72, there's a picture, and we've hidden strategically some of
7 it.
8 But we asked Mr. Adamczak, the corporate representative of
9 Beecher Carlson, at Page 101, Lines 15, to 102, What did you
10 understand Sapphire to be?
11 He answered, A typical Las Vegas strip club.
12 Question, Did you look at that at the time when they
13 submitted $318,000 in expenses?
14 Answer, Yes.
15 And did you ask Mr. DiOrio specifically about that?
16 Answer, I did.
17 Question, And his answer was that it was business
18 development?
19 Answer, They were all business development. This is how
20 they do business.
21 Question, They being who?
22 Answer, Highland Capital.
23 Okay? By the way, the business is, on one day, or one
24 evening, December 16, 2019, as you can see, $9,800, $9,800,
25 $9,000, all being supposedly conducted at the Sapphire strip

1 club.

2 Back in the day, this was looked at. And you can see on
3 some of these emails. Remember, you heard about this SAS
4 Management server that's apparently been hidden from the
5 Highland -- from the Debtor? Sarah Goldsmith to Matt DiOrio
6 says that she was submitting the attached expense
7 reimbursement on behalf of Scott Ellington. Ms. Goldsmith, I
8 think, was his assistant. Subject to an approval by the
9 directors, please instruct reimbursement to Scott Ellington
10 for this total travel expenses of $318,000.

11 Mr. DiOrio forwards that on to Beecher Carlson and just
12 says, Hey, guys, Please submit the attached expenses for
13 approval and reimbursement.

14 By the way, as a heads up, settlement talks are cranking
15 up, but okay.

16 Internally at Beecher Carlson -- and this finally gets
17 their attention. They mostly just do what they're told, but
18 internally Mr. Adamczak emails with his colleague and says,
19 Nice. What the hell is going on with these expenses? I
20 question how much, quote, business development is actually
21 being done. Did you look at this?

22 Well, we asked, What raises concern? He said, The fact
23 there was $318,000 worth of expenses at first, but there was a
24 significant amount of that that seemed to be club-related. We
25 asked if the directors approved it. He said, Ultimately, but

1 they also questioned it.

2 Oh, by the way, these are not the current directors. As

3 Mr. Morris noted, the current directors are new, and those are

4 the ones we're dealing with now. These were Mr. DiOrio and

5 his two other colleagues back then.

6 They were asked -- they requested the nature of these

7 expenses and then specifically inquired whether all or both of

8 the UBOs would be okay with running these expenses through the

9 captive as business development. That was their only

10 question. Are the UBOs -- that is, Dondero and Ellington --

11 going to be okay with running these expenses through the

12 captive?

13 Who did they ask? Matt DiOrio. What did he answer? That

14 it was appropriate.

15 And I just clarified, So he was saying it's appropriate

16 because the UBOs said it was appropriate?

17 Answer, To my knowledge, yes.

18 No justification other than, Hey, if Dondero and Ellington

19 said it's okay, at least according to DiOrio, it must be okay.

20 That's not it, though. It wasn't just a mod... you know,

21 relatively, I guess, when you consider the total amount of

22 expenses. There's also dividend payments. And on Slide 77,

23 you see that we've uncovered at least a total of $8.9 million

24 dividend payments that were paid to Mr. Dondero and Mr.

25 Ellington's entities that they owned, that they're the

1 intermediaries to them as the ultimate beneficial owners.
2 Here is an example of a payment that was made in April of
3 2020 -- again, unbeknownst I think at the time, I'm sure at
4 the time, to Mr. Seery. And this is out of Sentinel's money.
5 It's supposed to be -- you know, they don't even have a
6 hundred million in cash at that time, and yet they're
7 dividending up to Mr. Dondero and Mr. Ellington. There is an
8 approval of the payment, of course. It's done by Matt DiOrio
9 and his -- and then two colleagues, as the Sentinel director
10 at the time, in April 24, 2020. This is Exhibit 47. A total
11 of $6.4 million. And you can see it's divided up. About $4.4
12 million goes to Main Spring, Limited. This is Exhibit 21.
13 That's a Dondero entity. And you can see there's -- Exhibit
14 22 shows the wire transfer to another entity called Montage of
15 about $1.9 million. That's the Ellington-affiliated entity.
16 So, the grand total of about $6.4 million gets distributed
17 70/30, as we've seen in the ownership interest, to entities
18 controlled, respectively, by Mr. Dondero and Mr. Ellington, as
19 set forth in Exhibits 21 and 22.
20 That's not all, of course. Even in 2021, in January of
21 2020 -- sort of the last gasp before they get found out,
22 there's another dividend payment. Again, approved by Mr.
23 DiOrio. January 11, 2021. This is -- this is all during a
24 time when they're not telling anything to Mr. Seery or Mr.
25 Demo or the others about Sentinel. And yet Mr. DiOrio is

1 hustling dividend payments up to Dondero and Ellington. And
2 you can see Exhibits 48 and 23 show how the money ultimately
3 gets transferred, you know, even, you know, as late as the
4 spring of 2021.
5 Finally, Sentinel money. Mr. Morris talked about this.
6 And I guess there's a lawyer on the -- on the -- in the
7 proceedings today that maybe intends to try to benefit from
8 Sentinel's money as well.
9 In June 2021, Beecher Carlson was given a request for
10 expense approval for Ross & Smith of about $75,000. This,
11 according to Mr. DiOrio, was all in order and should be
12 settled. Mr. DiOrio represents -- this is June of 2021, after
13 he's been fired by Highland. He says, The company identified
14 a group of former employees, my -- former employees, okay?
15 Sentinel had no employees. And by the way, many of these
16 people testified under oath that not only were they not
17 employees, but they hardly did anything at all with Sentinel.
18 Yet Mr. DiOrio is claiming that the company had identified a
19 group of former employees, myself included -- presumably, he's
20 talking about former Sentinel employees; there's no reason why
21 Sentinel would be indemnifying former Highland employees. But
22 in any event, he says, It relates to our defense with today's
23 hearing that I mentioned.
24 Now, they're not a part of this hearing. To the extent
25 Sentinel -- Sentinel insurance doesn't go to Mr. DiOrio for

1 trying to avoid deposition testimony or something, and that's,
2 by the way, what that hearing was.
3 Your Honor may not remember that date. We do. It was
4 June 24, 2021. This is an entry that shows that that hearing
5 that day was the motion we had to make to compel the
6 deposition testimony, because at the time all of these former
7 Highland employees were fighting having to come provide all of
8 this testimony you've now seen. You would never have seen
9 much of what we presented today had this motion to compel not
10 been granted. And they charged $75,000 to fight it.
11 Now, we asked for fees at the time. And we understand why
12 Your Honor didn't award fees, but -- we can understand that.
13 But it sort of put us flat. Not only did they not pay our
14 fees for having to move to compel, they depleted Sentinel
15 further, which owes us, at the time, owes us quite a bit of
16 money, for the privilege of trying to stop us from finding out
17 all of the evidence here.
18 So, and I say that it's UBS's money at Sentinel because
19 the New York courts say so. The New York courts have held
20 that insurance policies may constitute debts against which a
21 money judgment may be enforced under Article 52 of the New
22 York CPLR, and a judgment debtor can enforce the subject debt
23 arising from the court's final judgment against the judgment
24 debtor's insurer, pursuant to Article 52 of the CPLR. So,
25 really, this money really ultimately should go to UBS. It

1 should not be allowed to continue to be paid for this
2 indemnification or for any other purpose, et cetera.
3 At the end of the day, even if the policy were valued, or
4 valid, UBS would be owed at least $100 million, even if it was
5 a totally valid thing. But in fact, UBS is owed the $100
6 million plus the $80 million for the fraudulent transfer, for
7 a total of over $180 million.
8 So that's how we get to success on the merits. The
9 others, I really don't need to go much through.
10 I think, you know, irreparable injury. In brief, there's
11 case law that makes it clear that the irreparable injury
12 element is satisfied when the defendants would dissipate the
13 frozen assets, and if the defendants were to dissipate or
14 transfer these assets out of the jurisdiction, the District
15 Court would not be able to grant the effective remedy. That's
16 from the Fifth Circuit, *Janvey v. Alguire*, 647 F.3d 585.
17 There's similar law in the Ninth Circuit: *Johnson v.*
18 *Couturier*, 572 F.3d 1067.
19 And, again, Mr. Seery, as you heard him testify live, but
20 this is from his deposition, made it clear that he really had
21 no choice. Without the TRO, this money probably would have
22 been already transferred to Sentinel and gosh knows what would
23 have happened.
24 The weighing of harms. Well, this adversary proceeding,
25 of course, as Mr. Morris said, we kind of expected maybe

1 Sentinel or maybe Mr. DiOrio or someone to intervene. No one
2 did. So the proceeding is between UBS and Highland. There is
3 huge harm to UBS if the injunction is not granted.
4 The other party is Highland, because Highland -- you know,
5 there's certainly no benefit to Highland, and instead what
6 Highland will face is more litigation, costs, and a fraud,
7 which, of course, Highland doesn't want. And that's why I
8 think Highland -- not only is there no harm to Highland to
9 granting the relief, but Highland wants to cut these
10 proceedings short. And that's fine with us, as long as we
11 were able to present this evidence, as long as it doesn't cut
12 short the ability to get the full order that we've requested.
13 So, I think the weighing of harms is easy.
14 And finally I end with the public interest. Your Honor,
15 there is no harm to the public interest if the Court does
16 enjoin fraudulent behavior. That is the only way that we can
17 prevent harm to the public interest. You have seen a pattern,
18 a series, you know, it's tacked on to other things you've seen
19 in connection with these proceedings. But the prevention of
20 unjust enrichment by means of fraud or misappropriation, even
21 if it was affecting "only private entities," is in the general
22 public interest.
23 Of course, here, all of these things impact not just UBS,
24 it affects the other creditors of the estate. It affects the
25 Court's time. And certainly, I think as Mr. Morris put it,

1 it's just the signal that it sends to allow this to go
2 unchecked would be terrible.
3 So it's many issues of concern that we haven't even dived
4 into as much as we could, including testimony that is
5 questionable, I'll say, at best, and various transfers and
6 information that was not provided to the Court and its
7 representatives. And, of course, these proceedings, I suspect
8 there will be issues for someone else for another day to deal
9 with.
10 But for us, we just ask that the Court enter the
11 injunction as we have suggested with the minor edits to the
12 version that Mr. Morris and his colleagues submitted. The
13 public interest will be served by that.
14 And I'll end with, you know, why are we still here? We're
15 still here because UBS still has that over billion-dollar
16 judgement. And, in fact, because of interest, that judgment
17 has grown by about $116 million, okay, while we've been
18 dealing with all of this. While we could've maybe gotten a
19 significant portion, maybe could've settled, et cetera, but
20 it's now up to over $1.1 billion.
21 And how much total has UBS been paid by the judgment
22 debtors? About $14 million. By the way, the $14 million is
23 those assets that we caught at the last second that were
24 ineffectually tried to -- transferred, even though they tried
25 to be. But that's all that UBS has recovered from the actual

1 judgment debtors. And that's why we're still here, that's why
2 we have to stay here, and that's why we should be entitled to
3 continue to make sure that this Court's injunctive power
4 protects UBS's ability to continue in its efforts.
5 Thank you for your patience. I appreciate it.
6 THE COURT: All right. I'm going to ask you a couple
7 of follow-up questions. I've heard today that once Highland's
8 independent directors, Strand's, discovered all of this, the
9 Sentinel policy and the transfer of assets, they immediately
10 notified UBS. And one of the results was the settlement that
11 had originally been struck between UBS and Highland was
12 increased with $50 million more to go to UBS. Could you just
13 elaborate on that? Before this was all discovered, the
14 settlement that had been negotiated that was going to be
15 presented to the Bankruptcy Court involved how much of an
16 allowed claim that would be paid out of the estate and any
17 other relevant components?
18 MR. MORRIS: Mr. Clubok, I have those numbers if you
19 don't have them handy.
20 THE COURT: Okay. Or Mr. Morris.
21 MR. CLUBOK: Thank you. I was just going to -- so I
22 would appreciate that.
23 MS. MORRIS: So, at the confirmation hearing, the
24 proposed settlement was a Class 8 general unsecured claim for
25 $50 million, a $25 million Class 9 subordinated general

1 unsecured claim, and a cash payment of $18-1/2 million from
2 Multi-Strat.
3 After the disclosure of this information, the Class 8
4 claim was increased by $15 million, from $50 to $65 million,
5 and the Class 9 subordinated general unsecured claim was
6 increased by $35 million, from $25 to $60 million. And the
7 Multi-Strat cash payment remained the same.
8 So, just to summarize, the Class 8 claim went up by $15
9 million and the Class 9 claim went up by $35 million.
10 THE COURT: Okay. And just another refresher of my
11 memory. The global mediation that happened in this case, it
12 was summer 2020, the global mediation before former Judge
13 Gropper and Sylvia Mayer. So I know UBS technically did not
14 settle during that mediation, but it came about, you know, a
15 few weeks or months after. But there had been participation
16 by UBS and the Debtor in that mediation. And, again, this was
17 summer 2020, before anyone knew about this Sentinel insurance
18 policy, correct?
19 MR. CLUBOK: That's correct, Your Honor, but also, as
20 you note, the mediation started in the summer of 2020. We
21 were, prior to doing that mediation, in anticipation of that
22 mediation, asking for all this financial information. To Mr.
23 Seery's credit, as he testified, he said, Hey, we'll get it to
24 you. We -- that's fair. And he said, I'll tell my folks to
25 get whatever you need, or words to that effect.

1 We didn't settle in the first round when some others did,
2 but we had continuing mediation sessions into the fall. And I
3 believe, I don't have the exact dates, but I believe UBS then
4 had follow-on continuing discussions with Judge Gropper or Ms.
5 Mayer in, you know, I want to say October, September/October
6 time frame. And that's when we're still in the mediation, we
7 believe or we've been told at that time, oh, you've got all
8 the information about the assets now, because in the first
9 mediation we didn't have it, so that's why I said, hey, we
10 can't settle. By the time we had that second set of sessions
11 with Judge Gropper and Ms. Mayer, then we had been given all
12 the information, as we now know, because Mr. Leventon, Mr.
13 Ellington, and others told Mr. Seery and Mr. Morris and his
14 team, hey, this is everything.
15 So, with that in hand, that's when we reached this initial
16 settlement that Mr. Morris described to you. And then, you
17 know, as we're working through it and we'd gotten that -- I
18 think we finally got to that settlement by the end of the
19 year, by the end of 2020. But then, luckily, as we continued
20 to press for information, and then in January a lot of this
21 gets uncovered. In fact, before we had finalized that
22 settlement per those discussions, this was all uncovered. And
23 so that's what caused us to, then, say, well, --
24 THE COURT: I'm just mainly trying to be clear. And
25 I'm just thinking through all the time and attorneys' fees

1 that were incurred related to this UBS claim and what was a
2 fair and equitable settlement, without anyone having the
3 benefit of the knowledge about this Sentinel transaction.
4 MR. CLUBOK: For sure. And my point is it started
5 August, but we worked all the way -- I think maybe it was even
6 close to Christmas. I feel like it was very much at the end
7 of the year when we finally got a settlement, and all that was
8 on the fiction of the belated production of some of the
9 assets, which then we get to January and it's like ah, gee, we
10 have to start over again. And you know, it's all those months
11 of attorneys' fees and time and et cetera, all because or
12 largely because this information was hidden from Mr. Seery,
13 Mr. Morris, and his colleagues.
14 THE COURT: Okay. My last question for you. We
15 heard a little bit of testimony from Mr. Seery about the
16 after-the-fact insurance policy and whether that's a thing or
17 not. That's our new phrase in this case, "Is this really a
18 thing or not?" it seems like.
19 What is your view of this? I mean, I'm certainly
20 generally aware. I think Mr. Seery said, you know, in
21 jurisdictions where there's a loser-pay concept as opposed to
22 the American rule there is a concept such as this, I guess, to
23 at least pay defense costs. But what is your take on this,
24 you know, fake or real insurance policy?
25 MR. CLUBOK: So, so a slightly different take. It's

1 a little more nuanced. There is certainly something called an
2 after-the-event insurance policy that is not -- it would be
3 common for some insurers to issue those policies. Sometimes
4 it's call judgment insurance. And basically what happens is
5 that, you know, let's say your company gets hit with some
6 lawsuit, maybe it's an environmental potential liability, so
7 it's now known that, you know, you are alleged to have leaked
8 chemicals onto somebody's property. So, a claim is filed.
9 Normally, obviously, you can't buy insurance to insure against
10 something right after you find out about it, but there are
11 companies, I understand, insurers, that will say, okay, you've
12 already been sued; I'm going to now insure you against the
13 judgment. Now, the premium might be very high, and we have
14 to, you know, price it the right way. But, you know, you have
15 a, you know, if you have a billion dollar claim, if you want a
16 billion dollar judgment, the premium might be, you know, $250
17 million, or you have a $100 million claim, you know, it could
18 be a $100 million claim, and so maybe the premium could be $25
19 [million]. Let's look at the strengths and weaknesses, we'll
20 price it out, et cetera.
21 There is a market that I'm very loosely describing. I'm
22 not an insurance expert. I'm not testifying here. But my
23 understanding is that is a market and you could theoretically
24 get it.
25 What is in the record here is that these guys came up with

1 this idea that -- probably because they had heard there's
2 something like this -- and they start with the proposition,
3 okay, all the assets, hundred million coverage, let's backdoor
4 figure out how to work it out.
5 They then ask Beecher Carlson to "shop it" to see if they
6 could get a policy. And Beecher Carlson, there's extensive
7 testimony in this, I'm not sure we submitted every bit, but we
8 could if we needed to, basically said, yeah, we shopped around
9 and no -- no insurance would have done it for anything like
10 that. There would have been a very different premium. They
11 would have had to do lots of due diligence. It would have
12 been a whole different process.
13 They said some of them agreed to just look into it as a
14 favor to Beecher Carlson, but they were never going to write a
15 policy. And so there was some -- something suspect. Some of
16 the individuals said, oh, this looks very legitimate. We
17 priced it around. Now, one of -- some of them said, oh, we
18 priced it around. There's other testimony that some of it's
19 been designated by us that I didn't cover today for purpose of
20 time that say, yeah, but no other insurer would -- no other
21 insurer would do it at this price. Right?
22 Which just shows it's not -- even if it's a thing,
23 theoretically, this particular transaction is not arm's
24 length. Obviously, they grossly overpaid. They did it in a
25 way that was very highly irregular for any insurance company.

1 And they -- and for Sentinel, it was the one and only ATE
2 policy they ever tried to issue.
3 So, yes, it's a thing. That's why they -- there's enough
4 there that they, in some of their deposition testimony, can
5 sort of say, this is a legitimate thing. And that's why, you
6 know, if we take them at their word, it's perfectly legitimate
7 to have a hundred -- you know, had they told us, hey, we spent
8 $25 million and we got in a $100 million insurance policy, we
9 probably would have said, that sounds okay. You know.
10 Had they told us we shipped away $300 million face-value
11 assets that were worth at least $105 million and then we're
12 going to buy $100 million policies and we're going to hide it
13 from you and never pay out on it, that wouldn't be so good.
14 And that's the difference between a thing that's legit and a
15 thing that is let's just say highly irregular.
16 THE COURT: Okay. All right. I just wanted to be
17 educated on that point. I realize what the real beef is here,
18 the nondisclosure.
19 MR. CLUBOK: Did I give you the information you
20 needed?
21 THE COURT: What?
22 MR. CLUBOK: I'm sorry. Did I give you what you
23 needed --
24 THE COURT: Yes, you did.
25 MR. CLUBOK: -- on that?

1 THE COURT: All right. Thank you.
2 MR. CLUBOK: Okay.
3 THE COURT: Was there anything else? I think you
4 rested, correct?
5 MR. CLUBOK: I assume Mr. Morris -- I don't know if
6 there's going to be "closing arguments." I don't need any if
7 Mr. Morris is comfortable with standing on the record, unless
8 there's final --
9 MR. MORRIS: I've got about three minutes, Your
10 Honor, if I may.
11 THE COURT: All right. Go ahead, Mr. Morris.
12 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT
13 MR. MORRIS: Number one, I don't think anybody could
14 fairly call this insurance policy a legitimate thing, and you
15 know that from two undisputed facts. Number one, it was never
16 disclosed, and number two, nobody ever made a claim until Jim
17 Seery did. So nobody ever tried to recover the assets and
18 nobody ever disclosed the existence of the policy. It is not
19 a thing.
20 Number two, at Slide 79 of Mr. Clubok's presentation,
21 you'll see a transfer of $6.4 million to an entity called Main
22 Spring. You'll see that that transfer was made in the spring
23 of 2020, and we believe, Your Honor, that that $6.4 million
24 was part of the $10 million that Mr. Dondero referred to in
25 April in open court when he testified that he had caused $10

1 million to be paid to Highland's insiders.
2 So, think about that. They transfer the money to
3 Sentinel. That money was from the Defendants that UBS was
4 suing. And then they use that money to pay the insiders at
5 the same time they're signing the indemnity agreement. At the
6 exact same moment.
7 Your Honor, I told you that Mr. Seery and the Debtor and
8 the independent board agreed to the preliminary injunction but
9 could not agree to a permanent injunction because they didn't
10 have personal knowledge of all the facts. We knew of the
11 existence of the policy, but Mr. Clubok's presentation and the
12 work done by his team show exactly the justification, the
13 rationale, and the common sense that Mr. Seery and the
14 independent board showed in not rushing to a conclusion here.
15 The evidence that Mr. Clubok presented today was unknown
16 to the Debtor, was unknown to the independent board, and we
17 thank them for their diligence and for their work.
18 At the end of the day, Your Honor, to borrow a phrase the
19 Court has used before, this is not a garden-variety commercial
20 dispute. This is not a garden-variety fraudulent transfer
21 action. This is not a garden-variety breach of fiduciary
22 duty. This is fraud, plain and simple, compounded by the
23 failure, the intentional -- knowing, intentional failure to
24 disclose post-bankruptcy.
25 We'd respectfully request that the Court grant the motion.

1 THE COURT: All right.
2 MR. CLUBOK: Your Honor, if I may.
3 THE COURT: You may.
4 MR. CLUBOK: Very briefly. I just --
5 THE COURT: Go ahead.
6 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF
7 MR. CLUBOK: Sorry. Yeah, as a housekeeping matter,
8 I would like to offer our presentation as a demonstrative
9 exhibit reflective of the evidence. We will provide you with
10 a hard copy. It refers to, obviously, many of the exhibits
11 that we submitted, and it'll be up to the Court's convenience,
12 I think. I think we've -- we've given a copy to Mr. Morris
13 ahead of time. I think there's no objection to that being
14 submitted to Your Honor.
15 I would just like to, you know, end by saying, you know,
16 we started the proceedings, we appreciate, we understand
17 certainly why Highland wanted to stop the bleeding and stop
18 spending money on this proceeding, and so that -- we have no
19 issue with that.
20 We would ask that -- we provided a redline that makes mild
21 edits that I think -- dare I hope, Mr. Morris, that, per
22 agreement, can and should be made to the proposed order. They
23 submitted one and we submitted a slightly proposed -- one
24 which also referred to a consideration of the evidence that we
25 anticipated being able to present today, and most importantly,

1 now that we've presented that evidence today, I think that
2 justifies a modest change in the order along the lines to that
3 effect.
4 I see Mr. Morris nodding, so hopefully that means he
5 agrees.
6 MR. MORRIS: It does. We hadn't heard the evidence
7 before, Your Honor. I'd never seen Mr. Clubok's presentation.
8 I didn't know quite what he was going to do today. And that's
9 the reason why we had a slight dispute over some of the
10 language.
11 But based on the evidence that I heard, you know, if we
12 could take one last review of it and confirm, but I have no
13 reason to believe that we'll have any objection.
14 THE COURT: All right. And you have no objection to
15 the PowerPoint being part of the record, Mr. Morris?
16 MR. MORRIS: Not as -- not as a demonstrative
17 exhibit, Your Honor, --
18 THE COURT: Okay.
19 MR. MORRIS: -- which is, I think, what Mr. Clubok
20 said.
21 THE COURT: All right. Well, Mr. Clubok, if you
22 could send it to Traci Ellison, with copy to counsel, I will
23 make that part of the record. It's always, I think, easier to
24 understand a transcript, if anyone's looking at it after the
25 fact, if they have the PowerPoint in the Court file to cross-

1 reference.

2 Well, it's been, for lack of a better term, an amazing day
3 of evidence. The Court believes the evidence is overwhelming
4 to justify the granting of an injunction here. And as was
5 stated early on, it's been phrased in terms of it being a
6 permanent injunction, but as I understand it, the injunction
7 sought would be to enjoin disbursement, disposition of the so-
8 called transferred assets until a further order of a court of
9 competent jurisdiction with regard to fraudulent transfer
10 litigation or other litigation over the Sentinel matters or a
11 settlement with Sentinel.

12 Certainly, the four prongs for an injunction have been met
13 here.

14 I believe the relief is necessary to avoid immediate and
15 irreparable harm to the UBS entities.

16 I believe UBS has made a very strong showing of likely
17 success on the merits here with regard to these transfers of
18 assets being fraudulent and with regard to a potential showing
19 of insolvency or inability of the transferors to pay debts as
20 they become due, and as a result of the transfers,
21 consideration for the transfers appears to have been
22 inadequate.

23 Secrecy of the transaction.

24 Certainly, there are all of these indicia of fraud
25 suggesting UBS would succeed on the merits.

1 The balance of equities certainly tip in favor of UBS
2 here. Injury to it would appear to outweigh any damages that
3 the injunction would cause Highland. And such relief would
4 serve the public interest.
5 So, the Court reserves the right to supplement in a more
6 fulsome form of order, but, again, the motion of the Debtor to
7 withdraw its answer disputing this relief is granted, and I
8 think judgment for this injunctive relief is also appropriate
9 at this juncture.
10 I said that it's been an amazing day of evidence. It's
11 been amazing. It's been exhausting. It's been troubling.
12 You know, I think it was, Mr. Morris, you who said at the
13 beginning today that, you know, Debtor-in-Possession counsel
14 is not a prosecutor, it's not the SEC, it's not the State Bar
15 disciplinary agency. And, you know, your goal for your client
16 is always to maximize value for creditors and get a good
17 overall result for all parties in interest affected by the
18 bankruptcy.
19 I could say something similar right now that I, you know,
20 I oversee these things. I apply the Bankruptcy Code to
21 motions filed and different relief sought and grant relief
22 where appropriate that is designed to help companies or people
23 get a fresh start and help creditors get paid what they're
24 justly owed.
25 But this evidence today, I am, unfortunately, duty-bound

1 to do more than just sign the judgment and order that's
2 submitted to me and forget about it. I'm just letting you
3 know that referrals will likely be made to the State Bar
4 disciplinary agencies regarding the attorneys' activities that
5 I've heard about. And, you know, it's not a good day in court
6 when I'm looking at 18 U.S.C. during the middle of evidence,
7 but I'm just going to let observers who -- I don't who all is
8 on the WebEx today. I don't have all the little boxes on my
9 screen to know. But 18 U.S.C. Section 3057: Any judge having
10 reasonable grounds for believing that violation of laws of the
11 United Stated relating to insolvent debtors has been committed
12 or that an investigation should be had in connection therewith
13 shall report to the appropriate United States Attorney all the
14 facts and circumstances of the case, the names of the
15 witnesses, and the offense or offenses believed to have been
16 committed. And there are different provisions of Title 18
17 that I'm very, very concerned may be implicated.
18 So, I'm duty-bound to go back and carefully look at some
19 of the exhibits that have been submitted today. And, again,
20 I'm not the U.S. Attorney and I'm not a criminal judge. I
21 don't plan on combing over everything as, you know, a grand
22 jury would do. But if I think there is enough there, I will
23 be making a referral to the U.S. Attorney.
24 Again, the nondisclosure, the potential cover-up here is
25 beyond troubling. And, you know, I'm duty-bound to do what

1 I've got to do if the exhibits look as damning as, you know,
2 on further reflection in chambers, as they did sitting here on
3 the bench today.
4 So, you know, I regret, I regret this greatly, but, you
5 know, I'm just letting people know that it's a potential
6 consequence of what I've heard today.
7 All right. Anything else? All right.
8 MR. MORRIS: No, Your Honor. Thank you.
9 THE COURT: Thank you. We stand adjourned.
10 (Proceedings concluded at 1:16 p.m.)
11 --oOo--
12
13
14
15
16
17
18
19
20 CERTIFICATE
21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the above-entitled matter.
23 **/s/ Kathy Rehling** **08/10/2022**
24 ______________________________________ ________________
25 Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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EXHIBIT 16

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

2

3 In Re:	)	**Case No. 19-34054-sgj-11** Chapter 11
4 HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas December 4, 2023 1:30 p.m. Docket
5 6 Reorganized Debtor.	)	- MOTION FOR ORDER TO SHOW CAUSE [3910]
7	)	- MOTION TO STRIKE [3957]

8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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25 Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 DALLAS, TEXAS - DECEMBER 4, 2023 - 1:39 P.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Stacey Jernigan presiding.

5 THE COURT: Good afternoon. Please be seated. All
6 right. We are here in Highland Capital. We have certain
7 motions to hold certain parties in contempt of the Court's
8 gatekeeping orders. So we're going to start out by getting
9 appearances from lawyers in the courtroom, please.

10 MR. LEVY: Josh Levy from Willkie Farr & Gallagher on
11 behalf of Jim Seery.

12 THE COURT: Okay.

13 MR. LEVY: I'm joined by my colleague Mark Stancil.

14 THE COURT: Thank you.

15 MR. MORRIS: Good afternoon, Your Honor. John
16 Morris; Pachulski Stang Ziehl & Jones; for Highland Capital
17 Management, LP. I've got my colleague Hayley Winograd here
18 with me, and Mr. Seery, Highland's CEO, is in the courtroom
19 today.

20 THE COURT: Okay. Good afternoon.

21 MR. LEE: Good afternoon, Your Honor. Jim Lee from
22 Vinson & Elkins, along with Michael Lee from Vinson & Elkins.
23 We represent two law firms that have been charged with this
24 motion. One is the Lynn Pinker firm. Representing Lynn
25 Pinker, we have Mr. Michael Hurst, a named partner, and then

1 Chris Akin, who serves as general counsel. And the other is
2 The Pettit Firm, and Julie Pettit is present as well.
3 THE COURT: Okay. Thank you.
4 MR. LEE: Thank you, Your Honor.
5 MS. HARTMAN: Good afternoon, Your Honor. Michelle
6 Hartman; Baker McKenzie; on behalf of Scott Ellington. He has
7 appeared voluntarily today, without subpoena. With me in the
8 courtroom is Reese Griffin and Deb Dandeneau, also from Baker
9 McKenzie.
10 THE COURT: Okay. Thank you. Ms. Hersh, you're
11 approaching?
12 MS. HERSH: Good afternoon, Your Honor. Susan Hersh
13 here on behalf of Russell Nelms and John Dubel. Mr. Nelms is
14 in the courtroom with us here today. I'm local counsel with
15 Hogan Lovells. Richard Wynne is on the phone as well as Mr.
16 Dubel.
17 THE COURT: Thank you.
18 MS. HERSH: Thank you.
19 THE COURT: All right. I think that's all the
20 courtroom lawyer appearances. Anyone on the WebEx who is
21 wanting to appear in this matter?
22 MS. LAMBERT: Lisa Lambert for the United States
23 Trustee.
24 THE COURT: Thank you. Any others?
25 MR. WYNNE: Good afternoon, Your Honor. Richard

1 Wynne of Hogan Lovells. As Ms. Hersh said, I'm counsel for
2 Russell Nelms and for John Dubel, and will be appearing --
3 will be making a short opening statement for them.
4 THE COURT: Okay. Thank you.
5 Any other lawyer appearances?
6 All right. Before we begin, I want to explain something
7 with regard to people on the video. My Court Reporter/
8 Judicial Support Specialist, Mike, was asking some questions,
9 and I want to explain his questions.
10 We had some rule changes about video court on September
11 21st, and that came from Washington, the Administrative Office
12 of the Courts. And what we were told is that after September
13 21st the relaxed COVID rules were going to be changed so that,
14 while the Court always has some discretion in allowing video
15 court, the general rule was going to be that only parties in
16 interest and their lawyers can watch a court proceeding by
17 video. Okay?
18 So if you're not a party in interest or a lawyer for -- or
19 a professional, I should say, for a party in interest -- in
20 other words, if you're just a member of the public who's
21 curious or media, then the new rule is that you can only
22 listen in, you can't watch by video. So I know there's a way
23 on WebEx where you can just listen in, not watch by video. So
24 that's during non-evidence.
25 But when evidence is being presented, a member of the

1 public or media is not even supposed to listen. Okay? You
2 can come here and be live in the courtroom.
3 So I don't know if that's crystal clear to everyone, but
4 basically, if you're on the WebEx, you can watch all you want
5 if you're a party in interest or if you're a professional for
6 a party in interest in the Highland matter. But if you're a
7 member of the public or media, as of September 21st you can
8 only listen in, not watch. And then if a witness takes the
9 witness stand, you need to be cut off.
10 We've pretty much been just doing the honor system on
11 that, as well as I think a lot of other courts. And so that's
12 pretty much what I've instructed Mike to do here. Ask in the
13 beginning, and then now you know the rules, and so the Court
14 reserves the right to do what it thinks it needs to do if it
15 thinks there's a rulebreaker out there. But I just wanted to
16 be clear why we were asking the questions and what the new
17 rules of the road are on video court. I don't know if you're
18 hearing that in other courts or not, but that's the new rule
19 as of September 21st.
20 All right. With that out of the way, I'll hear any
21 opening statements --
22 MR. LEE: Your Honor?
23 THE COURT: -- or housekeeping matters.
24 MR. LEE: Yes. Your Honor, I do have procedural or
25 housekeeping matters I'd like to address before we open.

1 THE COURT: Okay.
2 MR. LEE: If I may. Thank you, Your Honor. Again,
3 for the record, Jim Lee of Vinson & Elkins.
4 A couple things. One, there was a late-filed joinder by
5 Mr. Daugherty in this matter, who is not a protected party,
6 could not have had any basis for bringing the motion that
7 Movants have brought. It was filed at the eleventh hour, even
8 though this motion has been on file for two and a half months.
9 And we believe it was done solely for the purpose of trying to
10 prejudice Mr. Ellington and the law firms that represent him.
11 They attached more than 700 pages of exhibits, yet they never
12 filed a witness and exhibit list. And as I appreciate this
13 Court's rules as well as the Local Rules, those cannot be
14 admissible.
15 So, for that reason alone, as well as the purpose behind
16 their filing it, two things. One is we would object and move
17 to strike the joinder, and two is we want to make certain that
18 Mr. Daugherty does not testify.
19 So, to that extent, not knowing whether there are other
20 nonparty witnesses in the courtroom or not, we would invoke
21 the rule out of an abundance of caution.
22 So, basically, a two-pronged comment there, Your Honor.
23 First, we move to strike Mr. Daugherty's joinder as untimely,
24 inappropriate, and not supported by a witness or exhibit list,
25 even though -- and the exhibits attached are not supported by

1 affidavit, making them all rank hearsay anyway. We think it
2 was done solely to prejudice us, and we'd ask the Court to
3 strike it.
4 And then, secondly, we would like to invoke the rule.
5 And then I do have a third, once the Court addresses
6 those.
7 THE COURT: Okay. Well, let me take these in steps.
8 First, well, let me ask. Has anyone named Patrick Daugherty
9 as a witness on the witness list?
10 MR. LEE: Not that I've seen, Your Honor.
11 MS. HARTMAN: No, Your Honor.
12 MR. MORRIS: We have not, Your Honor. I don't see
13 any reason why we should be precluded from calling him on
14 rebuttal if we chose, but we did not put him on our witness
15 list.
16 MR. LEE: Well, if that's the case, then we would
17 invoke the rule, because counsel is just indicating he may be
18 a rebuttal witness.
19 THE COURT: Okay. Thoughts about whether it's
20 appropriate to invoke the rule?
21 MR. MORRIS: I would say, Your Honor, I have
22 absolutely no intention of calling Mr. Daugherty. The thought
23 never occurred to me until Mr. Lee raised the issue just now.
24 But I, you know, as far as I understand, the rule is, if
25 somebody puts on their case and you want to call a rebuttal

1 witness, that, you know, it's rebuttal, you don't have to
2 disclose. I mean, I just don't want my hands to be tied
3 unfairly. I have no intention of calling him, but I've got to
4 hear their case.
5 THE COURT: Okay.
6 MR. LEE: With that statement of his position, Your
7 Honor, then we invoke the rule because there's a potential he
8 could testify, and he should not be in here hearing the other
9 testimony.
10 THE COURT: All right. Well, let me carry that for a
11 moment.
12 We have a lawyer standing up. I don't know if your Mr.
13 Daugherty's lawyer or not.
14 MR. RAYSHELL: I am, Your Honor. Drake Rayshell.
15 THE COURT: Do you want to speak at the podium and --
16 MR. RAYSHELL: Sure.
17 THE COURT: -- respond however you want to respond?
18 MR. RAYSHELL: Thank you, Your Honor. Drake Rayshell
19 on behalf of Patrick Daugherty from Gray Reed.
20 We're just here in attendance today. Our joinder was
21 filed in support of Movants' briefing, but no intent to
22 participate in the hearing other than listen to the happenings
23 that are going on today.
24 He wasn't identified as a witness on any of the witness or
25 exhibit lists. We came to the hearing with the intention that

1 we'd just sit in the gallery and pay attention to the
2 proceeding.
3 And with that said, as far as their motion to strike, same
4 argument. And just to be concise, Your Honor, there were two
5 exhibits that we attached there that we believe the Court
6 could take judicial notice of, as they were state court
7 filings, just to establish the argument that Respondents were
8 actually on notice of a couple of the motions that they claim
9 they were not.
10 THE COURT: All right. Well, here's what I'm going
11 to do. I'm going to first grant the motion to strike.
12 MR. RAYSHELL: Okay.
13 THE COURT: Okay? It was late-filed, among other
14 reasons. Your 700 pages of attachments didn't have any
15 declaration. And I haven't, by the way, read it. It came in,
16 I think, after hours Thursday night, maybe.
17 MR. RAYSHELL: It --
18 THE COURT: I was out of town at an ABI conference in
19 Arizona --
20 MR. RAYSHELL: Okay.
21 THE COURT: -- Thursday through Saturday. So --
22 MR. RAYSHELL: Understood.
23 THE COURT: -- I haven't read it, if anyone's worried
24 about I've got anything in my brain that I read. So I will
25 strike it.

1 With regard to the attempt to invoke the rule, I'm going
2 to deny that. No one has named him on a witness list, and
3 I've heard no one intends to call him.
4 Now, it is possible that he could be called as a rebuttal
5 witness to impeach. I think it would be probably limited to
6 only impeachment evidence. But I'm not going to exclude him
7 from the courtroom based on that probably-remote possibility.
8 I just, I think he has a right to be in the courtroom and hear
9 something that's going to involve him to some extent.
10 So I deny that motion to have him excluded from the
11 courtroom.
12 MR. LEE: Your Honor? Your Honor, thank you. I
13 appreciate what you've just said with respect to Mr.
14 Daugherty. But I want to invoke the rule generally. So to
15 the extent there are any witnesses who intend to testify that
16 are not parties, then they would need to leave the courtroom
17 as well.
18 I don't know if there are. I just want to do it as a
19 procedural protection.
20 THE COURT: All right. Well, let's talk about who's
21 been named as a witness. I think Mr. Ellington was on
22 somebody's witness list.
23 MR. LEE: And he's a party.
24 THE COURT: And he's a party. And I think there was
25 a lawyer. Was Ms. Deitsch-Perez --

1 MR. MORRIS: Yeah. We won't be calling her, Your
2 Honor.
3 THE COURT: You won't be calling her?
4 MR. MORRIS: I'm just calling -- we're just calling
5 Scott Ellington.
6 THE COURT: Scott Ellington?
7 MR. MORRIS: Let me be transparent. We're just
8 calling Scott Ellington.
9 THE COURT: Okay.
10 MR. LEE: Very well.
11 THE COURT: And I don't --
12 MR. LEE: We only have our two parties named, so --
13 THE COURT: Okay.
14 MR. LEE: -- I think we're fine, then.
15 THE COURT: We're fine, then.
16 MR. LEE: Unless there's some undisclosed, and then
17 we'll fight about that.
18 THE COURT: Okay.
19 MR. LEE: All right. Fine. Thank you, Your Honor,
20 for that. And I had --
21 MR. RAYSHELL: May I be dismissed, Your Honor?
22 THE COURT: You may.
23 MR. LEE: I had one other I'll call it a procedural
24 or a housekeeping matter. The Court mentioned that we were
25 here on motions for contempt, but what was noticed for today

1 and what I appreciate was whether or not a show cause hearing
2 should be scheduled and a show cause order entered. That's
3 what the notice of hearing says, that's what the proposed
4 order submitted in connection with the motion says, and
5 that's what the motion is entitled.
6 So, to my knowledge, the Court has never entered a show
7 cause order up to this point in time, and I thought we were
8 down here to argue about whether the Court should or not.
9 THE COURT: Okay. Mr. Morris, do you want to
10 address that?
11 MR. LEVY: That -- that's right, Your Honor. We
12 filed a motion for order to show cause, and that's what we're
13 here for, is an order to show cause for why they should not
14 be sanctioned. So, I don't think the parties disagree on
15 this issue.
16 THE COURT: Okay. So let's make sure we're all
17 clear. So, you, like Mr. Lee, envision a two-part hearing,
18 so I would potentially come back if --
19 MR. MORRIS: No. No. No. I -- respectfully, Your
20 Honor, we're here for a trial on the merits. That's what we
21 scheduled. That's what the hearing is. That's why we're all
22 here and that's why we -- who would do that? I mean, I'm
23 hearing this for the first time right now.
24 MR. LEE: Well, --
25 MR. MORRIS: I'm hearing this for the first time

1 right now. Your Honor did not sign the order to show cause.
2 No doubt about it. But we all consented to be here, with
3 exhibit lists, with -- I mean, if he wants to do it twice, I
4 hear a lot of complaints, I'll do it twice. If he wants to
5 do that twice. Because I don't think the -- I do not think
6 that would be efficient from any concept. I think if Your
7 Honor gets to the point where Your Honor believes that the
8 order to show cause is appropriate, I think that -- that is a
9 trial on the merits as far as I'm concerned.
10 THE COURT: Okay.
11 MR. LEE: Your Honor, I accept that that's
12 presumptuous to think we'll be here twice, because we don't
13 think, once the Court hears the evidence, you're going to
14 enter a show cause order.
15 So maybe the evidence would be the same, and I'm not
16 disputing that, but I only know what they noticed and what
17 their motion said, and I know that, in prior matters, this
18 Court has issued a show cause order and then held a contempt
19 hearing.
20 THE COURT: Okay. Well, I'm going to hear evidence
21 today on what's happening and whether or not that is contempt
22 of the Court's gatekeeping orders. If I find that there is
23 contempt of the Court's gatekeeping orders, I mean, maybe
24 we'll come back for what is an appropriate sanction. I mean,
25 --

1 MR. MORRIS: And I would just point out, Your Honor,
2 in the pleading filed by Mr. Lee at Docket 3957, he concludes
3 by saying, "Finally, Movants' request for this Court to hold
4 the state court law firms in contempt under 11 U.S.C. § 105
5 is unwarranted." And he goes on. So, you know, he knew full
6 well what was happening today.
7 THE COURT: Okay.
8 MR. LEE: I don't dispute that we will be trying the
9 same matters, Your Honor.
10 THE COURT: Okay.
11 MR. LEE: It was just the way it was done
12 procedurally, and I'm just trying to play by the rules.
13 THE COURT: Okay. Well, I guess I have a lot of
14 reactions. I don't think due process has been denied to
15 anyone. The motion has been on file since September 13th.
16 We're now at December 4th.
17 I think it was quite clear what the argument was, what
18 the evidence might be. And, again, if I were to find
19 contempt of the gatekeeping orders, I might very well say
20 we'll come back for part two to have you each put on evidence
21 or counter-evidence about what an appropriate sanction might
22 be, whether it's reimbursement of attorneys' fees or what.
23 But we're going forward on the contempt issue and the
24 evidence and argument regarding what's happened and whether
25 it violates the gatekeeping order. All right?

1 MS. HARTMAN: Excuse me, Your Honor.
2 THE COURT: Yes.
3 MS. HARTMAN: We have a courier outside with
4 documents. May I be excused --
5 THE COURT: Oh, certainly.
6 MS. HARTMAN: -- temporarily to go get the
7 documents?
8 THE COURT: Okay. Thank you. Thank you.
9 All right. Well, shall we move to opening statements?
10 MR. LEVY: Yes, Your Honor. And one very small
11 housekeeping matter before we get started. The parties have
12 met and conferred about our respective exhibit and witness
13 lists, and none of the parties have objections to any of the
14 exhibits that have been proffered.
15 THE COURT: Okay.
16 MR. LEVY: So, on behalf of the Movants, we would
17 move our exhibits into evidence.
18 THE COURT: All right. So, could I get confirmation
19 there is no objection?
20 MR. LEE: No objection here, Your Honor.
21 MS. HARTMAN: No objection, Your Honor.
22 THE COURT: All right. So those will be admitted.
23 While I pull up the docket, why don't you tell me for the
24 record at what docket entry those are filed.
25 MR. LEVY: Our witness and exhibit list is Docket

1 Entry 3977.
2 THE COURT: Okay. 3977. All exhibits located there
3 are admitted.
4 (Movants' exhibits are received into evidence.)
5 THE COURT: Okay. What about the others?
6 MR. LEE: Your Honor, if I may.
7 THE COURT: Uh-huh.
8 MR. LEE: Your Honor, sort of that same agreement,
9 the Law Firms' witness and exhibit list and attachments are at
10 Docket 3976.
11 THE COURT: Okay.
12 MR. LEE: And we move their admission in toto.
13 THE COURT: Okay. Could I get confirmation no
14 objection?
15 MR. LEVY: No objection, Your Honor.
16 MS. HARTMAN: No objection, Your Honor.
17 THE COURT: All right.
18 MR. LEE: And Your Honor, if I may approach, I have a
19 hard copy for the Court --
20 THE COURT: Okay.
21 MR. LEE: -- because I know you like it. And I'm
22 also going to be using this notebook, so I'll go ahead and
23 give it to you.
24 THE COURT: Okay. Terrific.
25 MR. LEE: Thank you.

1 THE COURT: All right. So, for the record, all
2 exhibits at Docket 3976 are admitted.
3 (Law Firms' exhibits are received into evidence.)
4 THE COURT: Okay. And yes?
5 MS. HARTMAN: And Your Honor, with regard to Mr.
6 Ellington, the exhibits are at Docket 3978, and they consist
7 of SE 1 to SE 10. And we'd move for those to be admitted as
8 well.
9 THE COURT: Okay. Could I get confirmation these are
10 not objected to?
11 MR. LEVY: No objection.
12 MS. HARTMAN: Your Honor, we have a copy for you as
13 well.
14 THE COURT: Okay. Terrific.
15 Mr. Lee, no objection?
16 MR. LEE: Oh, no objection.
17 THE COURT: Okay.
18 MR. LEE: I apologize, Your Honor.
19 THE COURT: Okay. All exhibits at Docket Entry 3978
20 are also admitted.
21 (Scott Ellington's exhibits are received into evidence.)
22 MR. LEVY: We understand Your Honor already received
23 a copy of our exhibits. Is that correct? If not, we have it
24 for you.
25 THE COURT: I do have them. It's 1 through 39. Let

1 me make sure I've got them all. 1 through 39?
2 MR. LEVY: Yes. Yes.
3 THE COURT: Yes, I've got those. Now I'm going to
4 have Mr. Ellington's. Okay.
5 Apologies for the occasional noise. They are doing
6 construction in our chambers next door, so you may hear
7 banging occasionally. I hope not, but we'll do our best to
8 keep them under control.
9 OPENING STATEMENT ON BEHALF OF JAMES P. SEERY
10 MR. LEVY: So, I'm Josh Levy from the law firm of
11 Willkie Farr & Gallagher, as I announced earlier, on behalf of
12 Jim Seery. You will also be hearing from Mr. Wynne on behalf
13 of Mr. Dubel and Mr. Nelms, who's on WebEx today. And you'll
14 also be hearing from Mr. Morris on behalf of Highland and the
15 Claimant Trust.
16 And we're seeking to hold Scott Ellington and his counsel,
17 The Pettit Law Firm and Lynn Pinker Hurst & Schwegmann, in
18 civil contempt for violating all three of this Court's
19 gatekeeper orders because they are using the stalking action
20 against Patrick Daugherty in the Texas state court as a
21 vehicle to pursue claims against Highland and Mr. Seery
22 without this Court's leave.
23 All three elements required for a civil contempt filing
24 are satisfied here. Under the gatekeeper orders, Ellington
25 and his counsel may not pursue a claim or cause of action

1 against Seery and Highland as protected parties without this
2 Court's leave. There is no dispute that the gatekeeper orders
3 are in effect. There is no dispute that the gatekeeper orders
4 prohibit Mr. Ellington and his counsel from pursuing claims
5 against Seery and Highland without this Court's leave.
6 There are two questions before the Court today. One, what
7 constitutes pursuit of a claim or cause of action under the
8 gatekeeper orders? And two, did Mr. Ellington and his counsel
9 violate the gatekeeper orders by doing so?
10 For the first question, we posit that pursuing a claim or
11 cause of action means seeking evidence or making court filings
12 for the purpose of developing a claim or cause of action
13 against a protected party. And as Mr. Morris will explain,
14 Mr. Ellington and his counsel have clearly done so. Mr.
15 Ellington and his counsel did not seek Your Honor's leave to
16 take any of the discovery or make any of the court filings at
17 issue today. This violates the gatekeeper orders.
18 Finally, this is not a motion we bring lightly. We tried
19 for months to avoid bringing it. We were even prepared to
20 permit Mr. Seery to sit for a deposition in the stalking
21 action while objecting to questions we thought violated the
22 gatekeeper order. But as the evidence today will show, Mr.
23 Ellington and his counsel have point-blank admitted, in emails
24 and in sworn declarations, that they are using discovery in
25 the stalking actions to pursue purported conspiracy and quid

1 pro quo claims against Highland and Seery. And they have
2 already provided correspondence about that discovery in the
3 stalking action to parties in this bankruptcy case, which have
4 used them to bring claims and motions against Seery.
5 And with that, I turn it over to Mr. Wynne and to Mr.
6 Morris.
7 THE COURT: Okay.
8 MR. LEVY: Yes.
9 THE COURT: I'm already asking questions. That's not
10 a good sign.
11 MR. LEVY: Of course.
12 THE COURT: You said what's at issue here is what is
13 pursuit of a claim under the gatekeeping orders, which I
14 wholeheartedly agree that's primarily what's at issue today.
15 You said it's your position that pursuit of a claim could be
16 seeking evidence or making a court filing for purposes of
17 developing a claim. Did I get your quote correctly?
18 MR. LEVY: Yes, that's right.
19 THE COURT: Okay.
20 MR. LEVY: And what -- the filings for you in closing
21 arguments, that'll have that written out for you.
22 THE COURT: Okay.
23 MR. LEVY: So don't need to worry about getting that
24 down.
25 THE COURT: Okay. I did nevertheless. Okay. Thank

1 you. Who's next? Mr. Morris?
2 MR. MORRIS: Mr. Wynne is going to go next.
3 MR. LEVY: Yes.
4 MR. MORRIS: He's on the WebEx.
5 THE COURT: Oh, I'm sorry. Okay. You all were tag-
6 teaming for Mr. Seery. Go ahead.
7 OPENING STATEMENT ON BEHALF OF RUSSELL NELMS AND JOHN DUBEL
8 MR. WYNNE: Thank you, Your Honor. It's Richard
9 Wynne of Hogan Lovells, again, on behalf of Mr. Nelms --
10 THE COURT: For Mr. Nelms?
11 MR. WYNNE: -- and Mr. Dubel.
12 THE COURT: Uh-huh.
13 MR. WYNNE: I apologize, Your Honor, for not being
14 there today in person. I wasn't able to travel. And Mr.
15 Dubel is actually also on the WebEx but not -- was not able to
16 be there today.
17 Your Honor, the focus of most of the papers filed and the
18 reason why I wanted to do an opening statement was because
19 there's voluminous evidence that has been filed really
20 relating to Mr. Seery and Highland and the actions and the
21 investigation that directly affected them. But I'm here to
22 speak for the two former independent directors, Mr. Nelms and
23 Mr. Dubel, who have been I would call it collateral damage and
24 the subjects of an improper campaign of harassment as
25 ostensible third-party witnesses.

1 All of the evidence that I'd like to discuss today is
2 contained in my declaration that Highland filed in the
3 original motion. That's Docket No. 3914. And it's been
4 admitted as Seery Documents 30 to 39.
5 And Highland and Mr. Seery did discuss some of that in
6 their memorandum, but I'd like to really call the Court's
7 attention to some specific items that we think are very
8 important.
9 And I also want the Court to know that, notwithstanding
10 what we think have been some violations of the gatekeeper
11 order over the past year, we have really not rushed into court
12 in order to claim those. We've tried to work those things
13 out. We tried to work a lot of things out. But we think that
14 a violations just have become too willful and too blatant, and
15 it's all based on documentary evidence.
16 First, Your Honor, Mr. Dubel and Mr. Nelms had to hire
17 counsel, us, to represent them with respect to these matters.
18 We also had to engage not only co-counsel here in Texas, Ms.
19 Hersh, who's in the courtroom, but we've previously had to
20 engage co-counsel in New Jersey because Mr. Ellington filed a
21 lawsuit against Mr. Dubel seeking damages and a contempt
22 finding for him for supposedly not responding to a subpoena, a
23 subpoena that was, in any event, improperly served, and that
24 complaint was dismissed.
25 But Mr. Dubel was actually sued by Mr. Ellington, and we

1 think that was a very clear gatekeeper violation. But because
2 we were able to get it dismissed, we did not bring that to the
3 Court's attention before.
4 I'd like to walk through sort of the chronology, because I
5 know that, you know, there's -- I think I have three very
6 large binders, and I know the Court has those, and tell you
7 how this all developed.
8 First, on November 12, 2022, Mr. Nelms was personally
9 served with a document subpoena from Mr. Ellington, seeking
10 documents relating to his -- the Daugherty state court case
11 where Mr. Ellington was suing Mr. Daugherty.
12 Mr. Nelms wrote to counsel, Michael Hurst. Told counsel
13 that he had no responsive documents, that he didn't know Texas
14 state court procedures, but to let him know -- to let Mr.
15 Nelms know if Mr. Hurst needed him to do anything else. Mr.
16 Nelms ended the email saying, "If you require an affidavit
17 that recites in substance what I have communicated above,
18 please let me know." The simple response he got from Mr.
19 Hurst was, "Thanks, Russ," and there was effectively no
20 further follow-up.
21 These emails are attached as Exhibit 2 to my declaration,
22 Your Honor, if you want to take a look at them.
23 Mr. Nelms then at some point told Mr. Dubel about this,
24 and Mr. Dubel assumed that they would ask him next or subpoena
25 him, so he took the initiative to do his own document search

1 and he sent a similar email to Mr. Hurst on December 5, 2022.
2 That's also contained -- that's the first email in Exhibit 2
3 to my declaration.
4 Mr. Dubel never received a response. This was back last
5 December. And he, frankly, assumed that the matter was over.
6 The facts that I'm now talking about, Your Honor, are
7 contained in the certification that we filed by Mr. Dubel in
8 the New Jersey state court. Specifically, Paragraphs 10 to
9 13, which are Exhibit 7 to my declaration. We had to file
10 that certification in response to the order to show cause that
11 was issued by the New Jersey state court in the lawsuit by Mr.
12 Ellington.
13 So, without ever responding to Mr. Dubel's December 5th
14 email, apparently, according to the papers, Mr. Ellington, on
15 January 17th, sued Mr. Dubel in state court for supposedly
16 ignoring a properly-served subpoena, seeking damages, a
17 finding of contempt, and an order directing Mr. Dubel to
18 appear and provide responsive documents.
19 When Mr. Dubel received these papers -- I think he got
20 them in February by FedEx -- we became involved. And the
21 first thing we did was try to reach out to counsel and get the
22 matter dropped. To me, this seemed to be a relatively simple
23 exercise. Mr. Ellington's counsel, by responding to Mr.
24 Nelms' email --
25 MR. LEE: Your Honor?

1 MR. WYNNE: -- with simply a "Thanks, Russ" and --
2 MR. LEE: Excuse me, Your Honor.
3 THE COURT: Okay. Hang on.
4 MR. LEE: I need to object. He's testifying, Your
5 Honor. He's supposed to be making an opening argument. He's
6 testifying to things he did.
7 THE COURT: All right. Response?
8 MR. LEE: And I don't think that's appropriate for an
9 opening.
10 THE COURT: Your response, Mr. Wynne?
11 MR. WYNNE: I'm really summarizing just the evidence
12 that's in my declaration, Your Honor, and the emails. So I'll
13 -- I will try to refrain from adding any -- anything that
14 might be considered testimony --
15 THE COURT: Okay. I'll overrule the objection --
16 MR. WYNNE: -- as we go through.
17 THE COURT: -- as summarizing the evidence to be
18 shown.
19 MR. WYNNE: As part of -- Your Honor, as -- we
20 engaged with counsel in various emails. Those are in the
21 exhibits. We offered to have Mr. Dubel provide a declaration
22 that he had no responsive documents or knowledge about the
23 matters in the lawsuit. We were not able to get that lawsuit
24 to be withdrawn, so we did engage New Jersey counsel, as
25 reflected in Mr. Dubel's certification that's Exhibit 7 to my

1 declaration. And ultimately, because Mr. Dubel was really --
2 was not properly served, they did ultimately agree to dismiss
3 the lawsuit, and that was dismissed.
4 What I would like to point out, however, with respect to
5 this was that the complaint that Mr. Ellington and his counsel
6 filed in New Jersey, which the complaint is attached as
7 Exhibit 8 to my declaration, Paragraph 7 of that complaint has
8 the following statement that I think they should have known
9 was completely baseless. It states, "Upon information and
10 belief, Daugherty has provided Defendant, Mr. Dubel, with
11 information regarding Plaintiff, Plaintiff's assets,
12 Plaintiff's family, and Plaintiff's home, including videos and
13 surveillance footage, and Defendant is still in possession of
14 such information."
15 I believe that that false statement was undoubtedly relied
16 upon by the New Jersey court that issued the order to show
17 cause against Mr. Dubel. And while ultimately the lawsuit was
18 dropped, at that point, when that statement was filed in
19 January, they already had the correspondence in Exhibit 2.
20 They knew that Mr. Dubel had said he had no information, just
21 like Mr. Nelms, but they went ahead and actually filed a
22 lawsuit against Mr. Dubel, and we think that's a clear
23 violation of the gatekeeper order.
24 Many months later, Your Honor, without contacting me or
25 Mr. Nelms again, he was yet personally served yet again with

1 another document subpoena on June 14, 2023, with a deposition
2 and document request for the following week. This is
3 contained in Exhibit 3 of my declaration.
4 Again, Your Honor, we engaged with counsel to try to get
5 that -- those emails are included in Exhibit 4 of my
6 declaration. We actually had to file a motion to quash the
7 subpoena in order to -- because the date was not something
8 that we could comply with. And that's the Texas state court
9 procedure. You first file a motion to quash if there's a
10 procedural issue with a date, and you later, if you need to,
11 file a motion for a protective order.
12 The email summarizing that back-and-forth is in Exhibit 4
13 of my declaration. Those emails show that we informed Mr.
14 Ellington's counsel that Mr. Nelms had no relevant documents
15 and that in fact he had no knowledge relating to the events
16 referenced in the lawsuit. We offered to provide a
17 declaration to that effect.
18 We then tried to negotiate for a limited deposition of Mr.
19 Nelms, to limit it in time and scope, limit it in scope to the
20 allegations raised in the *Ellington v. Daugherty* lawsuit. And
21 we had a -- we even sent them, on June 30, 2023, we sent them
22 a copy of the gatekeeper order because we wanted to make sure
23 that they were appraised of it. We think they probably knew
24 about it earlier, but we wanted to make sure that we did that.
25 And that's in Exhibit -- as well in Exhibit 4.

1 Subsequently, Your Honor, we were provided with some
2 additional information from -- I don't remember; I think it
3 was from Mr. Morris and from Highland -- and we found out that
4 there had been literally thousands of pages produced in the
5 *Ellington v. Daugherty* lawsuit. We found out that Mr.
6 Daugherty -- we got a copy of his deposition transcripts. We
7 found out that he had in fact testified that he had not ever
8 discussed any of these matters with Mr. Nelms. And we
9 informed Mr. Ellington's counsel about this on July 21, 2023.
10 We had an exchange of emails, which are in Exhibit 4 of my
11 declaration, with Ms. Pettit. I think mostly Ms. Pettit. And
12 it really was through that that we found out that the
13 deposition that they were seeking was really not limited to
14 the -- to the *Ellington v. Daugherty* lawsuit, but it really
15 had much broader, much broader issues that they were trying to
16 do. And it appeared to us that they were trying to use that
17 to pursue other claims, as Mr. Levy asserted.
18 The next item, Your Honor, that I'd like to draw your
19 attention to is that on July 27th we let Ms. Pettit know that
20 she had some of her key facts wrong. She, for example, in one
21 of her emails, thought that Mr. Nelms had been on the Highland
22 board when the Daugherty settlement was approved, and in fact
23 Mr. Nelms' role with Highland had completely ended when the
24 plan went effective, which was in August 2021. He was not on
25 the post-confirmation board, nor was Mr. Dubel. He had no

1 role with Highland post-confirmation, post-the effective date,
2 and he didn't approve the Highland-Daugherty settlement, which
3 was signed in November 2021 and then presented to this Court
4 for approval.
5 We informed Ms. Pettit about those facts. The email is in
6 Exhibit 4, --
7 MR. LEE: Your Honor?
8 MR. WYNNE: -- Page 1.
9 THE COURT: Just a moment, Mr. Wynne. I think I've
10 got another objection.
11 MR. LEE: I am not trying to be obstreperous. But he
12 is essentially reciting his declaration. This is an opening
13 statement, and all we're hearing is a litany of evidence. And
14 I, again, think he's testifying from the podium. I don't
15 think it's appropriate.
16 THE COURT: All right. Mr. Wynne, are all of the
17 items that you're talking about in evidence? I mean, are
18 there pieces of evidence, --
19 MR. WYNNE: Yes, Your Honor.
20 THE COURT: -- not just your declaration and
21 attachments, but --
22 MR. MORRIS: May I just -- may I just help the Court
23 and Mr. Wynne out here? Mr. Wynne's declaration was admitted
24 into evidence as Exhibit 30. For convenience, we broke out
25 the exhibits that were attached to his declaration separately.

1 Mr. Wynne attached nine exhibits. Those exhibits are Exhibits
2 31 through 39. So everything that Mr. Wynne is talking about
3 -- and this is what opening statements I thought were supposed
4 to do -- is to preview the evidence that's in the record for
5 the Court and that the Court is going to hear.
6 So if you just take a look at Exhibits 30 to 39, you'll
7 find that everything Mr. Wynne is describing is now in
8 evidence before the Court.
9 THE COURT: Okay. If that is the case, then I think
10 the objection should be overruled. This is just summarizing
11 evidence that I've admitted. So I'll allow it.
12 MR. WYNNE: Thank you, Your Honor. I appreciate Mr.
13 Morris saying pretty much exactly what I was going to say.
14 So, thank you.
15 Your Honor, going back to the timeline -- and the reason
16 why I'm doing this, Your Honor, is because I really don't want
17 the facts of what we perceive to be significant violations of
18 the gatekeeper order with respect to Mr. Nelms and Mr. Dubel
19 to be lost, because most of what I think you're going to hear
20 for the rest of the day is going to be relating to Highland
21 and Mr. Seery. But I very much just wanted to provide a brief
22 summary. And Your Honor, I'm probably three-quarters of the
23 way through.
24 THE COURT: Okay.
25 MR. WYNNE: So I'd appreciate the Court's time.

1 Your Honor, going back to -- we informed Ms. Pettit that
2 she had her facts wrongs on July 27, 2023. We let her know
3 that, as I said, Mr. Nelms had no role in approving the
4 Daugherty settlement that Highland entered into. And so even
5 though she was in our view attempting to pursue claims, Mr.
6 Nelms still had no knowledge or involvement with that.
7 Without replying to that email, what happened next was
8 that Mr. Nelms was personally served yet again on August 22nd.
9 And Your Honor, I find that just offensive. We were engaged
10 with counsel. We had said we would agree to accept service of
11 counsel -- of process. And here Mr. Nelms has been subjected
12 to basically three process servers. The first time, I can
13 understand that, but to have him be personally served
14 repeatedly I think is pure harassment.
15 We again had to now move to quash in state court. We did
16 that. We were not able to effectively resolve the issues with
17 counsel, so we moved for a protective order. That motion for
18 a protective order is still pending. It's scheduled for a
19 hearing on January 4th, as the subpoena to Mr. Nelms has to
20 this day not been withdrawn.
21 Your Honor, I'd like to draw your attention next to the
22 email we received from Mr. Ellington's counsel, Ms. Pettit, on
23 September 5, 2023. This listed a number of deposition topics.
24 We were again trying to work out a consensual but limited
25 exam. We asked for the exact topics. And in that September

1 5th email, which is part of my declaration, she responded. If
2 Your Honor -- Exhibit 6 to my declaration, on Page 2, has the
3 list of topics. And I think these lists of topics themselves,
4 I'd love to specifically call the Court's attention to them,
5 to Topic 7 to 11, which we think show how clearly this was
6 being used to pursue claims against Highland, against Mr.
7 Seery, and potentially against either Mr. Nelms or Mr. Dubel
8 or both.
9 Topic 7 was "Any meetings or communications between any
10 representative of the Highland bankruptcy estate and Mr.
11 Daugherty and/or his representatives related in any way to
12 Ellington."
13 Topic 8 was "Any instructions or approval by Nelms or
14 others, whether explicit or tacit, provided to Mr. Daugherty
15 with respect to Mr. Daugherty's so-called investigation of Mr.
16 Ellington or the stalking allegations in this case."
17 Topic 9 was "Any consideration provided to Daugherty with
18 respect to Mr. Daugherty's so-called investigation of Mr.
19 Ellington or the stalking in this case, including but not
20 limited to the treatment of Mr. Daugherty's proof of claim in
21 the Highland bankruptcy."
22 Topic 10 was the process for approval of Mr. Daugherty's
23 proof of claim with respect to the settlement announced on the
24 record in the Highland bankruptcy on February 2, 2021.
25 And Topic 11 was the ordinary process for negotiation and

1 settlement of material proofs of claim in the Highland
2 bankruptcy.
3 Your Honor, these -- these topics have little or nothing
4 to do with the state court case, if we look at the complaint,
5 but everything to do with the type of potential claims that I
6 think the gatekeeper order was designed, in our view, to
7 protect the protected parties. This was simply using third-
8 party subpoenas against Mr. Nelms and Mr. Dubel as a fishing
9 expedition to look to see if they could pursue claims against
10 Highland, against Mr. Seery, and I guess potentially against
11 Mr. Nelms or Mr. Dubel if they acted negligently or some other
12 way.
13 With that, Your Honor, I wanted to specifically provide
14 that. Obviously, I'm happy to answer any questions that you
15 have. But I can turn it over to Mr. Morris if Your Honor has
16 no questions.
17 THE COURT: Okay. No questions. Thank you.
18 MR. WYNNE: Thank you, Your Honor.
19 OPENING STATEMENT ON BEHALF OF THE REORGANIZED DEBTORS
20 MR. MORRIS: Good afternoon, Your Honor.
21 THE COURT: Good afternoon.
22 MR. MORRIS: John Morris; Pachulski Stang Ziehl &
23 Jones; for Highland.
24 I just want to preview for you some of the evidence that
25 is now in the record, because we may hear some testimony

1 today, but at the end of the day there is proof by clear and
2 convincing evidence that the breach of the gatekeeper has
3 occurred in the documents themselves.
4 And, you know, one of the things I would encourage the
5 Court to do is to look at the before and the after, because
6 something happened, and I don't know if we'll have here an
7 explanation of what happened, but something happened whereby
8 Mr. Ellington and his lawyers went from being focused on Mr.
9 Daugherty and the allegations in the state court petition to
10 being focused on Mr. Nelms, Mr. Dubel, Mr. Seery, and Highland
11 and what they were doing and whether they were engaged in a
12 conspiracy and what was happening in this courtroom. Right?
13 So the starting point has to be their petition. And Your
14 Honor, I don't know if you have the binder in front of you. I
15 don't know if you want to follow along. But Exhibit 2 is the
16 petition. And it's really -- it's well done. I have no idea
17 if, you know, what's -- what's credible and not credible. I
18 don't know what's true or not true. It's not our case. We've
19 had no involvement in it. But it's really clear. And it's
20 allegations, factual allegations that Mr. Ellington is making
21 against Mr. Daugherty where he alleges that Mr. Daugherty
22 engaged in a pattern of harassment that caused Mr. Ellington
23 and his family members to reasonably fear for their safety.
24 That's the standard of stalking.
25 And the other claim that they brought was invasion of

1 privacy by intrusion, that Mr. Daugherty went someplace that
2 was intrusive. That's the complaint.
3 Mr. Seery is not mentioned. Highland is not mentioned.
4 Mr. Daugherty's bankruptcy claim is not mentioned. There's no
5 mention of a quid pro quo. It has nothing to do with this
6 case. I think we can stipulate to that. I think that's
7 clear. In fact, we kind of did stipulate to that, because
8 when Mr. Daugherty removed that petition to this Court, Your
9 Honor had a whole hearing. Like, what's this complaint about?
10 And so if you turn to Exhibit 3, you'll find Mr.
11 Ellington's reply where his lawyers at Baker & McKenzie
12 represented, among other things, if you look in Paragraph 4 at
13 the bottom, "The state court action does not even mention the
14 Daugherty settlement." That's a fact. Remains true today.
15 At the end, they stated that, "The Daugherty settlement has no
16 bearing on the merits of Ellington's stalking and invasion of
17 privacy claims." That's what they told you. They said,
18 please send this back to state court because the Daugherty
19 settlement with the Highland estate had no bearing on the
20 merits of the stalking claim.
21 In Paragraph 12, they told Your Honor, "The state court
22 action is independent of the administration of the bankruptcy
23 and has no impact on the already-resolved Daugherty
24 settlement."
25 These are the representations they made to this Court.

1 These are the representations this Court relied upon in
2 concluding to remand. And we can find that in Exhibit 4,
3 which is excerpts of the transcript of the hearing on the
4 motion to remand. And it's really -- this is really
5 important, because the last thing Your Honor said, at the
6 bottom of Page 33 continuing to the top of Page 34: "In
7 coming into today's hearing, the only possible hook, if you
8 will, if you want to call it a hook, for the Bankruptcy Court
9 or Federal Court jurisdiction was if this somehow implicated
10 the gatekeeping order that was dangled out in the pleadings;
11 or if it involved the interpretation, implementation, or
12 execution of the confirmed plan or confirmation order; or if
13 the estate was somehow going to be impacted. I just didn't
14 find, based on the evidence or argument, any of these things
15 implicated."
16 That was the Court's conclusion. And you reached that
17 conclusion based on Mr. Ellington's representations to the
18 Court. Remember, before and after. Everybody's on the same
19 page. We took absolutely no position in the case. I think
20 somebody put the whole transcript in here. You'll see, I
21 think it was Mr. Demo, stood up at the very beginning -- it
22 was virtual, so I don't know if he was standing or not -- but
23 he appeared virtually and he said, we take no position, we
24 don't care. Right?
25 So, fast forward. What happens next? Ms. Pettit -- maybe

1 she'll explain -- notwithstanding everything that was said to
2 Your Honor, six months later serves more than a dozen
3 subpoenas on everybody involved in the Highland bankruptcy
4 case. And you can find that in her declaration at Exhibit 27.
5 Always keep the petition -- Mr. Ellington's petition in
6 mind. What was that case about? It was about Mr. Daugherty
7 allegedly engaging in harassing conduct that caused Mr.
8 Ellington to fear for his safety, and that he was intrusive,
9 he was invading privacy by intrusion.
10 Look at Ms. Pettit's declaration. Paragraph 23. I just
11 -- it's wild. In October, they served more than a dozen
12 subpoenas. In Subparagraphs B and K, you'll see the
13 independent directors were served. In Subparagraphs J and M,
14 you'll see former Committee members were served. In
15 Subparagraphs F and G, you'll see Committee counsel. Matt --
16 Matt Clemente and Paige Montgomery were served with subpoenas.
17 You'll see that Marc Kirschner, the Litigation Trustee, in H
18 was served with a subpoena. UBS's counsel, Andy Clubok, was
19 served with a subpoena. I was served with a subpoena. You'll
20 see that in D. And of course, I don't know why he didn't make
21 it on the list, but Mr. Seery was served with a subpoena.
22 A petition for stalking that has no mention of the
23 Highland bankruptcy, somehow anybody involved in the Highland
24 bankruptcy, I guess except for Your Honor, has been served
25 with a subpoena. Before and after.

1 Let's take a look at Mr. Seery's subpoena. It's at
2 Exhibit 7. This is the original subpoena that was served on
3 Mr. Seery. And if you take a look at Page 4, you'll find that
4 all of those topics actually were kind of reasonable. They
5 all relate to Mr. Daugherty's conduct. They all relate to the
6 allegations that he engaged in harassing and stalking conduct.
7 They want to know what Mr. Daugherty gave to Mr. Seery. Did
8 he give him pictures? Did he give him videos? Did he -- did
9 he give him videos of Sara Bell (phonetic)? Did he give him
10 videos of, you know, anybody else?
11 We didn't object. Mr. Seery didn't get personal counsel.
12 We produced some documents. Right? We didn't object. And if
13 we had taken a deposition on those topics, probably wouldn't
14 have been a problem.
15 But that's not what happened. What happened? For
16 whatever reason, and now we get to the after, in June, the
17 following June, six months later, they serve a second
18 subpoena. And that's at Exhibit 8. And you'll see in Exhibit
19 8 Topics 1 through 6 are the exact same, but now they have
20 added three new topics: 7, 8, and 9. And I don't want to
21 belabor the point in my opening, but I think, fairly read,
22 Your Honor, I think it's easy to say that those topics have
23 nothing to do with Mr. Daugherty. They have nothing to do
24 with the stalking action. They have to do with Mr. Seery and
25 Highland's conduct in this courtroom in this bankruptcy case.

1 They are basically looking for information as to whether or
2 not Mr. Seery was conspiring with Mr. Daugherty.
3 Now, we are not here today to talk about the merits of
4 these allegations. If they ever bring a gatekeeper motion,
5 we'd be delighted to do that. The only purpose of today's
6 hearing is to find out whether the Defendants, the
7 Respondents, were pursuing claims against Mr. Seery. And here
8 you have three deposition topics that, indisputable, clear --
9 beyond clear and convincing, this is beyond a reasonable
10 doubt, have absolutely nothing to do with the allegations in
11 the petition, but they certainly have everything to do with
12 Mr. Seery and his conduct in this courtroom in this bankruptcy
13 case.
14 So what happens? He's got to retain counsel. Here comes
15 Willkie Farr. You know, another cost to the estate. Remember
16 one of the things you said, Your Honor, when you remanded is,
17 I don't see how this has an impact on the estate. It's had a
18 huge impact on the estate. Mr. Nelms and Mr. Dubel have to
19 hire Hogan Lovells. Mr. Seery had to go get independent
20 counsel to deal with this. It's had a huge effect on the
21 estate.
22 So, so they serve this subpoena. And if you go to Exhibit
23 9, you'll see that, with Willkie on the scene, they object.
24 And I don't want to go through all of the emails. Your Honor
25 can do that, you know, as time permits. But I do want to

1 point out that on the very first page Mr. Levy attaches --
2 because this is an element of contempt -- he attaches the
3 confirmation order, the Seery retention order, the January
4 settlement order. Right? So that -- so that Ms. Pettit, Mr.
5 Hurst, everybody's on notice of the gatekeeper. And he says
6 it explicitly. Number 3: "We understand that John Morris,
7 counsel for Highland, copied here, wants to attend the
8 deposition and potentially raise objections under the
9 gatekeeper orders entered by the Bankruptcy Court, which I've
10 attached."
11 Nobody can come here today and say, I didn't know, I
12 didn't know. Everybody knew. Everybody knew exactly what was
13 happening. The debate continues.
14 But here's the thing. Scott Ellington's lawyers had
15 already reached the conclusion that Mr. Seery engaged in
16 wrongful conduct. And what they were trying to do -- and
17 clear and convincing evidence because it's in writing -- what
18 they were trying to do was obtain evidence to prove that Mr.
19 Seery did something wrong, that he was conspiring with Mr.
20 Daugherty and that he was otherwise breaching his duty. And
21 we'll get to that in a moment, because that's -- that's the
22 Russell Nelms piece.
23 So why do I say that? Exhibit 12, Your Honor. Again, a
24 lot of emails in here. I just want to point to Ms. Pettit's
25 email on Page 2, where she writes to Mr. Stancil, "The

1 production provided by Mr. Daugherty, Mr. Seery, and others in
2 this matter suggest the factual conclusion that the Highland
3 estate provided Mr. Daugherty with additional settlement
4 consideration in exchange for information on Mr. Ellington."
5 They have already concluded that there was a quid pro quo.
6 I know Your Honor is familiar with that term from earlier this
7 year. Here's the new quid pro quo. This one is between --
8 allegedly between Mr. Daugherty and Mr. Seery. Nothing to do
9 with the complaint. Right? But this is what they're trying
10 to get discovery on, is they want to -- they want to prove
11 this quid pro quo.
12 She goes on: "We believe that Mr. Daugherty and Mr.
13 Seery's communications regarding settlement of Mr. Daugherty's
14 proof of claim in the Highland bankruptcy case are relevant to
15 the factual issues that would be tried in this matter."
16 Exactly the opposite of what they told you earlier.
17 Exactly the opposite of what they told you -- what Mr.
18 Ellington's lawyers told you on the motion to remand. Now
19 it's highly relevant. Absolutely nothing in the petition
20 about it, and they know that. They know it has nothing to do
21 with the petition.
22 And that's why Ms. Pettit concludes by saying, "While we
23 do not believe it's necessary, we can always amend our live
24 petition as needed to give you comfort that you are producing
25 relevant and responsive materials."

1 They never amended their petition. Why would they?
2 Because if they did, somebody would probably remove it back to
3 this court, and then Your Honor would be in a very different
4 position than you were in March of 2022 when you remanded.
5 They haven't -- they want to stay in state court and use that
6 proceeding to develop evidence to support their conclusion
7 that Mr. Seery has conspired with Mr. Daugherty. It's on the
8 page.
9 Mr. Nelms. Where does he come in? If you go to Exhibit
10 34, you'll see more documentary evidence that proves that the
11 purpose of the discovery was to obtain evidence that would
12 support their claims against Mr. Seery. Look at Exhibit 34.
13 You'll see at the bottom of Page 3 a lawyer from Hogan Lovells
14 writes to Ms. Pettit, and she tells him, reminds him, in the
15 middle of that first paragraph, that "Daugherty testified that
16 he didn't recall ever speaking with Judge Nelms. In light of
17 this testimony, what is your basis for thinking that Judge
18 Nelms has any relevant information to the stalking
19 allegations?" And she provides an incredibly long response.
20 And we would urge the Court to study this response.
21 But I just want to focus on a couple of points. On Page
22 -- her response begins on Page 2. It continues at the top of
23 Page 3. You'll see -- it actually begins at the bottom of
24 Page 1. You'll see it's from Ms. Pettit to Mr. McNally and
25 others, including Mr. Wynne. It's dated July 25th. And at

1 the bottom of Page 2 she says explicitly, "We do believe
2 Daugherty left Judge Nelms" -- "While we do believe Daugherty
3 left Judge Nelms -- was left in the dark regarding Daugherty's
4 stalking, what is significant, that all of this happened
5 during the time Judge Nelms was on the board, and Jim Seery
6 and Andy Clubok did not -- did know about Mr. Daugherty's
7 inappropriate investigation. In fact, not only were they
8 aware, but according to Daugherty, Seery himself told
9 Daugherty he appreciated the investigation."
10 And this last line is really the tell. The last line is
11 where you see Ms. Pettit thinking out loud. This is -- this
12 is the admission. "We want to depose Judge Nelms on whether,
13 as we expect, Seery and Clubok kept him in the dark regarding
14 stalking."
15 Does that have any -- would that fact be at all relevant
16 to a claim against Mr. Daugherty? If -- let's just assume Mr.
17 Seery knew about the stalking. And let's assume that he
18 didn't tell Mr. Nelms. You're going to drag Mr. Nelms into
19 court to try to prove the negative, that Mr. Seery didn't tell
20 him? How does that establish a claim against Mr. Daugherty?
21 It doesn't.
22 What they're trying to do is establish somehow -- again,
23 if there's ever a gatekeeper motion, we'll address the merits
24 then -- but clearly what they're trying to establish is that
25 Mr. Seery breached his duty to the board. He didn't inform

1 -- he didn't keep the board informed.
2 And they go further. He didn't -- he didn't -- not only
3 didn't he inform the board of the stalking, but he didn't
4 inform the board of the quid pro quo, the alleged quid pro
5 quo. Has nothing to do with whether Scott Ellington was
6 afraid of Mr. Daugherty. Nothing to do with it, right?
7 Because that's what the stalkings say. I'm afraid. I'm
8 afraid.
9 Does the fact that Russ Nelms was never told by Mr. Seery
10 that Mr. Seery knew of the stalking or engaged in a quid pro
11 quo, how does that have anything to do with this? It doesn't.
12 They're pursuing claims.
13 But Ms. Pettit goes on. And at the bottom, you know, at
14 the top of the next page, Page 3, this is Mr. Ellington here.
15 The last sentence at the top: "Given the board's role in
16 approving settlement of material proofs of claim in the
17 bankruptcy, Ellington believes that Judge Nelms should have
18 been made aware of Daugherty's actions, if not by Daugherty,
19 then certainly by Jim Seery and Andy Clubok." That's Mr.
20 Ellington's point. That's his lawyer telling Jim -- Russ
21 Nelms' lawyer that the reason we want to depose Mr. Nelms is
22 to develop evidence against Mr. Seery for failing to tell you.
23 Nothing to do with Pat Daugherty.
24 There's a lot more in there. I don't want to belabor the
25 point. The fact of the matter is, at the end of the day, Your

1 Honor, if they had done what they told this Court they were
2 going to do, and that is pursue claims against Mr. Daugherty
3 for stalking, and if they wanted to take evidence from Mr.
4 Seery or from my client about the stalking, no problem. No
5 gatekeeper violation. Absolutely not.
6 But when you persistently seek evidence to try to buttress
7 your own conclusions that Mr. Seery has engaged in wrongful
8 conduct, that is the pursuit of claims, and that's where the
9 trigger comes in. When you harass John Dubel and you -- and
10 you -- he actually got sued. It's Exhibit 38. There's the
11 lawsuit. It's Exhibit 38. They sued Mr. Dubel, even after
12 they told -- he told them he had no documents. They go to
13 Russ Nelms' house three times to serve him with subpoenas in
14 order to have him testify that Jim Seery didn't tell him about
15 the stalking, that Jim Seery didn't tell him about the alleged
16 quid pro quo.
17 Other than commencing an action, other than filing a
18 lawsuit, I don't believe I could think of a more compelling
19 case for pursuit. The purpose of the exercise, the purpose of
20 the discovery, was to obtain evidence to validate their
21 theories that Mr. Seery engaged in wrongdoing. That's what
22 the evidence shows in the documents, and we'll see where we go
23 with the testimony, Your Honor.
24 Thank you very much.
25 THE COURT: Thank you. Ms. Hartman, are you going

1 next?
2 MS. HARTMAN: Yes, Your Honor.
3 THE COURT: I heard from my courtroom deputy you
4 might be having ability issues, so --
5 MS. HARTMAN: Thank you, Your Honor.
6 THE COURT: -- did you --
7 MS. HARTMAN: I'm good.
8 THE COURT: Are you good? Okay.
9 MS. HARTMAN: Although Mr. Griffin may have to carry
10 some things for me.
11 THE COURT: Okay.
12 MS. HARTMAN: Your Honor, may I approach?
13 THE COURT: You may.
14 OPENING STATEMENT ON BEHALF OF SCOTT ELLINGTON
15 MS. HARTMAN: Your Honor, Michelle Hartman on behalf
16 of Scott Ellington. And then Jim Lee will also have part of
17 an opening with regard to his clients as well.
18 I want to briefly discuss the state court action timeline,
19 the then and now, as Mr. Morris said, go through some
20 misquotations from the pleading, and then talk briefly about
21 the legal authority.
22 As this Court is aware, Mr. Ellington's state court action
23 is filed solely against Daugherty. It seeks damages and
24 permanent injunction against Mr. Daugherty individually. As
25 you heard Mr. Morris say, there's no mention of Mr. Seery in

1 this complaint.

2 Almost two years since filing, Mr. Ellington has not

3 sought to add them as parties. Not sought to bring any claims

4 or causes of action against any board members or Mr. Seery.

5 And in fact, the deadline to amend the pleadings and join

6 additional parties has passed.

7 Briefly on the state court action, Mr. Ellington filed his

8 petition in the 101st, this was before Judge Staci Williams,

9 seeking actual and equitable relief.

10 Daugherty removed this action from the state court to this

11 court a week later. Your Honor heard oral argument and then

12 remanded the matter.

13 Mr. Morris discussed some quotations from the hearing on

14 that motion to remand, including statements that the

15 settlement action had no bearing on the state court action and

16 the state court action is independent of the Daugherty

17 settlement. We stand by those, we still believe those to be

18 the case, but I'll address them in the -- in the course of the

19 argument as well and answer any questions.

20 May 15, 2022, following remand, Mr. Ellington served his

21 discovery. There's no mention of the Bankruptcy Court, no

22 mention of Mr. Seery in that discovery.

23 What happened was, on July 11, 2022, three days before Mr.

24 Daugherty's deposition, he produced communications between

25 himself and Mr. Seery that relate to the stalking efforts,

1 which Mr. Daugherty throughout his deposition referred to as
2 his investigation.
3 Daugherty's deposition testimony -- and you can see a bit
4 of it here -- confirms that he texted Mr. Seery often
5 concerning what he called his investigation of Mr. Ellington
6 and his family. And you can see the quote here, stating that
7 he had multiple text messages, that there were additional text
8 messages with Mr. Seery that involved his investigation.
9 He went through during that deposition other individuals
10 that he had sent his investigative evidence to, including Mr.
11 Clubok, Mr. Clemente, and others.
12 So the people that were subpoenaed or sent discovery
13 requests on were those that Mr. Daugherty mentioned in his
14 deposition. This is not something that Mr. Ellington started
15 off the bat in terms of discovery. This came up through Mr.
16 Daugherty's deposition, when he started mentioning this
17 investigation.
18 September 8, 2022, Mr. Ellington specifically requests
19 that Mr. Daugherty produce communications with Mr. Seery
20 regarding stalking. He responds that he will produce. And
21 then Mr. Ellington serves third-party subpoenas. So you can
22 see that it's after Mr. Daugherty's deposition.
23 January 3, 2023, Mr. Seery produced over 18,000 pages of
24 documents in response to the subpoena, and he agreed to a
25 deposition. He never sought to quash the subpoena before

1 Judge Williams. He never requested any kind of protective
2 order, even that would limit the discovery material just to
3 that lawsuit. He responds without any suggestion that a
4 subpoena requires a gatekeeper order of this Court.
5 Moving on, February 16, 2023, Mr. Seery's counsel informs
6 Mr. Ellington's counsel that his iPhone was set to
7 automatically delete text messages after one year,
8 notwithstanding that there were preservation letters sent to
9 Mr. Seery more than two years ago.
10 Shortly thereafter, within a month, Mr. Ellington's
11 counsel and Kirschner sent a letter to Mr. Seery's counsel
12 asking for clarification of his deletion of text messages.
13 The response was sent on March 10, 2023, when Mr. Morris
14 agreed or admitted, confirmed that the auto-delete setting had
15 been recently suspended. And you can see this on the email
16 exchange between Shelly Naughtin (phonetic) and Mr. Morris
17 from the state court actions.
18 It's important because this is the one piece of evidence
19 they point to in terms of what came from the state court
20 action that somehow worked its way into a Bankruptcy Court
21 matter. And they specifically cite to the DAF's imaging
22 motion. This is not evidence. This is a counsel's discussion
23 that is then confirmed in letters with regard to spoliation,
24 with regard to text messages being deleted. It's counsel-to-
25 counsel discussion.

1 July 14, 2023, approximately two weeks before the agreed-
2 upon deposition date for Mr. Seery, so this is in the state
3 court action, there was no request, but a supplement from Mr.
4 Seery was made, producing additional documents. And some of
5 them were redacted almost in their entirety.
6 The deposition was put off because of that, because we
7 wanted the unredacted or Mr. Ellington's counsel in the state
8 court action wanted the unredacted text messages. Mr.
9 Ellington's counsel filed a motion to compel Daugherty -- not
10 Mr. Seery -- to produce those redacted text messages. And you
11 can see the state court's order of September 1, 2023. And it
12 states on it, the heading is "Order Granting Fourth Motion to
13 Compel."
14 So Mr. Daugherty was required, and you can see it there,
15 to produce unredacted text messages regarding Ellington and
16 the stalking issues.
17 Less than two weeks after that state court's order is when
18 we received the motion in this case.
19 It's important because there are no outstanding written
20 discovery requests right now on Mr. Seery. He has already
21 complied with those. He has already produced 18,000
22 documents, and then additional documents. This order here
23 relates to Mr. Daugherty. There was no motion to compel filed
24 against Mr. Seery. It was filed against Mr. Daugherty. And
25 that's what Judge Williams' order relates to.

1 The depo at some point will need to be rescheduled, but
2 there is no outstanding request, which is why this motion for
3 sanctions was odd to us.
4 A couple of points that -- from the pleadings that I want
5 to make sure we clear up. Mr. Ellington has not said that he
6 intends to pursue claims against the Movants. That is not in
7 our pleading. It's stated over and over in the reply brief,
8 and it's really taken out of context in a bad way. You can
9 see a couple of the quotes here. This is the reply at one:
10 "Ellington does not, because he cannot, deny that he intends
11 to use the third-party discovery to file a future claim
12 against Seery."
13 That was not said. When you look at what actually is in
14 our brief, it says, "Even giving credit to Movants'
15 unsupported speculation that Ellington intends to use a third-
16 party discovery to file a future claim against Seery, there is
17 still no violation of the gatekeeper orders." They've cut-
18 and-paste in a way that's just wrong, Your Honor.
19 Same thing with the second misquote. "Ellington does not
20 deny that he 'intends to use a third-party discovery to file a
21 future claim against Seery.'" That was never said and there
22 is no current intention to file any claims against Mr. Seery.
23 Turning to another misquote. Here, you can see where the
24 Movants state, "Ellington tries to minimize this conduct as
25 simply having an intent to pursue claims or causes of action

1 against Seery in the future, but serving subpoenas and filing
2 motions in a stalking action to challenge the bankruptcy
3 process is conduct, not just intent."
4 When you look at the actual quote, that's not what it said
5 at all. "Movants argue that having an intent to pursue claims
6 or causes of action against Seery in the future also violates
7 the gatekeeper orders. However, even the expression of an
8 intent to pursue a claim, of which there is no evidence here,
9 is not sufficient to constitute the actual pursuit of claim."
10 They've taken what we've said and completely turned it on its
11 head.
12 The other sort of quote-mining that we see from the
13 responses is listed here. You can just look at that last
14 sentence from what's in the Movants' reply at Paragraph 14.
15 They say, "By acknowledging that Daugherty's motives are
16 relevant to the stalking action, they put the lie to any
17 theory of relevance based on Daugherty's motives."
18 I don't completely understand that, but want to make sure
19 that this Court understands that Mr. Ellington didn't bring up
20 the Daugherty settlement. That came from Daugherty's counsel.
21 And we'll show you exactly where it came from. But this is
22 the actual quote. I'm looking at the second paragraph. "To
23 the extent that the redacted messages related to negotiations
24 between Daugherty and Seery, communications regarding the
25 Daugherty settlement would be relevant, not so Ellington could

1 challenge the settlement in the bankruptcy case or bring some
2 claims against Seery, as Movants suggest, but so Ellington
3 could obtain materials related to Daugherty's apparent motive
4 in stalking -- in stalking Ellington and also assign a value
5 to his damages in the state court action."
6 And we'll go to, later in the presentation, the temporary
7 injunction. But this is where the Daugherty settlement came
8 up. Over objection of Ellington's counsel. You have
9 Daugherty's counsel say, look, we're not stalking Ellington to
10 harass or intimidate him or his family. We're doing it so
11 that we can -- as part of an investigation so that we can
12 report on it. We're doing it for investigation purposes,
13 rather than to harass or intimidate, which is what the statute
14 requires.
15 So it is actually Mr. Daugherty's counsel that brought
16 this up as a defense to motive. So if they're going to bring
17 it up, yes, we'd like to investigate it, not to bring claims
18 but because we get to challenge that in some way.
19 Briefly, it is Movants here that are flip-flopping. And
20 Your Honor will remember the Hunter Mountain case, where
21 Hunter Mountain sought leave of Court pursuant to the
22 gatekeeper orders to file a complaint. And these are from the
23 Movants' opposition. They very clearly talk about the Rule
24 202 proceeding and how discovery went forward for
25 approximately two years before the motion to leave. And all

1 of that, as they state, were related to the same trades that
2 ultimately were the subject of the revised proposed complaint.
3 That's what we're having here. You've got discovery.
4 What they've said in these previous cases is what Your Honor
5 has held in her decisions, that discovery is not pursuing a
6 claim.
7 The same thing with regard to deference to the state
8 court. When you look at that Hunter Mountain case and you go
9 back to the transcript, these are the Movants saying very
10 clearly that the Court should look at what the state court
11 does, what the state court said with regard to discovery in
12 that Hunter Mountain matter and the Rule 202 petition.
13 What they're doing here is flip-flopping that and now
14 saying what Judge Williams said with regard to the redaction
15 of those text messages to Daugherty, a nonprotected party,
16 should be thrown out, and this Court should instead be the
17 umpire.
18 One thing to focus on is intent. We heard a lot about
19 that in the opening presentation, what Mr. Ellington might
20 intend to do. There is no present intent to bring any claims
21 against Mr. Seery, and the deadline for joinder has passed.
22 Nonetheless, intent is not the question with regard to the
23 gatekeeper motion, and no court has relied on intent in terms
24 of violating gatekeeping.
25 This motion has no basis in fact or law. There's no

1 before or after. On the motion to remand, we didn't think
2 this had anything to do with the settlement. We still don't
3 think that it should. And Mr. Ellington has no desire to
4 attack the settlement. In fact, the appeals have passed and
5 it has been resolved. There is nothing with regard to that in
6 terms of objection of the Daugherty settlement. It was
7 brought up by Mr. Daugherty's counsel in the context of
8 attacking motive, a defense to his motive, as to why he -- why
9 he stalked.
10 Now, Mr. Morris may say that he doesn't see that as
11 relevant. We may say we don't see it as relevant. But Judge
12 Williams has allowed it to come in, so we obviously get to
13 develop that on the other side in terms of attacking that
14 motive, just with regard to the settlement and not for
15 objecting to it or in any way, collateral or otherwise,
16 attacking the settlement.
17 THE COURT: Did I misread or misunderstand something
18 in the pleadings? I thought somewhere I read that you all
19 agree motive doesn't matter for purposes of establishing the
20 evidence of civil stalking in Texas.
21 MS. HARTMAN: No, Your Honor, we -- we believe that
22 if there's an intent to harass, an intent to harass -- and let
23 me show you at least what is argued. If we can turn to Slide
24 18. So, this is Movant -- tricky flicker here -- Movants'
25 argument on alleged backdoor efforts to challenge the

1 Daugherty settlement. This is where it came up. Mr.
2 Ellington is not seeking discovery to challenge or overturn
3 the Daugherty settlement, and there's no evidence of this. So
4 you can see with regard to the temporary injunction Mr. York
5 starts talking about the bankruptcy process and this
6 investigation. Ms. Pettit objects on the basis of relevance.
7 Ultimately, the Court allowed further argument, and you can
8 see what Mr. York -- this is Mr. Daugherty's counsel -- says.
9 "The reason this is relevant goes to the purpose and intent
10 for why Mr. Daugherty engaged in the investigation activities
11 he engaged in, not because he was attempting to intimidate,
12 harass, or threaten Mr. Ellington."
13 So whether we think it's relevant or not, part of it has
14 come in under the state court's order with regard to Mr.
15 Daugherty's ability to challenge his motive. And so that's
16 why this settlement agreement came in, not in terms of
17 objecting to the settlement agreement, but in terms to this
18 motive.
19 I don't know if I answered your question head on, Your
20 Honor, but that's where it came in, and she did allow it in
21 terms of motive.
22 THE COURT: Okay. Well, you've answered my question,
23 --
24 MS. HARTMAN: Okay.
25 THE COURT: -- but I'm still very confused, by the

1 way, about this whole issue of motive and intent, whether it
2 has to be established under the stalking statute.
3 MS. HARTMAN: So, looking at the gatekeeper orders,
4 Your Honor, and this was discussed earlier, but you see claim
5 or cause of action, and I think this was your question at the
6 very beginning of the Movants' presentation. Are we talking
7 about discovery here or are we talking about a claim or cause
8 of action? You can see that it lists examples that give rise
9 to a right to relief that may apply to the injunction, and it
10 specifically lists claim or cause of action six times.
11 Nowhere in that is there any mention of discovery.
12 The main case that is relied on by the Movants is the
13 *Charitable DAF* case. And you'll remember, Your Honor, this is
14 the case that went up to Judge Starr with regard to leave to
15 amend. The complaint named Seery as a potential party. I
16 believe mentioned him more than 50 times with regard to the
17 complaint. Charitable DAF then sought leave to amend the
18 complaint to add Seery. And Judge Starr as well as this Court
19 discussed pursuing a claim, party must try or seek to bring
20 that claim. And one thing that Judge Starr noted is that,
21 under the Local Rules, an amended complaint would be
22 immediately filed by the Clerk of Court once leave would be
23 granted. And that, here, the contemnors tried to and in fact
24 took every action necessary on their part to bring the claim
25 against Seery.

1 By contrast here, Ellington has not taken any action
2 necessary to add Mr. Seery. It's been almost two years. He's
3 not amended. He's not sought leave to amend. He's not even
4 tried to do so. If that ever were the case, we'd be before
5 Your Honor. But I will represent to the Court that there is
6 no current intention to bring Mr. Seery -- bring claims
7 against Mr. Seery.
8 Mr. Seery also responded to the subpoena request for
9 documents -- this was almost a year ago -- and agreed to a
10 deposition in state court without seeking to quash.
11 So we kept going back to, at least on our side, what
12 should we have done such that we wouldn't be here either being
13 asked to show cause or to be held in contempt? And here's
14 where you find it, in the Claimant -- in the Movants' reply.
15 This is what they're asking this Court to do. They're asking
16 the Court to move back from motion to leave, to instead draw a
17 line between permissible discovery and impermissible
18 discovery. And you see three quotes here, and they're the
19 full sentence, not taken out of context. "Respondents
20 conflate legitimate third-party discovery in a stalking
21 action, which Seery has provided without objection, with
22 impermissible discovery they now seek concerning the
23 bankruptcy process and Daugherty's settlement."
24 Goes on to say, "Movants have never argued that discovery
25 constitutes a claim or action. They argue that seeking

1 discovery to challenge alleged conduct in the bankruptcy
2 settlement process constitutes pursuing a claim or cause of
3 action."
4 And you can see the third one: "Serving subpoenas and
5 filing motions in a stalking action to challenge the
6 bankruptcy process is conduct, not just intent, which is why
7 it violates the gatekeeper provision and gatekeeper orders."
8 So, effectively, we're supposed to, with regard to
9 discovery, make a determination whether it's permissible or
10 impermissible. Otherwise, we might violate the gatekeeper
11 injunction. That's what they want now. That's where they're
12 asking for the line to go, from motion to leave all the way
13 back to discovery if it's impermissible. No case supports
14 that.
15 Two arguments, one we've already talked about a little bit
16 with regard to the Daugherty settlement. There is no
17 challenge here under this bucket of impermissible discovery.
18 There is no intention to challenge the Daugherty settlement.
19 As Your Honor knows, a hearing was held on the Daugherty
20 settlement, Mr. Ellington's objection, which were nonmonetary
21 and mainly related to the observer status, was overruled.
22 Appeals were exhausted. It was never appealed. And we will
23 stipulate that there is no intention to challenge the
24 Daugherty settlement.
25 THE COURT: Let me interrupt you there.

1 MS. HARTMAN: Sure.
2 THE COURT: You'll stipulate to that, but as I
3 understood it from pleadings, you wouldn't stipulate to never
4 bringing claims against Seery, Nelms, and Dubel?
5 MS. HARTMAN: That's true, Your Honor. In terms of
6 it because it's more along -- and that's advice of counsel, I
7 will say, on us. It's more along the lines above of a
8 release. And what we will say is there is no intention to
9 bring claims against Mr. Seery now.
10 I don't feel comfortable telling my client at no time in
11 the future will you ever not bring a claim. Of course we will
12 stipulate that if that ever were the case, we would be before
13 this Court, and we'd better have a really good reason to do
14 it. I'm not even sure that we could if we wanted to now in
15 terms of statute of limitations. But there is no intention
16 to.
17 It's just to, with regard to bringing a claim rather than
18 challenging a settlement that's already been fully resolved.
19 I see those as two different things, and there's not been any
20 kind of -- for a release, anything offered with regard to
21 that. But, again, we have nothing that we're -- we're ever
22 planning to bring a claim. We have no evidence to support a
23 claim right now. We have no current intention of bringing a
24 claim. We didn't raise this. Mr. Daugherty raised it in
25 terms of the deposition and in the temporary injunction

1 hearing. It's not like we left this Court and went and said,
2 okay, let's go now and bring some subpoenas against Mr. Seery.
3 The record is very clear that it came up in the context of
4 that deposition. We have no idea of this claimed
5 investigation that Mr. Daugherty discusses. We don't know if
6 it's even true, but we want to be able to attack it in terms
7 of motive.
8 THE COURT: Okay. But, still, your client won't
9 agree, I'll never bring a claim against Mr. Seery, Nelms, or
10 Dubel? And this would never, as I understand, have been
11 brought today if he would have agreed to that.
12 MS. HARTMAN: Well, that was brought up in the
13 context of pleadings. That was never -- nobody ever came to
14 us and said, okay, two weeks after Judge Williams enters an
15 order, all of a sudden we're going to be hauled into court?
16 They didn't come to us and say, you can resolve this right
17 now. They stated that in the reply. Never called us to
18 discuss it or anything like that.
19 I don't feel comfortable in terms of my client under
20 duress just saying, well, then stipulate right now. I have no
21 idea what evidence is out there. I think we might be able to
22 negotiate something, but I don't think there's ever been a
23 real offer with regard to that.
24 And we certainly do want the discovery, if for nothing
25 else because we want -- we have these redacted texts. There's

1 an order from the Court, and it's based on Mr. Daugherty
2 making a production, not Mr. Seery.
3 But what we will say is that there's no present intention
4 to bring any claim against Mr. Seery. And just like we stood
5 by the representations to the Court the last time we were
6 here, take them very seriously, including as a lawyer, and I
7 wouldn't be saying there's no intention to sue Mr. Seery if I
8 didn't believe it.
9 THE COURT: Okay.
10 MS. HARTMAN: So, in sum, Your Honor, the Movants
11 improperly seek to have this Court decide state court
12 discovery disputes. If there is any issue with regard to use
13 in another matter, a protective order can certainly handle
14 that. It was never requested that there be any protective
15 order. There's been no shuffling of these text messages
16 amongst counsel. There's no evidence of that whatsoever.
17 The one thing that they point to is this deletion of
18 texts. But that was a big deal, and it didn't come out in the
19 context of some document, some Bates-labeled document. It was
20 in the context of counsel-to-counsel discussions, where it was
21 discovered and revealed that Mr. Seery had deleted text
22 messages and not properly, we think, preserved his text
23 messages.
24 And, again, within less than a month, a letter was sent in
25 the Kirschner matter with regard to that. That was six months

1 ago. We never heard anything about that there is any kind of
2 flow between the state court action to the Kirschner matter.
3 Nothing like that. This was the facts that came out. We were
4 very surprised about that there could have been possible
5 deletion of text messages. That is the only thing they can
6 point to.
7 And I would submit that that's a good thing if it did come
8 out, and it's going to come out anyway, because in the
9 Kirschner matter, that was right when things were very hot in
10 March of 2023 and we had been asking for these text messages
11 in the Kirschner matter.
12 So the answer is the same whether it's in the state court
13 or in the Kirschner matter, that there is possible deletion of
14 text messages.
15 MR. MORRIS: Your Honor, forgive me. I rise just to
16 adopt Mr. Lee's admonition against testifying in argument.
17 Absolutely none of this is in the record.
18 THE COURT: Response?
19 MS. HARTMAN: Sure. This is in the record, and it's
20 actually Movants' exhibit. This is a declaration that
21 includes -- and you can see at the bottom that this is Mr.
22 Morris's email where he states, talking about Mr. Seery's
23 iPhone, "While it is backed up to iCloud, the backup does not
24 contain deleted items, whether deleted manually or as part of
25 automatic settings." And the entire email, which, again, was

1 proffered into evidence by Mr. Morris, discusses the automatic
2 deletion of those text messages.
3 THE COURT: Okay. I overrule the objection.
4 MS. HARTMAN: To finish, Your Honor, there are five
5 binding decisions of this Court and the Fifth Circuit and the
6 District Court, all discussing this gatekeeper injunction.
7 And in all of them, it discussed a claim, a claim or cause of
8 action.
9 The closest is Judge Starr's decision, but in that
10 decision there's a motion for leave to amend. Once that's
11 granted, that's the last thing necessary to bring a claim.
12 And it's also, under the Local Rules, automatic or self-
13 effectuating, that once it's granted it automatically would be
14 filed.
15 Next point. In over --
16 THE COURT: I don't know what point you're trying to
17 make from Judge Starr's opinion.
18 MS. HARTMAN: So, from Judge Starr's opinion, that
19 talked specifically throughout the entire decision about a
20 claim or cause of action. There's never a discussion of
21 discovery being a violation of the gatekeeper injunction.
22 Serving a subpoena or having that discovery be a violation of
23 the subpoena.
24 THE COURT: Okay. Well, maybe I didn't read it
25 thoroughly enough, but I thought there was just simply a

1 discussion at the very beginning of that opinion about how
2 there was a complaint that mentioned Seery fifty times and
3 then there was quickly filed thereafter a motion for leave to
4 amend. And he said that was enough to be pursuing a claim.
5 MS. HARTMAN: Your --
6 THE COURT: He never talked about discovery. He
7 addressed a slippery-slope argument that CLO Holdco's lawyer
8 made, like, gosh, under Highland and Seery's interpretation of
9 pursuing a claim, even if there's communications with a client
10 about maybe pursuing a claim, or legal research by lawyers
11 about maybe pursuing a claim, under that slippery slope that
12 would be pursuing a claim. And he goes no, you know, it's not
13 that far.
14 MS. HARTMAN: Yeah. Your --
15 THE COURT: Okay?
16 MS. HARTMAN: Yeah. Your recollection --
17 THE COURT: He didn't say anything about discovery,
18 though, right?
19 MS. HARTMAN: Your recollection is spot on. What I'm
20 pointing to, we've got it quoted here, is just throughout that
21 he says bring a claim. And we have several quotes from that
22 where he specifically says claim. You're right, it's in the
23 negative in terms of just not stating discovery.
24 THE COURT: Uh-huh.
25 MS. HARTMAN: But it goes at length to talk about how

1 this is the last thing possible before a claim would be filed.
2 And even goes to the Local Rules, saying, if it's granted, the
3 Clerk automatically files it. That's in contrast to a
4 subpoena, which in our mind is very far from a claim.
5 THE COURT: Okay.
6 MS. HARTMAN: And then Your Honor's decision in the
7 *A&M* case with regard to the Rule 202 proceeding, talking about
8 an investigatory tool and simply too inchoate to constitute a
9 removable cause of action. We again see that as on point in
10 terms of similar to a subpoena in terms of a Rule 202
11 proceeding and very different than a claim or cause of action,
12 which does not exist here.
13 Thank you, Your Honor.
14 THE COURT: Thank you. All right. I guess we have
15 one more. Mr. Lee?
16 MR. LEE: Thank you, Your Honor. Your Honor, may I
17 approach your clerk?
18 THE COURT: You may.
19 MR. LEE: I gave you one, but I hadn't --
20 THE COURT: Yes.
21 OPENING STATEMENT ON BEHALF OF THE LAW FIRMS
22 MR. LEE: Your Honor, again, for the record, Jim Lee.
23 I'm representing the two law firms that are the -- two of the
24 three Respondents.
25 Your Honor, two things at the outset. One is that I did

1 not confer with counsel for Mr. Ellington in connection with
2 any of this. So if I'm redundant from her well-presented
3 facts and arguments, then I apologize in advance. We did not
4 coordinate. So I may in fact cover some things that she did
5 as well.
6 But let me start by addressing a question that the Court
7 had that I think I can answer. And the Court's question, if I
8 understood it, was that your understanding was that proof of
9 motive was not necessary, a necessary element of stalking.
10 And I would agree with that. But that, although it's not
11 required to prove stalking, what it is very relevant to is
12 punitive damages. And potentially actual damages. And it's
13 relative to punitive damages because it can go to the
14 possibility of a bad-faith motive.
15 Now, that's not necessary to prove motive. You either
16 prove stalking happened or it didn't happen. But when you
17 start assessing damages, especially punitive damages in regard
18 to if stalking is found to have occurred, then it is very
19 material whether or not, for example, Mr. Daugherty was
20 motivated by financial gain and that's part of why he
21 undertook this so-called investigation.
22 When disclosures were made about certain things, including
23 the production of a substantial number of text messages by Mr.
24 Seery's counsel on a voluntary basis, after they had already
25 entered into an agreement about how his deposition would

1 proceed, it became apparent to my clients that there was a lot
2 Mr. Daugherty had not produced, and therefore they were
3 compelled, as zealous attorneys, to go investigate that. They
4 needed to do more discovery.
5 That was what started this litany of events that you've
6 been hearing about. And I'll talk about that more in a
7 minute. But where I want to go and spend a little time on the
8 front end is really what these gatekeeping orders were
9 intended to accomplish. And these aren't the first
10 gatekeeping orders I've encountered in almost 50 years of
11 practice. They are very common, especially in bankruptcies
12 and in bankruptcy plans.
13 And essentially is I've always seen, both in their intent
14 and in their application, they are a shield. They are to
15 prevent, among other things, frivolous litigation, to give
16 this Court control of the docket, to protect under the Barton
17 Doctrine perceived officers, and I know that is more than a
18 trustee these days. Those are the intended purposes of
19 gatekeeping orders and why they're pretty common practice.
20 Well, let's look, if you don't mind -- and it's on the
21 screen -- but this is in that little handout. However you
22 prefer to look is fine with me, Your Honor. But I'm going to
23 start with the confirmation order, because it really subsumes
24 the two prior orders. As the Court remembers, the very first
25 order was specific to the general partner, and then it was

1 expanded further. And essentially those were subsumed into
2 what was drafted into the confirmation order.
3 And at Paragraph 76, it talks about the fact that enjoined
4 parties first seek approval of this Bankruptcy Court before
5 they may commence an action against protected parties. As we
6 stand here today, no action has been commenced by my client's
7 client, Mr. Ellington, by -- against any of these protected
8 parties.
9 Further, elsewhere in the confirmation order, in Paragraph
10 8(a), it talks again about not doing so without the Bankruptcy
11 Court first determining, after notice and hearing, that such
12 claim or cause of action represents a colorable claim -- a
13 colorable claim; I want to emphasize that again -- of any
14 kind, including, and then it has the litany of negligence, bad
15 faith, et cetera.
16 Well, Your Honor, how could a party who seeks discovery
17 know, pursuant to this language, that they needed to come to
18 this Court before making discovery requests of any protected
19 party, not as a party in litigation but to that protected
20 party as a third-party witness? How could they know they
21 needed to do that, number one? And how could they demonstrate
22 to you that their claim was colorable when they're not
23 asserting a claim at all? They are seeking discovery.
24 Let's flip the page to the next. And what I did here,
25 Your Honor, I went back, and I think as any good lawyer would

1 do, I read your opinions, as well as what Judge Starr did, but
2 I read your opinions in several matters where there had been
3 consideration by this Court of contempt.
4 And here's, in the *In re Highland*, this is what we have
5 commonly called the *Charitable DAF Fund* litigation, with which
6 I know the Court is most familiar. And you describe the
7 gatekeeping provisions. They're specific provisions requiring
8 parties to seek Bankruptcy Court approval before filing
9 lawsuits against the persons controlling the Debtor. There is
10 no mention of discovery, and I don't believe that the Court
11 expected anybody who was ever going to seek discovery of a
12 protected party to have to come here first and ask for
13 permission.
14 And you say elsewhere in that very opinion, "These
15 gatekeeping protections require litigants to obtain the
16 Bankruptcy Court's approval before suing certain protected
17 parties in control of the Debtors." Again, suing. No mention
18 of taking discovery.
19 And again elsewhere in that very same opinion Your Honor
20 says, "To support a contempt finding in the context of an
21 order alleged to have been violated, the order must delineate
22 definite and specific mandates that the defendants violated."
23 Where is there a mention in either the two initial orders
24 or the bankruptcy plan's orders that you can't take discovery
25 of a protected party as a third-party witness unless you first

1 come to the Court? It's not there. And therefore it is not
2 definite and specific enough to preclude the conduct that
3 Movants are now complaining about.
4 The Fifth Circuit, on the next -- well, you have one other
5 I want to talk to you before I go to the Fifth Circuit, quite
6 frankly, Your Honor, because in the *HMIT* case, you also
7 characterized these gatekeeping provisions. And I know the
8 Court's very familiar. I'm not trying to beat you up with
9 your own language. The point I'm just trying to make is that
10 not only if you look at the language of the order, but if you
11 looked at this Court's opinions as to the purpose and extent
12 of the order, you would not know that discovery was prohibited
13 absent prior approval of this Court.
14 In fact, what you say is the intent is to screen and
15 prevent bad-faith litigation. And Your Honor, discovery is
16 simply not litigation. It's the same reason the 202 cases
17 that are specifically intended to investigate prospective
18 claims are found by the courts not to be litigation
19 themselves.
20 So the Fifth Circuit says the same thing. Before any
21 lawsuit is filed. There has been no lawsuit filed by Mr.
22 Ellington or by my clients on behalf of Mr. Ellington.
23 So my argument is pretty simple. Plain language of the
24 orders does not prohibit the conduct that they are trying to
25 say constitutes pursuit of a claim. And we are at a far end

1 of the spectrum from what the end-around was in *DAF*, where, as
2 this Court stated earlier, Mr. Seery was mentioned fifty times
3 and there was a stated intent through a motion for leave to
4 sue him.
5 And if the orders do not specifically prohibit discovery,
6 they run afoul of something else, and that's the United States
7 Supreme Court decision in *Taggart*. That's on the next page,
8 Your Honor. And essentially what *Taggart* says is if you want
9 to charge somebody with civil contempt, there can't be fair
10 ground of doubt as to what the wrongful conduct is. And I
11 submit to you -- and they -- stated differently, as the Court
12 says -- there is no objectively-reasonable basis for
13 concluding that the creditor's conduct might be lawful under
14 the order.
15 Well, in this case, I submit to you there is a very
16 reasonably -- objectively-reasonable basis for these law firms
17 concluding that your order did not require prior approval
18 before they could take third-party discovery. And that's all
19 they've done to this point. They can dress it up any way they
20 want to, but you can look at what is done and they're
21 complaining about deposition notices and subpoenas to testify
22 and document production things. Those are all discovery, as
23 you and I both know that.
24 But let me put it a little differently. Back to that
25 specificity thing that I argue is lacking here. Curiously,

1 Mr. Morris just said, both in his papers and here today, that
2 discovery in and of itself does not require prior approval of
3 this Court, and therefore the taking of discovery is not
4 pursuit of a claim. But certain discovery, they now argue,
5 is. They point to three or four different specifics, and
6 we'll address those in testimony and in argument. But they --
7 if you look at the motion, they've got three or four different
8 events that they claim constitute that, one of which was the
9 matter that was addressed earlier concerning the use of an
10 email from Mr. Morris disclosing that his client had not been
11 preserving texts but had an automatic redaction feature on his
12 iPhone.
13 That's not discovery, number one. And number two, it was
14 brought to this Court's attention. In two instances. One
15 instance was in what is the so-called imaging motion. So this
16 Court, there's no end-around there. It was brought to this
17 Court. And more importantly, Your Honor, it's a motion. It's
18 not an adversary proceeding. It's not a claim. It's a motion
19 asking for preservation of text messages and forensic
20 assistance in that respect.
21 The point here is how were my clients to know what
22 discovery was permissible and what discovery required them to
23 come first to you before they could seek it? And I submit to
24 you that if you look at the face of the gatekeeping orders --
25 and I use it collectively for the first two and the plan --

1 there is nothing that says specifically this kind of discovery
2 is okay and this kind of discovery requires prior approval of
3 the Court. But that's exactly what the Movants are arguing
4 here today.
5 And the Movants apparently want to be the arbiter of that.
6 They want to tell you, we've decided this crossed the line.
7 The other stuff was fine. We produced tens of thousands of
8 pages of documents without objection. We thought all that was
9 good. We had conferences with them about having the
10 deposition and setting parameters for it. But now all of a
11 sudden certain other discovery, oh, that's violative of the
12 rule. It violates the gatekeeping orders.
13 *Taggart* says that doesn't work. It has to be clear on the
14 face of the order, and you can't hold parties in contempt if
15 it's not. And I submit that's exactly where we are here.
16 And let me draw your attention next, Your Honor, to the
17 last page. Well, and more importantly, let me -- let me just
18 think about it as a practical matter. Having been a trial
19 lawyer for almost 50 years, I can tell you I wouldn't know
20 from reading those orders -- and I can assure you I have read
21 them so many times I can't count -- I wouldn't know, one,
22 whether I had to come to you for approval of discovery just
23 because it was a protected party that was the witness, not a
24 party to the litigation but just a witness; and further, how
25 could I know or discern what you would consider did require me

1 to come to you and other discovery that was not germane and so
2 I didn't?
3 And therein lies the rub. It has to be an all-or-nothing
4 thing for you to find contempt. They can't just pick and
5 choose what conduct they want to attack.
6 So let's look at this last page of that little
7 demonstrative I have, Your Honor. And this is -- this is
8 compelling to me, Your Honor. This is from an exchange with
9 Mr. Levy and my clients in connection with Mr. Seery's
10 deposition in the stalking action. This goes back to July the
11 13th. And on July the 13th, he writes, "Thanks, Laura." She
12 was -- she was the one who received it, and then my clients
13 were copied recipients. "We agree to accept service. Thanks
14 also to Michael and Julie" -- my clients -- "for the
15 productive call on Jim Seery's deposition. To summarize where
16 we landed. Time limits. It's going to be four hours.
17 Attendance. John Morris." Recall, John Morris does not
18 represent Mr. Seery. It's Mr. Levy. But, "John Morris can
19 attend the deposition and can instruct the witness not to
20 answer questions on privilege grounds or as he deems
21 appropriate under the Bankruptcy Court's gatekeeper orders."
22 My clients agreed to a protocol being put in place for Mr.
23 Seery's deposition that allowed Mr. Morris to serve as the
24 protector, to make decisions and instruct the witness not to
25 answer if he thought it got into the realm of the gatekeeping

1 order.
2 How can that be evidence of a violation of the gatekeeping
3 order when my clients are doing everything possible to
4 accommodate this, including allowing Mr. Morris to attend when
5 he otherwise has no right to be there?
6 And then let's look at the topics. Here's the next thing
7 that's really critical. "We agree to limit the deposition to
8 the topics noticed. We also agree to exchange objections to
9 the topics by email, and you reserve the right to challenge
10 these objections in a motion after the deposition. Here are
11 our objections."
12 So the three topics that you heard counsel talk about that
13 were so offensive, they objected to them, and under this
14 protocol he can instruct the witness not to answer. And now
15 they're saying this supports contempt? I don't think so. I
16 don't think so at all, Your Honor. That protocol shows that
17 there was an effort to bend over backwards to accommodate
18 these concerns, and something -- you talk about the before and
19 after? Let me tell you, something changed, too. And I'm
20 going to tell you what changed. You're going to see that many
21 of the things they allege that took place -- I'm not going to
22 go into them all now because a lot of them have been touched
23 on and I know we've run on for opening -- but I'm going to put
24 on evidence that shows you a lot of these alleged conducts did
25 not happen or are situations like the one I just pointed out

1 to you, where they are contrary to what really occurred.
2 But what's more important in my mind is, besides the no
3 evidence aspect of this thing, what was supposed to happen? I
4 mean, what really was supposed to occur when they found out
5 that Mr. Daugherty had not disclosed evidence because Mr.
6 Seery was producing, although redacted, texts between the two
7 of them?
8 What they did, as any good trial lawyer would do, they
9 tried to get them from Mr. Daugherty. And the state court
10 granted their motion.
11 Now, here's the interesting thing. And this is where I'm
12 going to tell you about the before and after. All of the
13 things they complain about took place months ago. The use of
14 the email describing the deletion of Seery's iPhone texts,
15 that was filed in March in this court. The use of that one
16 email again was used in support of the HMIT motion for leave
17 filed in this court, and that was back in June. They don't
18 file a motion for sanctions then. They didn't file one back
19 when they agreed to this deposition on July 13th. They didn't
20 file one in June when HMIT used it. But when did they file
21 it? They filed it within two weeks of the state court judge
22 ordering Mr. Daugherty to produce unredacted texts with Mr.
23 Seery. That was the triggering event.
24 And I submit to you, Your Honor, that's because they
25 didn't want to do it. They didn't want those documents

1 produced. Instead of going to the state court, which would
2 have been appropriate, and seeking a protective order, instead
3 of going to the state court and offering to have those text
4 messages reviewed *in camera* by the state court judge handling
5 that litigation, they came running to you, and they used a
6 motion for sanctions to get here. And in that motion for
7 sanctions, they asked you to make an *in camera* review of these
8 text messages, even though that is state court discovery hook,
9 line, and sinker. And I submit that's what caused this to all
10 of a sudden happen. And the rest of it is being used to try
11 to create bad looks and bad arguments against these and bad
12 conduct, but it's not there.
13 One, they acted appropriately. They were zealous
14 advocates for their client. And the other is the orders just
15 don't preclude discovery, and there's no way they could know
16 if it precluded some but not other discovery.
17 And I want to just take a minute, Your Honor, to also talk
18 about a lot of stuff that was raised by Mr. Wynne. I was a
19 little surprised by that, I've got to be honest with you,
20 because in spite of all this egregious behavior that he went
21 on for quite a period of time describing, he never, never
22 sought to file a motion for contempt against Mr. Ellington or
23 his lawyers.
24 This motion gets filed back in September. I think it was
25 September 13th. Mr. Wynne doesn't file anything then. You

1 don't hear from Russ Nelms then. You don't hear from Mr.
2 Dubel then. And then on the eve of this hearing they file a
3 joinder that says simply, "Me, too." Nothing new, nothing
4 different. Now, granted, Mr. Wynne had given a declaration to
5 support the original motion, but all of a sudden he's here
6 carrying the torch, and he's never done any of the things that
7 you would expect, such as file the motion. He didn't join in
8 early on. He wasn't a movant.
9 And so I think that we've got to kind of look at the fact
10 that when he loosely uses the term they're suing my clients,
11 and he says they already sued them in New Jersey, well, in New
12 Jersey, that's how you deal with motions to compel. You file
13 a complaint up there. It wasn't done by my clients. It was
14 done by lawyers in New Jersey.
15 My clients have never sued Mr. Dubel. They've never sued
16 Judge Nelms. In fact, they've never sued any of these three
17 Movants.
18 So I know I've gone long-winded, but I think it was
19 important to let the Court know that there's two sides to this
20 story. And I think the motivation here has been to use the
21 gatekeeping orders as a sword and not the shield this Court
22 intended.
23 Thank you, Your Honor.
24 THE COURT: I'm going to ask you a question.
25 MR. LEE: Sure, Your Honor.

1 THE COURT: And I want to hear the evidence, but I
2 asked Ms. Hartman this, and I'm going to ask you as well. You
3 know very well bankruptcy judges always want pragmatic
4 solutions where we can get them.
5 MR. LEE: Absolutely.
6 THE COURT: So what seemed like a very pragmatic
7 solution here was if Ellington would agree he's not going to
8 pursue a claim, using the literal words of the gatekeeping
9 order, he's not going to pursue a claim against Seery, Nelms,
10 or Dubel, then we'll sit for your deposition, we won't fight
11 this, we'll do discovery. What was so --
12 MR. LEE: What was --
13 THE COURT: -- wrong with that?
14 MR. LEE: What --
15 THE COURT: Why wouldn't he agree to that, if this
16 was really about getting discovery concerning his stalking,
17 civil stalking lawsuit?
18 MR. LEE: The implication that you've received from
19 counsel is just inaccurate. There was never -- and my client
20 will testify that there was never such an offer made. And it
21 was first mentioned in the reply brief filed in this matter.
22 THE COURT: Okay. So, what, November-ish was the
23 very first time it was mentioned?
24 MR. LEE: The reply brief I guess was November. I
25 can't remember the exact date. And that was a statement made

1 in there that that -- you know, why haven't they done that?
2 And I think my answer is I can't speak obviously for my
3 clients, who then are in a representative capacity here, as to
4 what would happen in the future. But as far as for current
5 stuff that's known, there's not happening. The pleading -- I
6 mean, the amended deadline is passed in the state court
7 action. None of them have been named. They're not even
8 mentioned, as counsel said.
9 THE COURT: But a new lawsuit could be filed.
10 MR. LEE: How?
11 THE COURT: Well, I don't know. There's a deposition
12 and document discovery and something is plucked out of
13 something --
14 MR. LEE: Well, --
15 THE COURT: -- in there and a lawsuit is filed.
16 MR. LEE: Then let's speculate on that, Your Honor.
17 I'm glad to go there with you. Let's assume that all of a
18 sudden in discovery it comes out that there was some
19 misconduct by one of these protected parties. Your
20 gatekeeping order says you can't sue unless you come and get
21 permission from Judge Jernigan. Isn't that already in place?
22 And it's kind of hard --
23 THE COURT: Well, here's the pragmatic bankruptcy
24 judge again. If your client had been willing to say, we're
25 not going to sue, we will put in writing we're never going to

1 pursue a claim, we're just trying to get discovery regarding
2 the stalking litigation and we'll put in writing we're never
3 going to pursue a claim, then these guys would not have had to
4 hire Willkie Farr and Susie Hersh and Hogan Lovells, and guess
5 who is paying for those lawyers?
6 MR. LEE: I appreciate that, Your Honor.
7 THE COURT: There are indemnification agreements in
8 place, and the value of this estate is going on every day. I
9 care about that.
10 It's almost like I've got two broad issues here. Was the
11 gatekeeping order violated, but are you interfering with this
12 bankruptcy estate's reorganization and impairing its value?
13 I'm not sure that's before me today, but I sure am troubled by
14 it.
15 MR. LEE: Well, here, let me try to -- because you
16 hit a couple of different things.
17 THE COURT: I hit two or three things.
18 MR. LEE: And let me try to go there. First and
19 foremost, I represent only the two law firms. So those law
20 firms could agree that they're not going to bring claims and
21 it doesn't get to where the Court is trying to go. So I
22 can't, even if my clients were willing to say that, they could
23 always go get other lawyers or do something of that nature, so
24 that's a difficult question for me to answer in the way I know
25 the Court wants to know.

1 THE COURT: Uh-huh.

2 MR. LEE: That's, that's a Mr. Ellington decision.

3 The second thing is -- and it's important -- is based on

4 what we're going to testify to, they didn't -- a couple of

5 things. They never came with this proposal. The first I knew

6 about it was a rhetorical statement in their reply, why

7 haven't they done this?

8 THE COURT: Okay.

9 MR. LEE: Most importantly, and it's going to come

10 out in the evidence, but it's in our papers as well: They had

11 this agreement that I pointed out to you in July 13th on how

12 this deposition was going to proceed. Then when it was --

13 and, and here's another point. A day later, Mr. Seery

14 supplements his document production, a day after the July

15 13th. He voluntarily produces substantially more information.

16 And that's when it becomes very apparent that Mr. Daugherty

17 hasn't been forthcoming with his discovery.

18 They -- my clients therefore make the prudent decision,

19 we're going to put off Mr. Seery's deposition and try to go

20 get these, and they filed a motion to compel against Mr.

21 Daugherty.

22 Then, in September, when the judge in the state court

23 enters that order, all of a sudden this gets filed. These

24 lawyers don't call and have a conference in advance to say,

25 hey, we're intending to file this, we don't think you're

1 allowed to do this. They -- and more importantly, I think, is
2 that when they -- the lawyers I represent asked to see a copy
3 of the motion and to discuss it in advance, the response was,
4 we're not obligated to give it to you.
5 Now, is that an effort to come to a resolution like this
6 Court wanted to see? No. They were using this as an
7 intimidation factor to get these lawyers to back off, because
8 two days later Mr. Daugherty would have had to produce
9 documents under the state court order, and they didn't want
10 that to happen. So they came running here.
11 So I guess I've got to throw back to the Court: Where
12 have they been, as stewards of this estate, trying to come up
13 with these resolutions with us?
14 THE COURT: Well, they showed me where someone
15 offered for Mr. Nelms, he'll just give you a declaration and
16 affidavit --
17 MR. LEE: And I'll -- can I address that?
18 THE COURT: -- swearing he never had any
19 conversations.
20 MR. LEE: Sure.
21 THE COURT: And I think the same thing was offered
22 for Dubel. And --
23 MR. LEE: Can I address that, Your Honor?
24 THE COURT: Yes.
25 MR. LEE: As a trial lawyer, the problem with that is

1 you can't get a declaration -- I mean, here we got them in by
2 agreement, but they're hearsay. And if Mr. Daugherty wanted
3 to object to the declarations, there's no way my clients could
4 get them into evidence in the state court action. They'd have
5 to take a deposition to do it. It's nothing more than playing
6 by the rules.
7 THE COURT: Okay. Do you dispute that your clients
8 never responded, though, for many months, to that offer, we'll
9 give you an affidavit?
10 MR. LEE: I'm not -- I'm not knowledgeable one way or
11 the other on that, --
12 THE COURT: Okay. Okay.
13 MR. LEE: -- Your Honor, so I'm not even going to
14 speculate.
15 THE COURT: Okay.
16 MR. LEE: I just don't know.
17 THE COURT: Okay. All right. Well, again, --
18 MR. LEE: Anything else for me, Your Honor?
19 THE COURT: No. I'm just bringing up my --
20 MR. LEE: No, I --
21 THE COURT: -- pragmatic concerns, why did we ever
22 have to be here?
23 MR. LEE: Your Honor, --
24 THE COURT: And that's really what my questions are
25 about.

1 MR. LEE: I would --
2 THE COURT: It feels like there was a way we never
3 had to be here.
4 MR. LEE: I would have hoped we would never have to
5 be here either, Your Honor.
6 THE COURT: Okay. Well, --
7 MR. LEE: Anything else for me?
8 THE COURT: No. I'm --
9 MR. LEE: All right. Thank you.
10 THE COURT: Thank you.
11 MR. LEE: Thank you for allowing me the time.
12 THE COURT: I'm ready to hear the evidence, but Mr.
13 Morris, I guess you're dying to say something.
14 MR. MORRIS: Yeah. Can we just take a short break?
15 THE COURT: Oh. Okay. That's a good thing to be
16 dying to say. We'll take a ten-minute break and come back.
17 THE CLERK: All rise.
18 (A recess ensued from 3:46 p.m. until 3:59 p.m.)
19 THE CLERK: All rise.
20 THE COURT: Okay.
21 A VOICE: Your Honor, we're working on something that
22 I think will make your life a lot easier. Can we have a few
23 more minutes?
24 THE COURT: Um, --
25 A VOICE: A lot easier.

1 THE COURT: A lot easier?
2 A VOICE: Yes, ma'am.
3 THE COURT: Okay. Well, if you mean a lot easier, --
4 A VOICE: I mean, --
5 THE COURT: -- not just a little easier, --
6 A VOICE: Oh, no. Way easier.
7 (Laughter.)
8 A VOICE: A lot easier.
9 THE COURT: Okay.
10 A VOICE: I wouldn't sell it if it wasn't worth
11 buying.
12 MR. LEE: I apologize, Your Honor.
13 THE COURT: Okay.
14 MR. LEE: We're actually having dialogue. So if you
15 could give us a little more time, that'd be great.
16 THE COURT: Okay. Well, should I come back in 15
17 minutes?
18 A VOICE: That would be great.
19 MR. LEE: That'd be great.
20 THE COURT: Okay.
21 MR. LEE: Thank you, Your Honor.
22 A VOICE: Thank you, Your Honor.
23 THE CLERK: All rise.
24 (A recess ensued from 4:00 p.m. until 4:45 p.m.)
25 THE CLERK: All rise.

1 (Discussion.)
2 THE COURT: Okay. For the people on the WebEx, you
3 probably figured this out a long time ago, but we've been in
4 recess. The lawyers have been out in the hallway trying to
5 work something out. And I've been getting the five more
6 minutes, five more minutes request. Okay. Do we have
7 everyone?
8 A VOICE: They are harmonizing two competing --
9 THE COURT: Okay.
10 A VOICE: Two Word documents are being harmonized in
11 the hall right now.
12 THE COURT: Okay. So we're on the record in
13 Highland. Let's get an announcement about what's happening.
14 MR. MORRIS: Good afternoon, Your Honor. John
15 Morris; Pachulski Stang Ziehl & Jones; for Highland Capital
16 Management.
17 Counsel for the Movants and counsel for the Respondents
18 have been engaged in good-faith negotiations to resolve this
19 motion in its totality. And when I say the Movants, I don't
20 just mean Willkie and my firm, but Hogan Lovells is involved.
21 We're drafting kind of terms that we, you know, hope to
22 present to the Court.
23 But there are a lot of parties involved, and I know, you
24 know, we've taken probably a half hour, maybe a little bit
25 more than that, so far. And I would just ask the Court's

1 indulgence to allow us to finish the process, because people
2 are working hard.
3 THE COURT: Okay. Yes. My only concern is am I
4 going to hear in 30 minutes everything's fallen apart, we now
5 need --
6 MR. MORRIS: I'm optimistic, --
7 THE COURT: -- three hours of evidence.
8 MR. MORRIS: -- Your Honor.
9 THE COURT: Okay.
10 MR. MORRIS: I give no guarantees, but I'm --
11 MR. LEE: I am as well.
12 MR. MORRIS: I'm optimistic.
13 MR. LEE: I think it's wordsmithing at this point.
14 MR. MORRIS: Yeah.
15 MR. LEE: Conceptually, I think we're there.
16 THE COURT: Okay.
17 MR. LEE: It's, you know, it's never over 'til the
18 fat lady sings, --
19 MR. MORRIS: Right.
20 MR. LEE: -- but we're getting real close to the end
21 of the opera.
22 THE COURT: Okay. All right. Well, you know, let's
23 not keep my staff, who doesn't get overtime, --
24 MR. LEE: Yeah.
25 THE COURT: -- here too, too late.

1 MR. LEE: Yes, ma'am.

2 THE COURT: So I'm just going to hang out and wait

3 for you all to come and notify Mike that --

4 MR. LEE: Is that -- thank you.

5 THE COURT: Okay.

6 MS. HARTMAN: Thank you, Your Honor.

7 MR. LEE: We'll do that. Thank you, Your Honor.

8 THE COURT: Okay. Thank you.

9 THE CLERK: All rise.

10 (A recess ensued from 4:48 p.m. until 5:49 p.m.)

11 THE CLERK: All rise.

12 THE COURT: Okay. Please be seated. We're back on

13 the record in Highland. I just know you've got something good

14 to tell me. But if you don't, we're coming back tomorrow

15 morning.

16 (Discussion.)

17 A VOICE: Excuse me one second, Your Honor. I'm

18 going to get Michelle Hartman. I think she's got the final.

19 THE COURT: Okay.

20 MR. LEE: The scrivener.

21 A VOICE: Yeah. It was on her laptop.

22 (Pause.)

23 THE COURT: All right. Again, we're back on the

24 record in Highland. We have taken a break regarding the

25 contested matter we had set today on contempt motions against

1 Scott Ellington and counsel. Do we have a resolution of this
2 matter?
3 MS. HARTMAN: Yes, Your Honor.
4 THE COURT: Okay.
5 MR. LEE: Do you want to read it off of --
6 MS. HARTMAN: I think John was going to --
7 MR. LEE: Oh, you're going to do it? I was just
8 saying your screen may be bigger than the phones. It may be
9 easier to read off the laptop. You got it? Okay.
10 MR. MORRIS: Good afternoon, Your Honor.
11 THE COURT: Uh-huh.
12 MR. MORRIS: For the record, John Morris; Pachulski
13 Stang Ziehl & Jones; for Highland Capital Management.
14 I just want to make sure Mr. Wynne is on the line and can
15 hear me.
16 THE COURT: Mr. Wynne, I see your name up there. Are
17 you there? There he is.
18 MR. WYNNE: Yes, Your Honor. I'm on the line and I
19 can hear Mr. Morris.
20 THE COURT: Good.
21 MR. MORRIS: Perfect. So, thank you so much for not
22 only the break but the encouragement to go out in the hall and
23 do something that we don't do often enough in the Highland
24 case. And I do want to thank counsel for the Respondents for
25 their efforts. It was good faith. And I think we've come to

1 an agreement.
2 THE COURT: Okay.
3 MR. MORRIS: In fact, I know that we have. The best
4 you can do among two dozen lawyers in an hour. It's not easy.
5 But here goes.
6 THE COURT: It's been an hour and forty-five minutes,
7 --
8 MR. MORRIS: Yeah.
9 THE COURT: -- but who's counting?
10 (Laughter.)
11 A VOICE: Time flies, Your Honor. You know time
12 flies.
13 THE COURT: I know. And I only mention that just
14 because we have staff here --
15 MR. MORRIS: Yeah.
16 THE COURT: -- who they don't get paid overtime. We
17 have security guards. I think maybe they get paid overtime,
18 but it's like, you know, the Government.
19 MR. MORRIS: We are grateful.
20 THE COURT: So I'm --
21 MR. MORRIS: We are grateful.
22 THE COURT: -- an adult. I can handle it.
23 MR. MORRIS: Yeah.
24 THE COURT: But I feel bad imposing on others.
25 MR. MORRIS: Yeah. It's all in the name of justice.

1 THE COURT: That's right.
2 MR. MORRIS: Because this is justice.
3 THE COURT: That's right.
4 MR. MORRIS: In exchange for dismissal with prejudice
5 of the motion to show cause to be held in civil contempt for
6 violating the gatekeeper provision and gatekeeping orders that
7 was filed at Bankruptcy Docket 3910, which I'll refer to as
8 the "Motion," that was filed by Highland Capital Management,
9 LP, Highland Claimant Trust, and James P. Seery, Jr., who are
10 collectively referred to as the "Movants," and together with
11 Mr. Dubel and Mr. Nelms, the "Highland Parties," are waiving
12 any other sanctions, recovery of fees, or any other relief
13 related thereto and for (1) the production of previously-
14 redacted text messages in unredacted form; (2) production of
15 any other documents not previously produced that are
16 responsive to any previously-served request for production of
17 documents served on Mr. Seery in the state court action, with
18 the production of any such documents, including the
19 previously-redacted text messages in unredacted form, to
20 constitute the completion of document discovery from any of
21 the Highland Parties; (3) Mr. Seery's agreement to sit for one
22 deposition in connection with the state court action, which
23 deposition shall last no longer than seven hours in a single
24 day; (4) provision of admissible declarations by Judge Nelms
25 and Mr. Dubel in lieu of any depositions by either of them,

1 with the subpoenas to Judge Nelms and Mr. Dubel to be deemed
2 withdrawn upon execution of the declarations, Scott B.
3 Ellington ("Mr. Ellington"), and together with the Highland
4 Parties, the "Parties," stipulate and agree -- stipulates and
5 agrees that he shall not bring any claims or commence any
6 cause of action against any of the Highland Parties related to
7 information provided in and/or discovery produced by any of
8 the Highland Parties in the state court action, with Ellington
9 agreeing and acknowledging that he will not authorize any
10 entities owned or controlled by him to bring any claims or
11 commence any cause of action against any of the Highland
12 Parties related to information provided in and/or discovery
13 produced by any of the Highland Parties in the state court
14 action.
15 For the avoidance of doubt, this agreement is by and
16 between Ellington and the Highland Parties only, and nothing
17 herein shall prevent Ellington from pursuing discovery, causes
18 of action, claims, or any other proceeding of any kind
19 against, among others, Patrick Daugherty.
20 To the extent discovery is permitted pursuant to this
21 agreement, the Highland Parties agree to cooperate in such
22 discovery and not to interfere with Daugherty's discovery
23 obligations in the state court action.
24 Pursuant to Rule 11 of the Texas Rules of Civil Procedure,
25 the Parties agree that information produced in the state court

1 action shall be treated as confidential and shall not be
2 disclosed except to a party in the state court action and its
3 agents, including its attorneys who are of record in the state
4 court action, and that such discovery shall be used solely for
5 purposes of the state court action.
6 That completes the written agreement between the parties.
7 I do want to point out I've got Mr. Daugherty's counsel here,
8 and the declarations of Mr. Dubel and Mr. Nelms that are
9 referenced in what I just read have been typed out by counsel
10 for Mr. Ellington, they've been shown to Mr. Daugherty and his
11 counsel, and Mr. Daugherty and his counsel have no objection
12 to those declarations coming into evidence in the state court
13 action.
14 Do I have that right?
15 A VOICE: That's correct, Your Honor.
16 MR. MORRIS: Yeah.
17 THE COURT: Okay. Well, I would like each and every
18 lawyer for each and every party to confirm --
19 MR. MORRIS: Uh-huh.
20 THE COURT: -- they agree with what you just read
21 into the record. So I'll start with the various what you
22 called Highland Party lawyers.
23 MR. LEVY: Confirmed --
24 THE COURT: The lawyer for Mr. Seery first?
25 MR. LEVY: Confirmed for Mr. Seery. Yes, Your Honor.

1 THE COURT: Okay. Confirmed for Mr. Seery.
2 For Mr. Nelms and Mr. Dubel?
3 MR. WYNNE: Your Honor, Richard Wynne. Yes, I can
4 confirm that with -- I just want to make sure that we're clear
5 on a few things. We saw a four-point declaration that we've
6 agreed to for both Mr. Nelms and Mr. Dubel. That's
7 acceptable.
8 It doesn't precisely say that, but assuming that -- and
9 Mr. Morris sent that to us, and it's fine.
10 But the -- there is still pending the motion for
11 protective order on January 4th and a motion to quash that we
12 had filed in Texas relating to the subpoena. So I'm assuming
13 that counsel for Mr. Ellington will confirm that, upon signing
14 that declaration that we've been -- the form we've been
15 provided, that those -- they'll withdraw the subpoena and
16 those motions will come off calendar. I just want to make
17 sure that that's clear.
18 THE COURT: Okay.
19 MR. WYNNE: I think it is understood by everyone, but
20 I wanted to clarify that.
21 THE COURT: Okay.
22 MR. HURST: I can confirm that on behalf of Mr.
23 Ellington in the state court proceeding.
24 THE COURT: Okay. I don't know if you could hear,
25 but Mr. Hurst just confirmed yes on behalf of Ellington.

1 Okay.
2 MR. WYNNE: I heard that, then. Thank you, Your
3 Honor.
4 THE COURT: Okay. All right. Now we'll hear from
5 counsel for the state court lawyers. Mr. Lee?
6 MR. LEE: Yes. Your Honor, just one point. The Law
7 Firms are actually not parties to this agreement. It's Mr.
8 Ellington. So what we would like, based on the dismissal
9 that's part of this agreement, is for the Court to make a
10 determination that the relief sought in the motion as against
11 the Law Firms is denied as moot in light of this settlement.
12 MR. MORRIS: Denied as moot. No problem, Your Honor.
13 THE COURT: Okay.
14 MR. MORRIS: Moot -- moot because of the settlement
15 that was reached.
16 MR. LEE: Yes.
17 MR. MORRIS: Yeah.
18 MS. HARTMAN: And Scott.
19 MR. LEE: Huh?
20 MS. HARTMAN: And Scott.
21 MR. LEE: Well, I'm going to -- I thought you wanted
22 -- I can -- I would also -- the same thing for Mr. Ellington,
23 but I thought she would address it. But obviously the same
24 request.
25 THE COURT: Okay. Well, the very first thing I heard

1 you say was dismissal with prejudice of the contempt motion,
2 and I interpret that to mean it all --
3 MR. MORRIS: Yes. I think --
4 THE COURT: -- goes away for good.
5 MR. MORRIS: I think they just want some comfort that
6 the Court is making an affirmative statement that the -- that
7 the complaint is being -- or the motion is being dismissed.
8 MR. LEE: That the relief sought is moot now in light
9 of --
10 MR. MORRIS: You know, as moot in light of the
11 settlement. I don't know.
12 MR. LEE: It's just a comfort order.
13 THE COURT: Okay.
14 MR. LEE: Thank you, Your Honor.
15 THE COURT: Well, then I'll give you the comfort --
16 MR. LEE: Thank you.
17 THE COURT: -- that I consider it moot. And I'm not
18 going to *sua sponte* raise it or whatever people might be
19 worried about. But, okay. Anything? Ms. Hartman, you're
20 rising. Anything that you can think of we need to address?
21 MS. HARTMAN: No, Your Honor. I just wanted to
22 confirm as to Mr. Ellington that we are in agreement as well.
23 THE COURT: Okay. Okay. Very good. Well, I guess
24 we've covered it, and I really appreciate not having to --
25 it's not that I'm trying to avoid the work. But as I said, we

1 all want pragmatic solutions, and this just seemed like a
2 situation where we could avoid a 108-page ruling that said
3 something someone wasn't going to like and then would appeal.
4 So anyway, very good. I'll be looking, I presume, tomorrow
5 for this written form of order. And I thank you all for
6 working this out.
7 MR. MORRIS: Great. Thank you, Your Honor.
8 MR. LEE: Thank you for your tolerance with the
9 extensions.
10 MS. HARTMAN: Thank you to your staff.
11 MR. LEE: Yeah.
12 (Proceedings concluded at 6:00 p.m.)
13 --oOo--
14
15
16
17
18
19
20 CERTIFICATE
21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the above-entitled matter.
23 **/s/ Kathy Rehling** **12/06/2023**
24 ____ ____________________
25 Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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HOSPITALITY TRUST

FOR IMMEDIATE RELEASE

NOT FOR DISSEMINATION TO U.S. NEWS WIRE SERVICES OR DISSEMINATION IN THE UNITED STATES

NexPoint Hospitality Trust Announces Undertaking Regarding Amendments to COVID Loans

DALLAS and TORONTO, June 26, 2023 –NexPoint Hospitality Trust ("NHT" or the "REIT"), (TSX-V: NHT.U) announced today that, at the request of the TSX Venture Exchange, it has provided an undertaking to amend the convertible promissory notes issued to NexPoint Real Estate Opportunities, LLC and Highland Income Fund (the "**Lenders**") during the COVID-19 pandemic (the "**COVID Loans**") to (i) reduce the conversion term to five years from the date of issuance; (ii) establish a minimum acceptable conversion price based on market prices at the time of each particular advance; and (iii) remove the conversion of interest, such that only principal under the COVID Loans is convertible. For one of the COVID Loans, in an amount of US$8.5 million advanced on February 22, 2022, the REIT has agreed to amend the loan to remove the conversion feature altogether. As each of the Lenders is a related party of the REIT under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"), in order to enter into the amendments to the COVID Loans, the REIT has undertaken to seek disinterested unitholder approval at its 2023 annual and special meeting of unitholders.

The COVID Loans were in the aggregate amount of US$56,165,000. The proceeds from the COVID Loans were used to fund the REIT's operating expenses and interest and principal payments on outstanding indebtedness during the COVID 19 pandemic to allow the REIT to continue as a going concern.

About NHT
NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. NHT is focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 10 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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EXHIBIT 18

NEXPOINT
HOSPITALITY TRUST

NOTICE OF ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

AND

MANAGEMENT INFORMATION CIRCULAR

ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

TO BE HELD ON OCTOBER 12, 2023

September 11, 2023

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NOTICE OF ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

NOTICE IS HEREBY GIVEN that an annual and special meeting (the "**Meeting**") of the holders of trust units ("**Unitholders**") of NexPoint Hospitality Trust ("**NHT**" or the "**REIT**") will be held virtually via live webcast on October 12, 2023 at 10:00 a.m. (Toronto time), for the following purposes:

1. **TO RECEIVE** and consider the financial statements of NHT for the year ended December 31, 2022, and the report of the auditor thereon;

2. **TO ELECT** members of the board of trustees of NHT for the ensuing year;

3. **TO APPOINT** the auditor of NHT for the ensuing year and to authorize the board of trustees of NHT to fix the remuneration of the auditor;

4. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "A" to the accompanying information circular) approving the amended and restated deferred unit plan of the REIT, which resolution, in order to be effective, must be passed by the affirmative vote of a simple majority of the votes cast by the disinterested Unitholders, excluding the votes cast by such Unitholders that are required to be excluded pursuant to TSXV Policy 4.4 – *Security Based Compensation* ("**TSXV Policy 4.4**");

5. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "C" to the accompanying information circular) approving and ratifying the grant of 1,295,668 deferred units to NHT's independent trustees on September 11, 2023;

6. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "D" to the accompanying information circular) approving certain amendments to the convertible promissory notes issued by the REIT between June 2021 and September 2022, which resolution, to be effective, must be passed by an affirmative vote of a simple majority of the votes cast by the Unitholders, excluding the votes cast by such Unitholders that are required to be excluded pursuant to Multilateral Instrument 61 - 101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"); and

7. **TO TRANSACT** such other business as may properly come before the Meeting or any adjournment thereof.

The information circular contains details of the matters to be considered at the Meeting. No other matters are contemplated, however, any permitted amendment to or variation of any matter identified in this notice may properly be considered at the Meeting. The Meeting may also consider the transaction of such other business as may properly come before the Meeting or any adjournment thereof.

The Meeting will be held in a virtual-only format, which will be conducted via live webcast over the internet. Unitholders will have an equal opportunity to participate at the Meeting regardless of their geographic location. Unitholders who choose to attend the Meeting will do so by accessing a live webcast of the Meeting via the internet by visiting https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023). Unitholders will be able to listen to the Meeting live and submit questions while the Meeting is being held. Unitholders who are unable to attend the virtual Meeting are requested to sign, date and return the form of proxy or voting instruction form received in accordance with the instructions provided.

If you wish to appoint a proxyholder other than the management nominees identified in the form of proxy or voting instruction form, be it yourself or a third party, you must carefully follow the instructions in the attached information circular and on your form of proxy or voting instruction form. These instructions include the additional step of registering such proxyholder with our transfer agent, TSX Trust Company, after submitting the form of proxy or voting instruction form, as applicable. Failure to register the proxyholder with our transfer agent will result in the proxyholder not receiving a control number. Without a control number, the proxyholder will not be able to participate in or vote at the virtual Meeting. It is the responsibility of the Unitholder to register their proxyholder

with TSX Trust Company in advance of the Meeting by completing and returning a "Request for Control Number" form, by no later than 10:00 a.m. (Toronto time) on October 10, 2023 or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario) prior to the time of such postponed or adjourned meeting. The "Request for Control Number" form is available at https://www.tsxtrust.com/control-number-request.

If you are a Registered Holder (as defined in the information circular), you must vote your proxy before Tuesday, October 10, 2023 at 10:00 a.m. (Toronto time), or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario) prior to the time of such postponed or adjourned meeting, in order for such vote to be valid at the Meeting. Voting by proxy will not prevent you from voting online at the Meeting if you attend the virtual Meeting but will ensure that your vote will be counted if you are unable to attend.

Included with this letter is a form of proxy for use by Registered Holders. Whether or not you intend to attend the Meeting, you are requested to complete, sign, date and return the enclosed form of proxy. To be valid, proxies must be signed and deposited with TSX Trust by mail to P.O. Box 721, Agincourt, ON M1S 0A1, Attention: Proxy Department; by facsimile to 1-416-595-9593; or electronically online with your 12-digit Control Number at www.meeting-vote.com, by no later than 10:00 a.m. (Toronto time) on Tuesday, October 10, 2023, or, if the Meeting is adjourned or postponed, at least 48 hours prior to such adjourned or postponed Meeting (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario).

Unitholders who hold their units through a nominee such as a broker, an intermediary, a trustee or other person (each, an "**Intermediary**"), or who otherwise do not hold their units in their own name ("**Beneficial Holders**") should note that units held by such Intermediaries on behalf of a Beneficial Holder can only be voted at the direction of the Beneficial Holder. Existing regulatory policy requires Intermediaries to seek voting instructions from Beneficial Holders in advance of unitholder meetings. Intermediaries have their own mailing procedures and provide their own return instructions to Beneficial Holders, which should be carefully followed by Beneficial Holders in order to ensure that their units are voted at the Meeting. The information circular provides additional information relating to the matters to be dealt with at the Meeting and forms part of this notice.

If you have any questions or need assistance with the completion and delivery of your proxy or voting instruction form, please contact TSX Trust Company by phone at 416-682-3860 or 1-800-387-0825 (toll-free in North America), or by e-mail at proxyvote@tmx.com.

The financial statements for the year ended December 31, 2022 and the report of the auditor thereon are available on the SEDAR website at www.sedarplus.ca.

Unitholders of record at the close of business on August 28, 2023 (the "**Record Date**") are entitled to notice of, and to vote at, the Meeting.

DATED at Toronto, Ontario this 11th day of September, 2023.

BY ORDER OF THE BOARD OF TRUSTEES

"James Dondero"

Chair of the Board of Trustees
NexPoint Hospitality Trust

NEXPOINT
HOSPITALITY TRUST

MANAGEMENT INFORMATION CIRCULAR

Unless otherwise indicated herein, or the context otherwise requires, "**NHT**" or the "**REIT**" refers to NexPoint Hospitality Trust, including its direct and indirect subsidiaries. Unless otherwise indicated herein, all dollar amounts are stated in U.S. dollars and references to dollars or "**$**" are to U.S. currency. The board of trustees of NHT is referred to herein as the "**Board**" or the "**Trustees**", and a "**Trustee**" means any one of them.

This management information circular (the "**Information Circular**") is furnished in connection with the solicitation of proxies by or on behalf of management of NHT, for use at the annual and special meeting (the "**Meeting**") of holders ("**Unitholders**") of trust units ("**Units**") of NHT scheduled to be held on Thursday, October 12, 2023 virtually via live webcast at 10:00 a.m. (Toronto time), and at all postponements or adjournments thereof, for the purposes set forth in the accompanying notice of the Meeting (the "**Notice of Meeting**"). Unitholders of record at the close of business on August 28, 2023 (the "**Record Date**") will be entitled to vote at the Meeting.

The Meeting will be held in a virtual-only format, which will be conducted via live webcast over the internet. Unitholders will have an equal opportunity to participate at the Meeting regardless of their geographic location. A summary of the information Unitholders will need to attend the Meeting online is provided below under "*Attending and Voting at the Virtual Meeting*".

Except as otherwise stated in this Information Circular, the information contained herein is given as of September 11, 2023.

PROXY SOLICITATION AND VOTING

Solicitation of Proxies

The solicitation of proxies is being made by or on behalf of management. It is expected that the solicitation will be primarily by mail, but proxies may also be solicited personally, by telephone or other form of correspondence. NHT will bear the cost in respect of the solicitation of proxies for the Meeting and will bear the legal, printing and other costs associated with the preparation of the Information Circular. NHT will also pay the fees and costs of intermediaries for their services in transmitting proxy-related material in accordance with National Instrument 54-101 — *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**"). This cost is expected to be nominal.

Appointment of Proxies

Unitholders will receive a form of proxy or voting instruction form (the "**Form of Proxy**") for use in connection with the Meeting. The persons named in such Form of Proxy are currently Trustees or officers of NHT. **A Unitholder who wishes to appoint some other person to represent him, her or it at the Meeting may do so by crossing out the persons named in the Form of Proxy and inserting such person's name in the blank space provided in the Form of Proxy or by completing another proper Form of Proxy. Such other person need not be a Unitholder of NHT.**

The Unitholder must also follow the additional step of registering such proxyholder with our transfer agent, TSX Trust Company, after submitting the Form of Proxy. Failure to register the proxyholder with our transfer agent will result in the proxyholder not receiving a control number. Without a control number, the proxyholder will not be able to participate in or vote at the virtual meeting. It is the responsibility of the Unitholder to register their proxyholder with TSX Trust Company in advance of the Meeting by completing and returning a "Request for Control Number" form no later than 10:00 am (Toronto time) on October 10, 2023 or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays) preceding the time of such adjourned

meeting (the "**Proxy Deadline**") The "Request for Control Number" form is available at https://www.tsxtrust.com/control-number-request.

The document appointing a proxy must be in writing and completed and signed by a Unitholder or his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Instructions provided by a Unitholder must be in writing and completed and signed by the Unitholder or his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Persons signing as officers, attorneys, executors, administrators, and trustees or similarly otherwise should so indicate and provide satisfactory evidence of such authority.

Revocation of Proxies

Proxies given by Unitholders for use at the Meeting may be revoked at any time prior to their use by depositing an instrument in writing executed by the Unitholder or by his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Revocations of proxies must be deposited in one of the manners indicated on the Form of Proxy not later than two business days prior to the Meeting or any adjournment thereof at which the proxy is to be used.

Only Registered Holders (as defined below) have the right to revoke a proxy. Beneficial Holders (as defined below) who wish to change their vote must make appropriate arrangements with their respective dealers or other intermediaries.

Voting of Proxies

The persons named in the Form of Proxy will vote, or withhold from voting, the Units in respect of which they are appointed, on any ballot that may be called for, in accordance with the instructions of the Unitholder as indicated on the Form of Proxy. In the absence of such specification, such Units will be voted at the Meeting as follows:

- **FOR the election of those persons listed in this Information Circular as the proposed Trustees for the ensuing year;**
- **FOR the appointment of Frazier & Deeter, LLC, as auditor of NHT for the ensuing year and to authorize the Board to fix the auditor's remuneration;**
- **FOR the approval of the resolution adopting an amended and restated deferred unit plan for the REIT;**
- **FOR the approval of the resolution approving and ratifying the grant of 1,295,668 deferred units to the REIT's independent trustees on September 11, 2023; and**
- **FOR the approval of the resolution approving the amendments to the convertible promissory notes issued by the REIT between June 2021 and September 2022.**

For more information on these issues, please see the section entitled "*Matters to be Considered at the Meeting*" in this Information Circular.

The persons appointed under the Form of Proxy are conferred with discretionary authority with respect to amendments to or variations of matters identified in the Form of Proxy and the Notice of Meeting and with respect to other matters which may properly come before the Meeting. In the event that amendments or variations to matters identified in the Notice of Meeting are properly brought before the Meeting, it is the intention of the persons designated in the Form of Proxy to vote in accordance with their best judgment on such matter or business. As at the date of this Information Circular, the Trustees know of no such amendments, variations or other matters.

Quorum

The quorum at the Meeting or any adjournment thereof shall be individuals deemed to be present at the virtual Meeting in person or represented by proxy, not being less than two in number and such persons holding or representing by proxy in aggregate not less than 25% of the total number of outstanding Units.

INFORMATION FOR BENEFICIAL HOLDERS OF SECURITIES

Information set forth in this section is very important to persons who do not hold Units in their own name. A Unitholder who beneficially owns Units (a "**Beneficial Holder**") that are registered in the name of an intermediary (such as a securities broker, financial institution, trustee, custodian or other nominee who holds securities on behalf of the Beneficial Holder or in the name of a clearing agency in which the intermediary is a participant) should note that only proxies or instructions deposited by securityholders whose names are on the records of NHT as the registered holders of Units ("**Registered Holders**") can be recognized and acted upon at the Meeting.

Units that are listed in an account statement provided to a Beneficial Holder by a broker are likely not registered in the Beneficial Holder's own name on the records of NHT. Such Units are more likely to be registered in the name of CDS Clearing and Depository Services Inc. ("**CDS**") or its nominee.

Applicable regulatory policy in Canada requires brokers and other intermediaries to seek voting instructions from Beneficial Holders in advance of securityholder meetings. Every broker or other intermediary has its own mailing procedures and provides its own return instructions, which should be carefully followed by Beneficial Holders in order to ensure that their Units are voted at the Meeting. Often, the form of proxy supplied to a Beneficial Holder by its broker is identical to that provided to registered securityholders. However, its purpose is limited to instructing the registered securityholder how to vote on behalf of the Beneficial Holder. Most brokers now delegate responsibility for obtaining instructions from clients to Broadridge Investor Communications Solutions ("**Broadridge**"). Broadridge typically prepares a machine-readable voting instruction form, mails those forms to the Beneficial Holders and asks Beneficial Holders to return the proxy forms to Broadridge. Broadridge then tabulates the results of all instructions received and provides appropriate instructions representing the voting of the securities to be represented at the Meeting. A Beneficial Holder receiving a Broadridge voting instruction form cannot use that voting instruction form to vote Units directly at the Meeting. The voting instruction form must be returned to Broadridge well in advance of the Meeting in order to have the Units voted. Proxy-related materials will not be sent by NHT directly to "non-objecting beneficial owners" under NI 54-101. NHT intends to pay for intermediaries to deliver proxy-related materials to "objecting beneficial owners" and Form 54-101F7 (the request for voting instructions), in accordance with NI 54-101.

Although Beneficial Holders may not be recognized directly at the Meeting for the purposes of voting Units registered in the name of CDS or their broker or other intermediary, a Beneficial Holder may attend the Meeting as proxy holder for the Registered Holder and vote their Units in that capacity. **Beneficial Holders who wish to attend the Meeting and indirectly vote their own Units as proxy holder for the Registered Holder should enter their own names on the Form of Proxy provided to them and return the same to their broker or other intermediary (or the agent of such broker or other intermediary) in accordance with the instructions provided by such broker, intermediary or agent well in advance of the Meeting. Beneficial Holders can only be validated and indirectly vote their own Units as proxy holder for the Registered Holder by completing the Form of Proxy provided to them and returning the same to their broker or other intermediary in accordance with the instructions provided.**

ATTENDING AND VOTING AT THE VIRTUAL MEETING

Attendance

NHT is holding the Meeting in a virtual-only format, which will be conducted via live webcast. Unitholders will not be able to attend the Meeting in person. Unitholders will be able to attend, participate and submit questions online at the virtual Meeting via live webcast. Unitholders will also be able to vote prior to the Meeting by completing their Form of Proxy.

The Meeting can be accessed as a Unitholder or as a guest at the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023).

If you attend the Meeting online, it is important that you are connected to the internet at all times during the Meeting in order to participate. It is your responsibility to ensure connectivity for the duration of the Meeting. You should allow 30 minutes prior to the start of the Meeting to check in online.

Registered Holders

Registered Holders can vote Units held in their name as the Unitholder of record online at the Meeting or by proxy. To vote Units personally, Registered Holders must submit the Form of Proxy appointing themselves as proxyholder by the Proxy Deadline. However, even if you plan to attend the Meeting, NHT recommends that you vote your Units in advance, so that your vote will be counted if you later decide not to attend the Meeting. Voting by proxy can be completed by returning the Form of Proxy.

Included with this circular is a Form of Proxy for use by Registered Holders. Whether or not you intend to attend the Meeting, you are requested to complete, sign, date and return the enclosed form of proxy. To be valid, proxies must be signed and deposited with TSX Trust by mail to P.O. Box 721, Agincourt, ON M1S 0A1, Attention: Proxy Department; by facsimile to 1-416-595-9593; or electronically online with your 12-digit Control Number at www.meeting-vote.com, by no later than 10:00 a.m. (Toronto time) on Tuesday, October 10, 2023 or, if the Meeting is adjourned or postponed, at least 48 hours prior to such adjourned or postponed Meeting (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario). The chair of the Meeting may waive, without notice, the time limit for deposit of proxies.

If a Registered Holder does not wish to attend and vote at the Meeting online (or have another person attend and vote on his or her behalf), the Form of Proxy must be completed, signed and returned in accordance with the instructions on the form.

Registered Holders can attend and vote online during the Meeting at the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023) by selecting “I have a control number”, entering your 12-digit control number, which can be located on your Form of Proxy, and entering the password: “nexpoint2023” (case sensitive).

Beneficial Holders

Beneficial Holders can vote their Units online at the Meeting or by proxy. Beneficial Holders will receive from their intermediary a Form of Proxy for the number of Units beneficially owned. **Beneficial Holders who wish to attend the Meeting and indirectly vote their own Units as proxy holder for the Registered Holder should enter their own names on the Form of Proxy provided to them and return the same to their broker or other intermediary (or the agent of such broker or other intermediary) in accordance with the instructions provided by such broker, intermediary or agent well in advance of the Meeting. Beneficial Holders can only be validated and indirectly vote their own Units as proxy holder for the Registered Holder by completing the Form of Proxy provided to them and returning the same to their broker or other intermediary in accordance with the instructions provided.**

However, even if you plan to attend the Meeting, NHT recommends that you vote your Units in advance, so that your vote will be counted if you later decide not to attend the Meeting. Beneficial holders should follow the instructions on the form they receive and contact their intermediaries promptly if they need assistance. Beneficial Holders can vote by accessing the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023) and entering the 12-digit control number printed on the Form of Proxy and following the instructions on the screen.

If a Beneficial Holder does not wish to attend and vote at the Meeting online (or have another person attend and vote on his or her behalf), the Form of Proxy must be completed, signed and returned in accordance with the directions on the form.

VOTING SECURITIES AND PRINCIPAL HOLDERS THEREOF

Units

NHT is authorized to issue an unlimited number of Units. The Units are listed and posted for trading on the TSX Venture Exchange (the "**TSXV**") under the symbol "NHT.U". No Unit has any preference or priority over another. Each Unit represents a Unitholder's proportionate undivided beneficial ownership interest in NHT and confers the right to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by NHT.

As of the date hereof, there were 29,352,055 Units outstanding.

Class B Units

NHT Operating Partnership, LLC (the "**OP**"), the operating partnership of NHT, has class B units ("**Class B Units**") outstanding. Class B Units do not carry a voting right with respect to matters put before Unitholders of NHT for a vote. However, the Class B Units are, in all material respects, economically equivalent to the Units on a per unit basis, subject to certain customary anti-dilution adjustments. The holders of Class B Units are entitled to receive distributions from the OP on the same per unit basis as holders of Units.

After Class B Units have been issued for at least 12 months (subject to acceleration in certain circumstances), holders of such Class B Units, acting individually, have the right to cause the OP to redeem all or a portion of such Class B Units for a cash payment to be paid by the OP. The OP shall not be obligated to satisfy such redemption right if NHT Holdings, LLC ("**NHH**") elects to purchase the Class B Units in exchange for a cash payment or equivalent value in Units, as determined by NHH (and NHT, indirectly) in its sole discretion. If NHH elects to redeem such Class B Units for the equivalent value in Units, NHT will generally deliver (indirectly) one Unit for each Class B Unit redeemed (subject to customary anti-dilution adjustments). As of the date hereof, there were 205,597 Class B Units outstanding.

Eligibility for Voting

At the Meeting, each Unitholder of record at the close of business on the Record Date will be entitled to one vote for each Unit held on all matters proposed to come before the Meeting. Any Unitholder who was a Unitholder on the Record Date shall be entitled to receive notice of and vote at the Meeting or any adjournment thereof, even though he, she or it has since that date disposed of his, her or its Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at the Meeting or any adjournment thereof or to be treated as a Unitholder of record for purposes of such other action.

Principal Unitholders

To the knowledge of NHT and its executive officers, the only person or company that beneficially owned, directly or indirectly, or exercised control or direction over, voting securities of NHT carrying 10% or more of the voting rights attached to all outstanding Units of NHT as of the date hereof, was:

Name	Number of Units Owned, Controlled or Directed[1]	Percentage of Outstanding Units	Number of Class B Units Owned, Controlled or Directed	Percentage of Outstanding Units (determined as if all Class B Units are redeemed for Units)[2]
James Dondero[3]	21,170,538	72.13%	0	71.62%

Notes:

(1) The number of Units beneficially owned includes any Units over which the person has sole or shared voting power or investment power. No person has any right to acquire additional Units through the exercise of any stock option or other right. Unless otherwise indicated, each person has sole investment and voting power (or shares such power with his or her spouse) over the Units set forth in the table.

(2) The percentages shown are based on 29,352,055 Units and 205,597 Class B Units Outstanding as of the date hereof.

(3) Includes 13,571,131 Units owned by NexPoint Real Estate Opportunities, LLC, 5,394,662 Units owned by The Dugaboy Investment Trust, 1,045,848 Units owned by NHT Holdco, LLC, 1,068,519 Units owned by Governance RE Ltd. and 90,378 Units owned by NexPoint Real Estate Advisors, L.P.; each of which is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

Management of NHT understands that the Units registered in the name of CDS are beneficially owned through various dealers and other intermediaries on behalf of their clients and other parties. The names of the Beneficial Holders of such Units are not known to NHT. Except as set out above, NHT and its executive officers have no knowledge of any person or company that beneficially owns, directly or indirectly, or exercises control or direction over 10% or more of the outstanding Units of NHT.

Voting Results

Voting results of the Meeting will be filed on SEDAR at www.sedarplus.ca following the Meeting.

MATTERS TO BE CONSIDERED AT THE MEETING

1. Financial Statements

The financial statements of NHT for the year ended December 31, 2022, and the auditor's report thereon will be placed before the Unitholders at the Meeting. No formal action will be taken at the Meeting to approve the financial statements. If any Unitholder has questions regarding such financial statements, such questions may be brought forward at the Meeting.

2. Election of Trustees

The present term of office of each Trustee of NHT will expire upon the election of Trustees at the Meeting. It is proposed that each of the persons whose name appears below be elected as a Trustee of NHT to serve until the close of the next annual meeting of Unitholders or until his or her successor is elected.

Advance Notice Policy

NHT's amended and restated declaration of trust dated March 27, 2019 (as subsequently amended by the first amendment to the amended and restated declaration of trust dated September 16, 2020, and further amended by the second amendment to the amended and restated declaration of trust dated October 25, 2021, the "**Declaration of Trust**") contains an advance notice policy (the "**Advance Notice Policy**") which requires a nominating Unitholder to provide notice to the Trustees of proposed Trustee nominations not less than 30 days prior to the date of the applicable annual meeting (being not later than September 12, 2023 for the purposes of the Meeting). This advanced notice period is intended to give NHT and its Unitholders sufficient time to consider any proposed nominees. A copy of the Declaration of Trust, which sets out the Advance Notice Policy, is available on the SEDAR website at www.sedarplus.ca.

Majority Voting Policy

The Board has adopted a majority voting policy (the "**Majority Voting Policy**") in Trustee elections that applies at any meeting of Unitholders where an uncontested election of Trustees is held, including at the Meeting. Pursuant to this policy, if the number of proxy votes withheld for a particular Trustee nominee is greater than the votes in favour of such nominee, the Trustee nominee shall immediately tender his or her resignation to the Chair of the Board following the Meeting. Following receipt of a resignation submitted pursuant to this policy, the compensation, governance, and nominating committee of the Board (the "**Compensation, Governance and Nominating Committee**") shall consider whether or not to accept the offer of resignation and shall recommend to the Board whether or not to accept it. With the exception of special circumstances that would warrant the continued service of the applicable Trustee on the Board, the Compensation, Governance and Nominating Committee shall accept and recommend acceptance of the resignation by the Board. Within 90 days following the Meeting, the Board shall make

its decision, on the Compensation, Governance and Nominating Committee's recommendation. Following the Board's decision on the resignation, the Board shall promptly disclose, via press release (a copy of which shall be provided to the TSXV), its decision as to whether or not to accept the Trustee's resignation offer, including the reasons for rejecting the resignation offer, if applicable. A Trustee who tenders his or her resignation pursuant to the Majority Voting Policy will not be permitted to participate in any meeting of the Board or the Compensation, Governance and Nominating Committee at which the resignation is considered. In the event of a "contested election", where the number of nominees for trustee exceeds the number of trustees to be elected, subject to applicable law, the voting method to be applied for purposes of electing trustees at the meeting will be determined by the Chair of the meeting in his or her sole discretion.

Nominees

Pursuant to an investor rights agreement among NHT and certain Unitholders of NHT who are principals and affiliates of NexPoint Real Estate Advisors VI, L.P. (collectively, the "**NexPoint Holders**") dated March 29, 2019 (the "**Investor Rights Agreement**"), the NexPoint Holders are granted the right to nominate two Trustees (such nominees are subject to election together with the remaining Trustees at annual meetings of Unitholders) subject to the NexPoint Holders owning, in the aggregate, 20% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), such number being reduced to one nominee if the NexPoint Holders own, in the aggregate, less than 20% but 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units). Upon the NexPoint Holders' aggregate ownership falling below 10%, the NexPoint Holders will not have any Board nomination rights. Notwithstanding the foregoing, where the Board is comprised of four or fewer Trustees, as long as the NexPoint Holders own, in the aggregate, 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), the NexPoint Holders are granted the right to nominate a maximum of one Trustee. For so long as the NexPoint Holders have nomination rights under the Investor Rights Agreement, the Board of Trustees will be restricted from nominating more than five Trustees. For clarity, this restriction does not affect the ability of a Unitholder to nominate Trustees in accordance with the terms of the Declaration of Trust or applicable law. The Investor Rights Agreement is available on the SEDAR website at www.sedarplus.ca.

As of the Record Date, the Board was comprised of four Trustees and the NexPoint Holders owned, in the aggregate, 29.7% of the outstanding Units (determined as if all Class B Units are redeemed for Units) and are therefore entitled to nominate one Trustee at the Meeting. Currently, James Dondero, who serves on the Board pursuant to the NexPoint Holders' nomination right, is nominated for re-election pursuant to the NexPoint Holders' nomination right at the Meeting.

The persons named in the Form of Proxy, if not expressly directed to the contrary in such Form of Proxy, intend to vote for the election, as Trustees, of the proposed nominees whose names are set out below. It is not contemplated that any of the proposed nominees will be unable to serve as a Trustee but, if that should occur for any reason prior to the Meeting, the persons named in the Form of Proxy reserve the right to vote for another nominee at their discretion. Each nominee elected as a Trustee will hold office until the close of the next annual meeting of the Unitholders or until his or her successor is elected or appointed. The Declaration of Trust provides for the Board to consist of a minimum of one and a maximum of nine Trustees. The Board currently has four Trustees and it is proposed that four Trustees be elected at the Meeting.

About the Nominees

The following information sets forth the names of, and certain other biographical information for, the four individuals proposed to be nominated for election as Trustees at the Meeting.

JAMES DONDERO	**Principal Occupation**
Age: 60	Mr. Dondero serves as a Trustee of NHT and is Chair of the Board. He is a member of NHT's Audit Committee and Compensation, Governance and Nominating Committee. Mr. Dondero also serves as NHT's Chief Executive Officer. He is the President of NexPoint

Location: Dallas, Texas, USA Trustee Since: February 2019 Status: **NOT INDEPENDENT**	Advisors, LP, which he founded in 2012. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes with portfolio management experience ranging in several asset classes, including real estate securities, corporate securities and direct lending. Mr. Dondero received a B.S. in Commerce (Accounting and Finance) from the University of Virginia, and is a Certified Public Accountant, Certified Managerial Accountant and a Chartered Financial Analyst.
	Other Public Board Memberships
	N/A
	Board / Committee Memberships
	Board (Chair) Compensation, Governance and Nominating Committee Audit Committee

Securities Beneficially Owned or Controlled (as at September 8, 2023)							
Units		**Profits LTIP Units**		**Total Units and Profits LTIP Units**		**Unit Ownership Requirement**	
Number[1]	Market Value[2]	Number	Market Value[2]	Number[1]	Market Value[2]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[3]
21,170,538	$10,585,269	389,025	$194,513	21,559,563	$10,779,782	$5,000,000	Yes

Notes:

(1) Includes 13,571,131 Units owned by NexPoint Real Estate Opportunities, LLC, 5,394,662 Units owned by The Dugaboy Investment Trust, 1,045,848 Units owned by NHT Holdco, LLC, 1,068,519 Units owned by Governance RE Ltd. and 90,378 Units owned by NexPoint Real Estate Advisors, L.P.; each of which is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

(2) These amounts were determined by multiplying the number of Units or Profits LTIP Units (as defined below) (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

NEIL LABATTE	**Principal Occupation**
Age: **66** Location: Toronto, Ontario, Canada Trustee Since: December 2018 Status: **INDEPENDENT**	Mr. Labatte serves as a Trustee of NHT and is Lead Trustee of the Board. Mr. Labatte currently serves on the boards of BSR Real Estate Investment Trust (where he serves as Chair) and Triovest Inc. (a Canada-wide diversified private real estate investment and management corporation). He was previously a director of Skyline Investments Inc. (Tel Aviv Stock Exchange), Jack Nathan Medical Corp. (TSXV) and Pomeroy Hotels (a private entity). He also previously served as a director for HealthLease Properties REIT, Alpha Peak and Holloway Lodging Corporation, all current or former TSX-listed entities. Mr. Labatte is the former President and Chief Executive Officer of the Legacy Hotels REIT. He became President in 1999 and Chief Executive Officer in 2003, holding both titles until the Legacy Hotels REIT was sold in September 2007. He also served as a trustee of the Legacy Hotels REIT from April 2003 until September 2007. Mr. Labatte joined Fairmont Hotels & Resorts in 1997 as Vice President Acquisitions, and from October 2001 to December 31, 2004 served as Senior Vice President, Real Estate and was a member of the organization's Executive Committee. Mr. Labatte possesses over 35 years of experience within the real estate sector.

	For four years prior to joining Fairmont Hotels & Resorts, Mr. Labatte was a founder, principal and board member of AEW Mexico Company, a Dallas, Texas private equity real estate investment management company formed with one of the largest institutional real estate private equity companies in the United States. For the 12 years prior to the formation of AEW Mexico Company, he was involved in the hotel and real estate sectors in the capacity of investment banker and consultant. Mr. Labatte received his B.Sc. and M.Sc. in Finance from the University of Utah. Mr. Labatte played professional hockey with the St. Louis Blues and Salt Lake Golden Eagles from 1977-1982. He was previously Co-Chairman of the NHL Alumni Association.
	Other Public Board Memberships
	BSR Real Estate Investment Trust (TSX)
	Board / Committee Memberships
	Board (Lead Trustee) Compensation, Governance and Nominating Committee (Chair) Audit Committee

Securities Beneficially Owned or Controlled (as at September 8, 2023)

Units		**Deferred Units**[1]		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value	Number	Market Value[2]	Number	Market Value[2]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[3]
–	–	972,312	$486,156	972,312	$486,156	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees (as defined below) payable to the independent Trustees to be paid in the form of Deferred Units (as defined below) in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Labatte in respect of fiscal 2020 and 2019 were $93,000 and $47,250 respectively. Mr. Labatte elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Labatte's service and performance during the COVID-19 pandemic, and to encourage Mr. Labatte to participate in the future growth of the REIT, Mr. Labatte was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Labatte was $88,500, of which $56,250 was paid in cash and the remaining $32,250 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $90,750 and $50,000 of Trustee Fees were payable to Mr. Labatte. Mr. Labatte elected to receive such fees in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 692,000 Deferred Units to Mr. Labatte in respect of his remaining portion of 2021 Trustee Fees, 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. As of the date hereof, Mr. Labatte holds 972,312 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

GRAHAM SENST	Principal Occupation
Age: **74** Location: Toronto, Ontario, Canada Trustee Since: February 2019 Status: **INDEPENDENT**	Mr. Senst serves as a Trustee of NHT. He is also the Chair of NHT's Audit Committee and a member of NHT's Compensation, Governance and Nominating Committee. Mr. Senst served as President of the Institute of Canadian Real Estate Investment Managers until its sale in August 2012. Prior to this role, Mr. Senst served as Managing Director of KingSett Capital Real Estate Income Fund and as an Executive Vice President of Bentall Capital and Penreal Capital Management. Mr. Senst also served as an Executive Vice President of Bentall Investment Management. Prior to joining Bentall in April 2003, Mr. Senst served as Vice President of Real Estate for the OMERS Administration Corp. (also known as Ontario Municipal Employees Retirement System). Mr. Senst has many years of senior real estate investment experience as a Vice President with a major Ontario pension fund and other Canadian financial institutions. Prior to joining OMERS, Mr. Senst served as Vice President of Real Estate at a Subsidiary of Mackenzie Financial Corporation, where he developed debt and equity investment products for various Mackenzie funds. Mr. Senst served as the Vice President of Corporate Real Estate at both Canada Trust and Truscan Realty. He served as a Member of the Advisory Board at KingSett Capital Income Fund, Morgan Stanley Real Estate Fund IV and Soros Real Estate Investors, C.V. and as a trustee of Residential Equities Real Estate Investment Trust (ResREIT). He also served as a Director of Oxford Properties Group, Inc. Mr. Senst served as a trustee of Milestone Apartments Real Estate Investment Trust (including as the Chair of the Investment Committee) and Partners REIT (including as the Chair of the Audit Committee). He is currently a trustee of BSR Real Estate Investment Trust. Mr. Senst holds an Honours of Business Administration and a Masters of Business Administration from the Ivey School of Business at the University of Western Ontario in London, Ontario and is a 2011 graduate of the Institute of Corporate Directors.
	Other Public Board Memberships
	BSR Real Estate Investment Trust (TSX)
	Board / Committee Memberships
	Board Compensation, Governance and Nominating Committee Audit Committee (Chair)

Securities Beneficially Owned or Controlled (as at September 8, 2023)							
Units		**Deferred Units**[(1)]		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value	Number	Market Value[(2)]	Number	Market Value[(2)]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[(3)]
–	–	673,043	$336,522	673,043	$336,522	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Senst in respect of fiscal 2020 and 2019 were $88,000 and $43,500 respectively. Mr. Senst elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Senst's service and performance during the COVID-19 pandemic, and to encourage Mr. Senst to participate in the future growth of the REIT, Mr. Senst was granted 105,000 Deferred Units which vested immediately.

In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Senst was $83,500, of which $53,333 was paid in cash and the remaining $30,167 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $70,750 and $37,500 of Trustee Fees were payable to Mr. Senst. Mr. Senst elected to receive his 2022 Trustee Fees in the form of Deferred Units, and his accrued 2023 Trustee Fees (as of June 30, 2023) in cash. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 403,668 Deferred Units to Mr. Senst in respect of his remaining portion of 2021 Trustee Fees and 2022 Trustee Fees. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. As of the date hereof, Mr. Senst holds 673,043 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

JERRY PATAVA	**Principal Occupation**
Age: 69 Location: Toronto, Ontario, Canada Trustee Since: August 2022 Status: **INDEPENDENT**	Jerry Patava serves as a Trustee of NHT. Previously, he served as the Chair of Great Gulf Group from January 2020 to January 2023, and Chief Executive Officer from July 2007 to January 2020. He also served as a Board member and Chair of Ashton Woods USA LLC from February 2009 to December 2022. Before joining Great Gulf and affiliates, he served as Executive Vice President and Chief Financial Officer of Fairmont Hotels & Resorts Inc. and as a trustee and Executive Vice President, Chief Financial Officer, and Treasurer of Legacy Hotels Real Estate Investment Trust. From 1990 to 1998, he was Vice President and Treasurer of Canadian Pacific Limited. Prior thereto, he was a Vice President and Director of RBC Dominion Securities. Mr. Patava has more than four decades of experience in real estate and finance. He has served on numerous public and private boards of directors in North America and internationally across a broad spectrum of industries including energy, newspapers and infrastructure. He is currently a member of the Fiera Capital Corporation Independent Review Committee. Mr. Patava holds a Bachelor of Arts from the University of Toronto and a Master of Business Administration from York University.
	Other Public Board Memberships
	N/A
	Board / Committee Memberships
	Board Compensation, Governance and Nominating Committee Audit Committee

Securities Beneficially Owned or Controlled
(as at September 8, 2023)

Units		**Deferred Units[1]**		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value[2]	Number	Market Value	Number	Market Value[2]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement[3]
–	–	200,000	$100,000	200,000	$100,000	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Patava in respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023) is US$20,000 and US$30,000 respectively. Mr. Patava elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 200,000 Deferred Units to Mr. Patava in respect of his remaining portion of his 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. As of the date hereof, Mr. Patava holds 200,000 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

Corporate Cease Trade Orders or Bankruptcies

Other than as set forth below, during the past 10 years, no nominee proposed for election has been a director, chief executive officer or chief financial officer of any company that:

(a) was subject to a cease trade order or similar order or an order that denied the company access to any exemption under securities legislation for a period of more than 30 consecutive days while the nominee was acting in such capacity; or

(b) was subject to a cease trade order or similar order or an order that denied the company access to any exemption under securities legislation for a period of more than 30 consecutive days that was issued after the nominee ceased to act in such capacity and which resulted from an event that occurred while the nominee was acting in such capacity.

During the past 10 years, no nominee proposed for election has been a director or executive officer of any company that, while the nominee was acting in such capacity, or within a year of the nominee ceasing to act in such capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

Mr. Dondero, on the date outlined below, was an executive officer of Highland Capital Management, L.P. ("**HCMLP**"). On October 16, 2019, HCMLP announced that it had filed a petition in the United States Bankruptcy Court for the District of Delaware, seeking voluntary Chapter 11 protection. HCMLP filed a plan of reorganization, which was approved by the United States Bankruptcy Court for the Northern District of Texas in February 2021 and subsequently became effective on August 11, 2021. As part of its plan of reorganization, HCMLP appointed a litigation trustee, whose sole purpose was to investigate, prosecute, settle, or otherwise resolve claims of HCMLP's estate.

Mr. Labatte, on the date outlined below, was a director and/or officer of Talon International Inc. and several affiliated entities, including Talon International Development Inc., TFB Inc., 2263847 Ontario Limited and 2270039 Ontario Limited. On November 1, 2016, such corporations became parties to a receivership order from the Ontario Superior Court of Justice (Commercial List) appointing a court-appointed receiver of certain assets of such entities used in relation to the Trump International Hotel & Tower in Toronto, Ontario. The sale of such assets to various third parties was facilitated through the receivership process.

Personal Bankruptcies

No nominee proposed for election has, within the 10 years prior to the date of this Information Circular, become bankrupt or made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or

instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the nominee.

Penalties or Sanctions

No nominee proposed for election has been subject to any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority or been subject to any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor making an investment decision.

Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the election, as Trustees, of the proposed nominees set out above.

3. Appointment of Auditors

The audit committee of NHT (the "**Audit Committee**") recommends to the Unitholders that Frazier & Deeter, LLC be appointed as the independent auditor of NHT, to hold office until the close of the next annual general meeting of the Unitholders or until its successor is appointed, and that the Trustees be authorized to fix the remuneration of the auditor. Frazier & Deeter, LLC has been the auditor of NHT since February 25, 2021.

Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR of the appointment of Frazier & Deeter, LLC as auditor of NHT to hold office until the next annual general meeting of Unitholders and the authorization of the Board to fix its remuneration.

4. Approval of Amended and Restated Deferred Unit Plan

On August 11, 2023, the Board approved (subject to disinterested Unitholder approval) the amendment and restatement of the REIT's deferred unit plan dated June 30, 2022 (the "**Deferred Unit Plan**") to: (i) remove the Insider Participation Limits (as defined below); and (ii) amend the definition of "Trustee" to explicitly exclude James Dondero, Chief Executive Officer of the REIT, as a participant thereunder (the "**Amended and Restated Deferred Unit Plan**").

The purpose of the Deferred Unit Plan is to enhance the ability of the REIT and any of its subsidiaries to attract, motivate and retain non-employee Trustees of the REIT ("**Participants**"), to reward such persons for their sustained contributions, and to encourage such persons to take into account the long-term performance of the REIT. A deferred trust unit of NHT ("**Deferred Unit**") is an award of a notional investment in the Units reflected on an unfunded, book-entry account maintained by NHT. For a summary of the current terms of the Deferred Unit Plan, see below under "*Compensation – Deferred Unit Plan*".

Under the current Deferred Unit Plan, there are certain restrictions (the "**Insider Participation Limits**") on the granting of Deferred Units to Participants and the issuance of Units to Insiders (as such term is defined in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time (the "**TSXV Corporate Finance Manual**") of the REIT.

NHT wishes to amend and restate the Deferred Unit Plan to remove the following Insider Participation Limits:

(a) The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued to Insiders (as a group) shall not exceed 10% of the issued and outstanding Units at any point in time, subject to the requisite disinterested Unitholder approval required by the TSXV; and

(b) The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued in any 12 month period to Insiders (as a group) shall not exceed 10% of the issued and outstanding Units, calculated as at the date any

such security based compensation award is granted or issued to any Insider, subject to the requisite disinterested Unitholder approval required by the TSXV.

Given the prior issuances of Profits LTIP Units under the omnibus equity incentive plan of NHT (the "**Omnibus Plan**") and Deferred Units under the Deferred Unit Plan, the Insider Participation Limits, if maintained, would severely curtail the REIT's ability to grant Deferred Units to the independent Trustees. The Board believes it is important to maintain the ability to issue Deferred Units to the independent Trustees in order to align their interests with those of the Unitholders.

The Amended and Restated Deferred Unit Plan was conditionally approved by the TSXV on August 30, 2023, subject to the satisfaction of certain conditions, including obtaining disinterested Unitholder approval.

Disinterested Unitholder Approval

The amendment to remove the Insider Participation Limits requires "disinterested unitholder approval" per TSXV Policy 4.4. As a result, the resolution approving the Amended and Restated Deferred Unit Plan (the "**Amended Deferred Unit Plan Resolution**") will require the approval by a majority of the votes cast by all Unitholders at the Meeting, present in person or by proxy at the Meeting, excluding the votes attaching to the Units beneficially owned by the Trustees eligible to participate under the Deferred Unit Plan and their "associates" and "affiliates" (as defined in TSXV Policy 4.4).

For the purposes of the disinterested unitholder approval requirement of TSXV Policy 4.4, any votes attaching to Units held by Neil Labatte, Graham Senst and Jerry Patava (the "**Interested Parties**") will be excluded in determining whether disinterested Unitholder approval for the Amended Deferred Unit Plan Resolution is obtained. As of the Record Date, the Interested Parties do not hold any Units.

NHT's disinterested Unitholders will be asked to consider and, if deemed advisable, pass the Amended Deferred Unit Plan Resolution in the form set out in Appendix "A" to this Information Circular. Unitholders are encouraged to review the proposed Amended and Restated Deferred Unit Plan attached as Appendix "B" to this Information Circular. In the event that disinterested Unitholder approval of the Amended Deferred Unit Plan Resolution is not obtained at the Meeting, the current Deferred Unit Plan will remain in full force and effect.

The Board has unanimously approved the Amended and Restated Deferred Unit Plan and recommends that the Unitholders vote FOR the Amended Deferred Unit Plan Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Amended Deferred Unit Plan Resolution.

5. Approval of Previous Grant of Deferred Units

In accordance with TSXV Policy 4.4 and the terms of the REIT's Deferred Unit Plan, the REIT conditionally granted 1,295,668 Deferred Units to independent Trustees of the REIT on September 11, 2023 (the "**Prior DSU Grant**"). The Prior DSU Grant is in excess of Insider Participation Limits (as described above) and is subject to ratification by Unitholders at the Meeting (in addition to approval of the Amended and Restated Deferred Unit Plan). At the Meeting, Unitholders will be asked to approve by ordinary resolution the ratification of the Prior DSU Grant (the "**Prior DSU Grant Resolution**").

The Prior DSU Grant will require "disinterested unitholder approval" pursuant to the TSXV policies. As a result, the Prior DSU Grant Resolution will require the approval by a majority of the votes cast by all Unitholders at the Meeting, present in person or by proxy at the Meeting, excluding the votes attaching to the Units beneficially owned by the Trustees eligible to participate under the Deferred Unit Plan and their "associates" and "affiliates" (as defined in TSXV Policy 4.4).

For the purposes of the disinterested unitholder approval requirement of TSXV Policy 4.4, any votes attaching to the Interested Parties will be excluded in determining whether disinterested Unitholder approval for the Prior DSU Grant Resolution is obtained. As of the Record Date, the Interested Parties do not hold any Units.

NHT's disinterested Unitholders will be asked to consider and, if deemed advisable, pass the Prior DSU Grant Resolution in the form set out in Appendix "C" to this Information Circular. In the event that disinterested Unitholder approval of the Prior DSU Grant Resolution is not obtained at the Meeting, the Prior DSU Grant will be terminated.

The Board has unanimously approved the Prior DSU Grant and recommends that the Unitholders vote FOR the Prior DSU Grant Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Prior DSU Grant Resolution.

6. Approval of Amendments to COVID Loans

Background and Purpose of COVID Loans

The REIT received 32 loans from entities controlled or managed by James Dondero between June 2021 and September 2022 in the aggregate amount of US$56,165,000 (the "**COVID Loans**"). The proceeds from the COVID Loans were principally used to fund the REIT's operating expenses, interest and principal payments on outstanding indebtedness during the COVID-19 pandemic to allow the REIT to continue as a going concern.

A portion of the proceeds from the COVID Loans were also used to fund certain acquisitions aimed at improving the REIT's financial condition. Prior to 2021, the REIT's portfolio was primarily focused on the business travel market. However, throughout 2021 and early 2022, the REIT observed that leisure travel was beginning to recover from the pandemic at a significantly faster rate than the business travel market. At that time, although the REIT continued to be in significant financial distress, it determined that its future financial condition could be significantly improved if it could replace some of its hotels focused on the business travel market with hotels focused on the leisure travel market. The REIT believed that shifting its asset mix in this manner would generate positive cash flow for the REIT more quickly than would be the case with its existing portfolio, thereby putting the REIT in a stronger position to recover from the COVID-19 pandemic. As a result, in February 2022, the REIT used certain of the proceeds from the COVID Loans to acquire two hotel properties focused on the leisure travel market. Shortly thereafter, the REIT commenced a marketing process to sell five of its hotel properties which primarily catered to the business travel market.

Each of the COVID Loans is unsecured, has a 20-year term and bears interest at interest rates ranging from 2.25% per year to 7.5% per year (which were market interest rates at the time of their issuance). The principal and interest owing under the COVID Loans is convertible into Class B Units of the OP, at the option of the holder at any time, based on the value of a Class B Unit at the time of conversion.

The COVID Loans were provided by funds managed or controlled by Mr. Dondero, the REIT's controlling Unitholder. Mr. Dondero, through the entities he manages or controls, holds an approximate 72.13% interest in the outstanding Units of the REIT. As a result, the REIT treated the COVID Loans as a "related party transaction" under MI 61-101, which subjects the COVID Loans to the formal valuation (the "**Formal Valuation Requirement**") and minority approval requirements set forth in Part 5 of MI 61-101 (the "**Minority Approval Requirement**"), unless an exemption was available.

Exemption from Formal Valuation Requirement

As a TSXV-listed issuer, the REIT relied upon the exemption from the Formal Valuation Requirement in Section 5.5(b) of MI 61-101 (the "**Specified Markets Exemption**"), which provides that an issuer is exempt from the formal valuation requirements if its securities are not listed on the Toronto Stock Exchange, the Aequitas NEO Exchange Inc., the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

Exemption from Minority Approval Requirement

At the time the COVID Loans were issued, the REIT relied upon the exemption under Section 5.7(1)(a) of MI 61-101. In addition, the REIT had available, and relied upon, the exemption in Section 5.7(1)(e) of MI 61-101 (the "**Financial Hardship Exemption**") to exempt the REIT from the Minority Approval Requirement. The Financial Hardship Exemption was available to the REIT based on the following criteria:

(i) The REIT was in serious financial difficulty.

As a hospitality REIT that owned 11 hotel properties across the United States at the beginning of the COVID-19 pandemic, the global response to the COVID-19 pandemic had a devastating impact on the REIT's operations. In April 2020, occupancy declined from an average of 75.1% across the REIT's portfolio to a low of 12.5%. In May 2020, a going concern note was included in the REIT's annual financial statements, highlighting the REIT's serious financial difficulties and possible risk of bankruptcy.

(ii) The COVID Loans were designed to improve the financial position of the REIT.

As a result of the COVID-19 pandemic, the REIT experienced material decreases in revenues, results of operations and cash flows. The impact to the global economy caused by the response to the COVID-19 pandemic also negatively impacted the REIT's ability to obtain new financing. The COVID Loans were advanced, in most cases, in critical moments to principally fund the REIT's ongoing operating expenses and to satisfy interest and principal payments due on third party debt. In certain situations, the proceeds from the COVID Loans were used to fund acquisitions designed to improve the financial condition of the REIT. Without the COVID Loans, the REIT would likely not have been able to continue its operations as a going concern.

(iii) The COVID Loans were not subject to court approval under bankruptcy or insolvency law.

At the time of the COVID Loans, the REIT was not subject to court oversight or approval under any bankruptcy or insolvency laws.

(iv) The REIT had two independent trustees in respect of the COVID Loans.

During the time that the COVID Loans were advanced to the REIT, the REIT had two independent trustees, namely Neil Labatte and Graham Senst. The independent trustees did not participate in the COVID Loans, were free from any interest in the COVID Loans, and were unrelated to the entities managed or controlled by Mr. Dondero that provided the COVID Loans.

(v) The REIT's board of trustees, acting in good faith, determined, and at least two-thirds of the independent trustees, determine that subparagraphs (i) and (ii) apply, and that the terms of the COVID Loans were reasonable in the circumstances of the REIT.

After carefully considering and reviewing all the factors surrounding the REIT, Mr. Labatte and Mr. Senst determined that: (i) the REIT was in serious financial difficulty; (ii) the COVID Loans would improve the financial condition of the REIT; and (iii) the terms of the COVID Loans were fair and reasonable in the circumstances of the REIT.

Amendments to COVID Loans

The COVID Loans were filed with the TSXV at various points during 2021 and 2022, as loan submissions pursuant to TSXV Policy 5.1 – *Loans, Loan Bonuses, Finder's Fees and Commissions* ("**Policy 5.1**").

Although the REIT believed that the COVID Loans were properly subject to Policy 5.1 and was not informed of any alternative treatment of the COVID Loans at the time of the filings, in December 2022, the TSXV advised the REIT that the COVID Loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – *Private Placements* rather than loans under Policy 5.1. Due to this determination, the TSXV required the following

amendments (the "**Amendments**") to the COVID Loans: (i) either the conversion feature be removed or limited to five years from the date of issuance of the COVID Loan; (ii) the conversion feature be limited to the principal amount of the COVID Loan (rather than the principal amount including interest); and (iii) the conversion price be fixed at a price equal to the market price of the REIT's Units on the TSXV at the time of the issuance of the COVID Loan.

If the Amendments are implemented, only the principal amount of each of the COVID Loans will be convertible into Class B Units for five-year terms ending between July 1, 2026 and September 30, 2027; however, the term of the COVID Loans shall remain as 20 years from their date of issuance. Any conversion of principal or interest of the COVID Loans into Class B Units or Units after the expiry of the 5-year conversion window will be subject to the approval of the Trustees and the TSXV. For one COVID Loan for an amount of US$8.5 million, the conversion right will be removed altogether. In addition, if the Amendments are implemented, the COVID Loans with conversion rights will be for an aggregate amount of US$47,665,000 and the conversion price for the principal outstanding will be fixed at prices ranging from US$1.60 to US$2.50 in satisfaction of the requirements of the TSXV. Accordingly, to the extent the Amendments are implemented, a maximum number of 21,075,012 Class B Units or Units will be issuable upon conversion of the COVID Loans.

The Board, having undertaken a thorough review of, and having: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units, and (iii) consulted with its legal advisors, concluded that the Amendments are in the best interests of the REIT and agreed to pursue the approval of the Amendments. The REIT has obtained the requisite approval from the entities that provided the COVID Loans to implement the Amendments. However, as the Amendments constitute a "related party transaction" under MI 61-101, the REIT must receive "minority approval" of the Amendments under MI 61-101, as more particularly described below. If the Amendments are not approved at the Meeting, the REIT will engage with the TSXV to seek alternative solutions to the satisfy the TSXV listing requirements; however, there can be no assurance that a satisfactory solution will be found, and if a solution is not found, the TSXV may halt trading in the Units, suspend trading in the Units and/or initiate a delisting review of the REIT's Units as, absent the Amendments, the REIT would not be in compliance with TSXV listing requirements.

Minority Approval under MI 61-101

The REIT is a reporting issuer in certain of the provinces of Canada and, accordingly, is subject to applicable securities laws of such provinces, including MI 61-101. MI 61-101 is intended to regulate certain transactions which raise the potential for conflicts of interest, including related party transactions, to ensure that all securityholders of an issuer are treated in a manner that is fair and that is perceived to be fair.

The Amendments constitute a "related party transaction" within the meaning of MI 61-101, as the Amendments have the effect of amending the terms of the COVID Loans, which are securities of the REIT beneficially owned or over which control is exercised by Mr. Dondero (a "related party" of the REIT because of the fact that Mr. Dondero beneficially owns or controls Units of the REIT that carry more than 10% of the voting rights attached to all of the REIT's issued and outstanding Units). The Amendments are not subject to the formal valuation requirements of Section 5.4 of MI 61-101, as the Specified Markets Exemption is available to the REIT (see above under *"Matters to be Considered at the Meeting – 6. Approval of Amendments to COVID Loans - Exemption from Formal Valuation Requirement"*).

MI 61-101 requires that a related party transaction be subject to "minority approval" (as defined in MI 61-101) of every class of "affected securities" of the issuer, in each case voting separately as a class. As such, the resolution approving the Amendments to the COVID Loans (the "**Amended COVID Loans Resolution**") will require the affirmative vote of at least a majority of the votes cast by the Unitholders (the "**Minority Unitholders**"), present in person or represented by proxy at the Meeting, excluding the votes attached to the Unitholders that are beneficially owned or over which control or direction is exercised by Mr. Dondero, and any "related party" of the REIT within the meaning of MI 61-101 (subject to the exceptions set out therein) and any person acting jointly or in concert with the foregoing in respect of the Amended COVID Loans Resolution. The full text of the Amended COVID Loans Resolution is set forth in Appendix "D" to this Information Circular.

For purposes of the minority approval requirements of MI 61-101, to the knowledge of the REIT after reasonable inquiry, the votes attached to the 21,170,538 Units beneficially owned, directly or indirectly, or over which control or direction is exercised by Mr. Dondero, or his "related parties" or "joint actors" (as defined in MI 61-101) (such entities, the "**Interested Unitholders**"), representing, as of the Record Date, approximately 72.13% of the issued and outstanding Units, will be excluded in determining whether minority approval for the Amended COVID Loans Resolution is obtained.

As of the Record Date, the Units to be excluded for the purposes of minority approval requirement are set out below:

Unitholder(1)	Number of Units Owned, Controlled or Directed	Percentage of Outstanding Units(2)
NexPoint Real Estate Opportunities, LLC	13,571,131	46.24%
The Dugaboy Investment Trust	5,394,662	18.38%
NHT Holdco, LLC	1,045,848	3.56%
Governance RE Ltd	1,068,519	3.63%
NexPoint Real Estate Advisors, L.P.	90,378	0.31%

Notes:

(1) The percentages shown are based on 29,352,055 Units outstanding as of the date hereof.

(2) Each of the Unitholders listed above is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

The Board has unanimously approved the Amendments to the COVID Loans (with James Dondero declaring his interest in the Amendments and abstaining from voting) and recommends that the Unitholders vote FOR the Amended COVID Loans Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Amended COVID Loans Resolution.

Additional Information Required by MI 61-101

(i) Trading Price and Volume

The Units are listed on the TSXV under the symbol "NHT.U". The following table sets out the monthly reported high and low trading prices and trading volumes of the Units on the TSXV for the periods indicated:

TSXV Trading Summary of Units			
Period	**High ($)**	**Low ($)**	**Volume (#)**
August, 2023	$0.50	$0.50	750
July, 2023	$0.50	$0.50	1,500
June, 2023	$0.50	$0.50	1,500
May, 2023	$1.00	$1.00	227
April, 2023	N/A	N/A	0
March, 2023	$1.50	$1.00	20,200
February, 2023	$1.50	$1.50	3,800

The closing price of the Units on the TSXV on September 8, 2023, being the last trading day prior to the date of this Information Circular, was $0.50. The closing price of the Units on the TSXV on June 23, 2023, being the last trading day prior to the public announcement of the Amendments to the COVID Loans, was $1.00.

(ii) Ownership of Securities of the REIT

The following table sets forth the number, designation and the percentage of outstanding Units or Deferred Units beneficially owned or over which control or direction is exercised by each trustee and officer of the REIT:

Names and Relationship with the REIT	Ownership or control over Units or Deferred Units of the REIT(1)
JAMES DONDERO Chief Executive Officer, Trustee, Chair of the Board	21,170,538 Units 72.13%
NEIL LABATTE Trustee	972,312 Deferred Units 3.31%(2)
GRAHAM SENST Trustee	673,043 Deferred Units 2.29%(3)
JERRY PATAVA Trustee	200,000 Deferred Units 0.68%(4)
JESSE BLAIR III Executive Vice President, Head of Lodging	98,639 Units 0.34%
BRIAN MITTS Chief Financial Officer & Corporate Secretary	-
PAUL RICHARDS Vice President, Asset Management	-
MATTHEW MCGRANER Chief Investment Officer	875,846 Units 2.98%

Notes:

(1) The percentages shown are based on 29,352,055 Units outstanding as of the date hereof.

(2) Determined as if the 972,312 Deferred Units were redeemed for 972,312 Units.

(3) Determined as if the 673,043 Deferred Units were redeemed for 673,043 Units.

(4) Determined as if the 200,000 Deferred Units were redeemed for 200,000 Units.

(iii) Material Changes in the Affairs of the REIT and Other Material Facts

Except as described or referred to in this Information Circular, NHT is not aware of any material fact concerning the securities or any other matter not previously generally disclosed and known to NHT which would reasonably be expected to affect the decision of Unitholders to accept or reject the Amended COVID Loans Resolution. Except as described or referred to in this Information Circular or as otherwise publicly disclosed, NHT has no current plans or proposals to make any material change in its business, corporate structure, management or personnel.

(iv) Previous Purchases and Sales of Securities

No securities of the REIT were purchased or sold by the REIT during the twelve months preceding the date of the Amendments.

COMPENSATION

Overview

The Compensation, Governance and Nominating Committee oversees compensation programs and related governance matters. NHT's senior management team consists of individuals employed by NexPoint Real Estate Advisors VI, L.P. (the "**Advisor**") (or an affiliate thereof). The Advisor provides advisory services to NHT pursuant to the Amended and Restated Advisory Agreement by and among NHT, NHH and the Advisor dated March 29, 2019 (the "**Advisory Agreement**"), for which NHT pays the Advisor certain fees (the "**Advisory Fee**"). On April 29, 2020, in light of developments related to the outbreak of COVID-19 and corresponding impact on the hospitality industry, the Advisor agreed to waive the Advisory Fee and certain expenses provided for in the Advisory Agreement until operations of NHT and NHH stabilized. On November 25, 2020, the Advisor reinstated the Advisory Fee, however, the Advisor agreed to defer payment of the Advisory Fee until NHT is cash flow positive and can sustain the payments. The Advisor did not collect any fees for the year ended December 31, 2022. However, in August 2023, the REIT commenced repayment of a portion of the accrued Advisory Fees. See below under "*Advisory and Management Agreements*".

The following discussion describes the significant elements of NHT's executive compensation program. The Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Executive Vice President, Head of Lodging and Vice President, Asset Management are referred to herein as the "**named executive officers**" in accordance with applicable Canadian securities laws. The named executive officers are employees of the Advisor (or an affiliate thereof) and the Advisor has sole responsibility for determining the compensation of the named executive officers, other than with respect to the granting of Unit-based compensation, which is the responsibility of the independent Trustees. NHT does not have any employment agreements with members of senior management and does not pay any cash compensation to any individuals serving as officers. A portion of the compensation paid to those employees of the Advisor is attributable to time spent on the activities of NHT.

Principal Elements of Compensation

The compensation of the named executive officers includes three principal elements: (a) base salary which will be paid by the Advisor; (b) discretionary cash bonuses which will be paid by the Advisor; and (c) long-term incentives, which may consist of restricted equity units, performance-based awards, Deferred Units, options, membership units of the OP designated as "Profits LTIP Units" or other equity-based incentive compensation awards granted under the Omnibus Plan and/or the Deferred Unit Plan, each as described in further detail below.

Base Salaries

Base salaries are intended to provide an appropriate level of fixed compensation that will assist in employee retention and recruitment. Base salaries are determined on an individual basis, taking into consideration the past, current and potential contribution to NHT's success, the position and responsibilities of the named executive officers and competitive industry pay practices for other real estate investment trusts and companies of comparable size. Base salaries are paid by the Advisor or its affiliates, not NHT.

Annual Cash Bonuses

Annual cash bonuses are discretionary and are not awarded pursuant to a formal incentive plan. Annual cash bonuses are awarded based on qualitative and quantitative performance standards and reward the performance of the named executive officer individually. The determination of NHT's performance may vary from year to year depending on economic conditions and conditions in the real estate industry, and may be based on measures such

as Unit price performance, the meeting of financial targets against budget, the meeting of acquisition objectives and balance sheet performance. Individual performance factors vary, and may include completion of specific projects or transactions and the execution of day-to-day management responsibilities. Annual cash bonuses are paid by the Advisor or its affiliates, not NHT.

Long-Term Compensation Plans

Grants of (i) equity-based incentive awards under the Omnibus Plan (which may include restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on Units), and (ii) Deferred Units under the Deferred Unit Plan are used to align the interests of the named executive officers more closely with the interests of the Unitholders, since they are tied to NHT's financial and Unit trading performance and vest or accrue over a number of years. The Board, acting on the recommendation of the Compensation, Governance and Nominating Committee, may designate individuals eligible to receive grants of equity-based incentive awards. In determining grants of such awards, an individual's performance and contributions to NHT's success, relative position, tenure and past grants will be taken into consideration.

Deferred Unit Plan

The following is a summary of the terms of the REIT's current Deferred Unit Plan dated June 30, 2022. The Deferred Unit Plan allows for the grant of Deferred Units to Participants.

The REIT intends to amend and restate its Deferred Unit Plan, subject to obtaining the approval of disinterested Unitholders and the TSXV. Readers are advised to review the proposed amendments to the Deferred Unit Plan above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*", along with the full text of the proposed Amended and Restated Deferred Unit Plan appended hereto as Appendix "B".

Authorized Units

The maximum number of Deferred Units reserved for issuance under the Deferred Unit Plan at any time is 2,844,256 (representing approximately 9.7% of NHT's outstanding Units as of the date hereof). As of the date hereof, 1,295,668 Deferred Units have been granted under the Deferred Unit Plan which are subject to approval by Unitholders pursuant to the Prior DSU Grant Resolution. Pursuant to the TSXV policies, the number of Units issuable pursuant to all of NHT's security based compensation arrangements in aggregate is a fixed specified number of Units up to a maximum of 20% of NHT's issued and outstanding Units as at the date of implementation of the Deferred Unit Plan. NHT currently maintains one other security based compensation plan, the Omnibus Plan, which allows for the grant of various equity-based awards to eligible participants. The maximum number of Units that are available for issuance under the Omnibus Plan is 3,026,155 (representing approximately 10.3% of NHT's outstanding Units as of the date hereof).

If any Deferred Unit granted under the Deferred Unit Plan is terminated, surrendered, forfeited, expired or is cancelled, new Deferred Units may thereafter be granted covering such Units, subject to any required prior approval by the TSXV or other stock exchange upon which the Units are then listed. At all times, the REIT will reserve and keep available a sufficient number of Units to satisfy the requirements of all outstanding Deferred Units granted under the Deferred Unit Plan.

Administration

The Deferred Unit Plan will be administered by the Board and the Compensation, Governance and Nominating Committee. The administration of the Deferred Unit Plan shall be subject to and performed in conformity with all applicable laws, regulations, orders of governmental or regulatory authorities and the requirements of any stock exchange on which the Units are listed. Should the Compensation, Governance and Nominating Committee, in its sole discretion, determine that it is not desirable or feasible to provide for the redemption of Deferred Units in Units, including by reason of any such laws, regulations, rules, orders or requirements, it shall notify the Participants of

such determination and on receipt of such notice each Participant shall have the option of electing that such redemption obligations be satisfied by means of a cash payment by the REIT equal to the Average Market Price (as defined below) of the Units that would otherwise be delivered to a Participant in settlement of Deferred Units on the redemption date (less any applicable withholding taxes). Each Participant shall comply with all such laws, regulations, rules, orders and requirements, and shall furnish the REIT with any and all information and undertakings, as may be required to ensure compliance therewith.

Granted and Elected Deferred Units

Participants may be awarded Deferred Units, each of which is economically equivalent to one Unit, from time to time at the discretion of the Board on recommendation of the Compensation, Governance and Nominating Committee ("**Granted DUs**"). Participants may also, subject to the terms of the Deferred Unit Plan, elect to receive up to 100% of his or her annual retainer (including fees for serving as Chair of the Board or a committee of the Board) and meeting fees for a calendar year otherwise payable in cash ("**Trustee Fees**") in the form of Deferred Units ("**Elected DUs**" and, together with the Granted DUs, shall all be considered Deferred Units for purposes of the Deferred Unit Plan).

The number of Deferred Units granted at any particular time pursuant to the Deferred Unit Plan will be equal to (i) the elected amount in respect of Trustee Fees, as determined by a Trustee, divided by the Average Market Price of a Unit on the award date, plus (ii) the Granted DUs, if any, granted to such Trustee. "**Average Market Price**" of a Unit means the volume weighted average price of the Units traded on the TSXV, for the five trading days immediately preceding such date (or, if such Units are not then listed and posted for trading on the TSXV, on such stock exchange on which the Units are listed and posted for trading as may be selected for such purpose by the Board); provided that, for so long as the Units are listed and posted for trading on the TSXV, the Average Market Price shall not be less than the market price, as calculated under the policies of the TSXV and provided, further, that with respect to Deferred Units issued to a U.S. taxpayer, such Participant and the number of Units subject to such issuance shall be identified by the Board prior to the start of the applicable five trading day period. In no event shall the Average Market Price be less than the Discounted Market Price (as such term is defined in the TSXV Corporate Finance Manual).

Under no circumstances shall Deferred Units be considered Units nor entitle a Participant to any rights as a Unitholder, including, without limitation, voting rights, distribution entitlements (other than as set out below) or rights on liquidation.

Whenever cash distributions are paid on the Units, additional Deferred Units will be credited to the Participant's Deferred Unit account ("**Additional DUs**"). The number of such Additional DUs to be credited to a Participant's Deferred Unit account in respect of a cash distribution paid on the Units shall be calculated by dividing the amount which is equal to the aggregate distributions that would have been paid to such Participant if the Deferred Units in the Participant's Deferred Unit account had been Units divided by the Average Market Price on the distribution payment date. Deferred Units credited to a Participant shall count towards a Trustees' ownership requirements as prescribed from time to time by the Board. For greater certainty, any Additional DUs shall count toward the limits set forth in Article 11 of the Deferred Unit Plan. Where an award of Additional DUs would be prohibited by the limits set forth in Article 11 of the Deferred Unit Plan, the REIT may make a cash distribution to the applicable Participant in lieu of Additional DUs.

Vesting

Elected DUs granted to Trustees pursuant to the terms of the Deferred Unit Plan will vest immediately upon grant (including any Additional Deferred Units issued pursuant to Elected DUs credited to a Participant's account in connection with cash distributions as described above).

Granted DUs granted to Trustees pursuant to the terms of the Deferred Unit Plan will vest on the first anniversary of the date of grant (including any Additional Deferred Units issued pursuant to Granted DUs credited to a Participant's account in connection with cash distributions as described above).

The Board may, in its discretion, at any time, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any other Unitholder or other approval which may be required, permit the acceleration of vesting of any or all Deferred Units or waive termination of any or all Deferred Units, in the manner and on the terms as may be authorized by the Board.

Redemption and Termination

Except with respect to Participants that are U.S. taxpayers, the Deferred Units (or a portion thereof) shall be redeemable by the Participant (or, where the Participant has died, his or her estate) on or after the date (the "**Termination Date**") on which the Participant ceases to be a Trustee, provided any such redemption date is not later than one year following the date the Participant ceases to be a Trustee. For greater certainty, in the event that a Participant (or his or her estate) has not redeemed his or her Deferred Units prior to the date that is one year following the Termination Date, such Deferred Units shall be automatically redeemed on the date that is one year following the Termination Date without any action required on the part of the Participant (or his or her estate). If the Compensation, Governance and Nominating Committee terminates the Deferred Unit Plan, Deferred Units previously credited to Participants shall remain outstanding and in effect and shall be settled subject to and in accordance with the applicable terms and conditions of the plan in effect immediately prior to the termination.

For Participants that are Canadian residents and are not U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit account will be redeemed automatically on the date on which the Participant files a written notice of redemption in the prescribed form with the Chief Financial Officer of the REIT (the "**Redemption Date**") for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

For Participants that are U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit account will be redeemed automatically on the date of the Trustee's Separation from Service for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above. "**Separation from Service**" has the meaning given to such phrase in U.S. Treasury Regulation § 1.409A-1(h).

Any cash payments made by the REIT to a Participant in respect of Deferred Units to be redeemed for cash shall be calculated by multiplying the number of Deferred Units to be redeemed for cash by the Average Market Price per Unit as at the Redemption Date or date of the Trustee's Separation from Service, as applicable.

No fractional Units will be issued pursuant to the redemption of Deferred Units. At the time of redemption, fractional Deferred Units shall be rounded down, and no payment shall be made to the Participant with respect to the fractional Deferred Units standing to the Participant's credit after the maximum number of whole Units due to such Participant have been issued by the REIT.

Upon payment in full of the value of the vested Deferred Units and the forfeiture of the unvested Deferred Units, the Deferred Units shall be cancelled.

Notwithstanding anything else in Article 10 of the Deferred Unit Plan, in the event of the death of a Participant, all previously awarded Deferred Units shall be redeemable only within one year after such death, and then only by the person or persons to whom the Participant's rights under the Deferred Units shall pass by the Participant's will or the laws of descent and distribution.

Change in Control

In the event of certain consolidations, mergers or similar transactions of NHT, certain sales or other disposition of NHT's Units, certain liquidation events or sales or dispositions of all or substantially all of NHT's assets, the Board may provide for the conversion, exercise or exchange of outstanding awards for new awards, or, if no equivalent

awards are available, for the accelerated vesting or delivery of Units under awards, or for a cash-out of outstanding awards.

Adjustments

In the event of any Unit distribution, Unit split, combinations or exchange of Units, merger, consolidation, spin-off or other distribution of NHT's assets to the Unitholders (other than normal cash distributions), or any other similar change affecting the Units, the account of each Participant and the Deferred Units outstanding under the Deferred Unit Plan shall be adjusted in such manner, if any, as the Board may in its discretion deem appropriate to reflect the event. However, no amount will be paid to, or in respect of, a Participant under the Deferred Unit Plan or pursuant to any other arrangement, and no additional Deferred Units will be granted to such Participant to compensate for a downward fluctuation in the price of the Units, nor will any other form of benefit be conferred upon, or in respect of, a Participant for such purpose.

Restrictions on Grants of Deferred Units

The following restrictions are placed on grants of Deferred Units under the current Deferred Unit Plan:

- the maximum aggregate number of Units issuable to insiders (as a group) pursuant to all security based compensation arrangements of NHT shall not exceed 10% of NHT's issued and outstanding Units at any point in time, subject to the requisite disinterested Unitholder approval required by the TSXV;

- the maximum aggregate number of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued in any 12 month period to insiders (as a group) shall not exceed 10% of NHT's issued and outstanding Units, calculated as at the date any such security based compensation award is granted or issued to any Insider, subject to the requisite disinterested Unitholder approval required by the TSXV;

- the maximum aggregate number of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued in any 12 month period to any one person (and any entities that are wholly owned by that person) shall not exceed 5% of the issued and outstanding Units, calculated as at the date any security based compensation award is granted or issued to the person, subject to the requisite disinterested Unitholder approval required by the TSXV;

- no Deferred Unit may be granted if such grant would have the effect of causing the total number of Units subject to Deferred Units to exceed the total number of Units reserved for issuance under the Deferred Unit Plan; and

- the aggregate fair market value on the date of grant of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued to any non-employee Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to awards (including Deferred Units) taken in lieu of any Trustee Fees and a one-time initial grant to a Trustee upon such Trustee joining the Board.

The REIT intends to amend and restate the current Deferred Unit Plan to remove the first two restrictions listed above, as described above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*".

Amendments

The Deferred Unit Plan provides that Unitholder approval is not required for any amendment to the Deferred Unit Plan except for any amendment or modification that:

- results in any increase in the number of Deferred Units issuable under the plan; or

- permit Deferred Units granted under the plan to be transferable or assignable other than for normal estate settlement purposes.

Without limiting the general amendment powers described above and for greater certainty, Unitholder approval is not required for amendments to the Deferred Unit Plan:

- for the purpose of making formal, minor or technical modifications to any of the provisions of the plan, including amendments of a "housekeeping" nature;
- to correct any ambiguity, defective provisions, error or omission in the provisions of the plan;
- to amend the vesting provisions of the Deferred Units, except for decreasing the vesting term of Granted DUs to less than one year from the award date; or
- any other amendment that does not require unitholder approval under applicable laws or the rules of the TSXV.

provided, however, that no such act shall diminish any rights accrued in respect of grants of Deferred Units made prior to the effective date of such amendment.

Omnibus Equity Incentive Plan

NHT adopted the Omnibus Plan on March 29, 2019. All equity and equity-based awards made or granted, including future grants to be made to named executive officers of NHT, are made under the Omnibus Plan. The Omnibus Plan provides eligible participants with compensation opportunities that encourage ownership of Units, enhance NHT's ability to attract, retain and motivate executive officers and other key members of management and incentivizes them to increase the long-term growth and equity value of NHT in alignment with the interests of Unitholders. The material features of the Omnibus Plan are summarized below.

Administration and Eligibility

The Omnibus Plan is administered by the Compensation, Governance and Nominating Committee. The Compensation, Governance and Nominating Committee has the authority to, among other things, determine eligibility for awards to be granted, determine, modify or waive the type or types of, form of settlement (whether in cash, Units or otherwise) of, and terms and conditions of, awards, to accelerate the vesting or exercisability of awards, to adopt rules, guidelines and practices governing the operation of the Omnibus Plan as the Compensation, Governance and Nominating Committee deems advisable, to interpret the terms and provisions of the Omnibus Plan and any award agreement, and to otherwise do all things necessary or appropriate to carry out the purposes of the Omnibus Plan.

Key officers and any employees of NHT, independent Trustees and key employees of the Advisor and its respective affiliates who, in the opinion of the Compensation, Governance and Nominating Committee, have dedicated significant time and attention to the affairs and business of NHT will be eligible to participate in the Omnibus Plan.

Authorized Units

Subject to adjustment, the maximum number of Units that are available for issuance under the Omnibus Plan is 3,026,155, representing 20% of the issued and outstanding Units of NHT at the time the Omnibus Plan was adopted, or such greater number as may be determined by the Board and approved by the Unitholders and, if required, by any relevant stock exchange or other regulatory authority; all of which may be delivered in satisfaction of restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units or any other applicable award, awarded under the Omnibus Plan. Units issued under the Omnibus Plan may be Units held in treasury or authorized but unissued Units of NHT not reserved for any other purpose. Units subject to an award that for any reason expires

without having been exercised, is cancelled, forfeited or terminated or otherwise is settled without the issuance of Units, will again be available for grant under the Omnibus Plan.

The following table summarizes certain information as of December 31, 2022 regarding compensation plans of NHT under which equity securities are authorized for issuance.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (#)	Weighted-average exercise price of outstanding options, warrants and rights ($)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in first column) (#)
Equity compensation plans approved by securityholders – Deferred Unit Plan[(1)]	N/A	N/A	2,844,256
Equity compensation plans not approved by securityholders – Omnibus Plan[(2)]	2,141,562	N/A	884,593

Notes:

(1) The Deferred Unit Plan was adopted by NHT's Unitholders on June 30, 2022. The maximum number of Deferred Units reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As of December 31, 2022, no Deferred Units have been issued under the Deferred Unit Plan. At the Meeting, Unitholders will be asked to approve and ratify the grant of 1,295,668 Deferred Units to the independent Trustees pursuant to the Amended and Restated Deferred Unit Plan.

(2) The Omnibus Plan was adopted in connection with NHT's initial public offering on March 29, 2019. On June 28, 2021, NHT issued an aggregate of 339,687 Deferred Units, in lieu of Trustee Fees earned since January 1, 2019, to the independent Trustees of NHT. Further, on December 13, 2021, NHT issued an additional 210,000 Deferred Units to the independent Trustees and 2,475,000 Profits LTIP Units to officers of NHT and employees of the Advisor based on the performance of the Board and management during the COVID-19 pandemic and to further incentivize each group to continue delivering value to NHT's Unitholders. As of December 31, 2022, there were 2,141,562 awards outstanding under the Omnibus Plan and 884,593 awards remaining that may be granted.

Types of Awards

The Omnibus Plan provides for awards of restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on the Units. Eligibility distribution equivalents may also be provided in certain circumstances in connection with an award under the Omnibus Plan.

- Restricted Equity Units. A restricted equity unit award is an award denominated in notional units that entitles the participant to receive Units or cash measured by the value of the Units in the future. The delivery of Units or cash under a restricted equity unit award may be subject to the satisfaction of performance conditions or other vesting conditions.

- Performance Awards. A performance award is an award the vesting, settlement or exercisability of which is subject to specified performance criteria.

- Deferred Units. A Deferred Unit is an award of a notional investment in the Units reflected on an unfunded, book-entry account maintained by NHT. Deferred Units may be subject to performance conditions or other vesting conditions. Deferred Units may be settled in Units, cash measured by the value of a Unit, or a combination thereof.

- Profits LTIP Units. A Profits LTIP Unit is an award of a membership unit of the OP which qualifies as a profits interest for U.S. federal income tax purposes. Subject to certain exceptions set forth in the LLC Agreement of the OP, Profits LTIP Units are treated as Class B Units, with all of the rights, privileges

and obligations attendant thereto, except the right to vote in respect of matters put before members of the OP.

- Other Awards. Other awards are awards that are convertible into, exercisable or exchangeable for, or otherwise based on Units.

Vesting

The Compensation, Governance and Nominating Committee has the authority to determine the vesting schedule applicable to each award, and accelerate the vesting or exercisability of any award.

Change in Control

In the event of certain consolidations, mergers or similar transactions of NHT, certain sales or other disposition of NHT's Units, certain liquidation events or sales or dispositions of all or substantially all of NHT's assets, the Compensation, Governance and Nominating Committee may provide for the conversion, exercise or exchange of outstanding awards for new awards, or, if no equivalent awards are available, for the accelerated vesting or delivery of Units under awards, or for a cash-out of outstanding awards.

Adjustments

In the event of an extraordinary distribution, securities based distribution, stock split or combination (including a reverse stock split) or any recapitalization, business combination, merger, consolidation, spin-off, exchange of Units, liquidation or dissolution of NHT or other similar transaction affecting the Units, the Board will make adjustments as it determines in its sole discretion to the number and kind of Units available for issuance under the Omnibus Plan, the annual per-participant Unit limits, the number, class, exercise price (or base value), performance objectives applicable to outstanding awards and any other terms of outstanding awards affected by such transaction. The Compensation, Governance and Nominating Committee may also make adjustments of the type described in the preceding sentence to take into account distributions and events other than those listed above if it determines that adjustments are appropriate to avoid distortion in the operation of the Omnibus Plan.

Restrictions on Grants of Awards

The following restrictions are placed on grants of awards under the Omnibus Plan:

- the aggregate number of Units issuable to insiders shall not exceed 10% of NHT's total issued and outstanding Units;

- the aggregate number of Units issuable to insiders within any 12-month period shall not exceed 10% of NHT's total issued and outstanding Units;

- the aggregate number of Units reserved for issuance pursuant to awards granted to any one person (and any companies wholly owned by that person) in a 12-month period shall not exceed 5% of NHT's total issued and outstanding Units calculated on the date an award is granted to the person (unless the approval of disinterested Unitholders is obtained);

- the aggregate number of Units reserved for issuance pursuant to awards granted to any one consultant within any 12-month period shall not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the person;

- the aggregate number of Units reserved for issuance pursuant to awards granted within any 12-month period to all persons retained to provide investor relations activities must not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the person, provided that no

awards other than options shall be issuable to any person retained to provide investor relations activities;

- the aggregate fair value on the date of grant of all options granted to any one non-employee Trustee shall not exceed $200,000 per annum; and

- the aggregate fair market value on the date of grant of all awards granted to any one non-employee Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to (A) awards taken in lieu of any Trustee fees, and (B) a one-time initial grant to a Trustee upon such Trustee joining the Board.

Termination and Amendments

The Compensation, Governance and Nominating Committee may amend the Omnibus Plan or outstanding awards, or terminate the Omnibus Plan as to future grants of awards, except that the Compensation, Governance and Nominating Committee will not be able to alter the terms of an award if it would affect materially and adversely a participant's rights under the award without the participant's consent. Unitholder approval is required for any amendment to the Omnibus Plan that increases the number of Units available for issuance under the Omnibus Plan or the individual award limitations specified therein (except with respect to certain adjustments as described above), modifies the class of persons eligible for participation in the Omnibus Plan, extends the term of any award granted beyond its original expiration date, permits an award to be exercisable beyond 10 years from its grant date (except where an expiration date would have fallen within a blackout period of NHT), permits awards to be transferred other than for normal estate settlement purposes, or deletes or reduces the range of amendments which require approval of the Unitholders, or to the extent required by law.

Compensation Risk

The Compensation, Governance and Nominating Committee considers the implications of the risks associated with NHT's compensation policies and practices as part of its responsibility to ensure that the compensation for the Trustees and the named executive officers align the interests of the Trustees and named executive officers with Unitholders and NHT as a whole. NHT's insider trading policy prohibits all officers and Trustees of NHT from selling "short" or selling "call options" on any of NHT's securities and from purchasing financial instruments, such as prepaid variable forward contracts, equity swaps, collars or units of exchange funds that are designed to hedge or offset a decrease in the market value of equity securities granted to such executive officers and Trustees as compensation or held directly or indirectly by such person.

Unit Ownership Policy

NHT has established Unit ownership guidelines (the "**Unit Ownership Policy**") for the Trustees and executive officers of NHT to further align the interests of Trustees and executive officers with those of the Unitholders. The Unit Ownership Policy establishes minimum equity ownership levels for each Trustee and executive officer of NHT to be achieved within the later of five years from the date of (i) the policy, and (ii) becoming a member of senior management or a Trustee, as applicable. The Unit Ownership Policy provides for the following guidelines.

Participant	Target Equity Ownership Level
Chief Executive Officer	5 times annual base salary OR $5,000,000 (if no annual base salary)
Chief Financial Officer **Chief Investment Officer** **Executive Vice President, Head of Lodging** **Vice President, Asset Management**	1.5 times annual base salary

Participant	Target Equity Ownership Level
Trustees	3 times annual cash retainer (excluding retainers paid in respect of Board or Committee Chair roles)

Each Trustee and executive officer is required to continue to hold such minimum ownership levels for as long as they serve as a Trustee or executive officer of NHT. Awards granted under the Omnibus Plan are included in determining an individual's equity ownership value.

Compensation – Trustees

Individual Trustees add value to the Board and to NHT by bringing skills, knowledge and experiences that complement those of their colleagues, so that collectively, the Board provides diversity and balance in views and perspectives, ensuring a challenging and thoughtful exchange with management. Trustee attendance at meetings is mandatory and, additionally, there is an expectation that all Trustees will be available as needed outside of meetings. Board membership is reviewed annually to ensure the right mix and skills are present.

Trustee compensation is structured to recognize Trustees for their skills, knowledge, experiences and attention in overseeing the governance of NHT, and to align with Unitholders' interests. The Compensation, Governance and Nominating Committee reviews Trustee compensation and recommends any changes to the Board to ensure that Trustee compensation is competitive.

In respect of January 1, 2022 to March 31, 2022, the Trustee compensation framework was as follows:

Annual Board Retainer	
Non-management Trustee	$25,000
Meeting Fees	
Per Board or Committee Meeting	$1,500
Chair Retainers	
Lead Trustee	$10,000
Audit Committee Chair	$15,000
Compensation, Governance and Nominating Committee Chair	$10,000
Travel and Expenses	
Reasonable Travel and ancillary expenses	Reimbursed

On the recommendation of the Compensation, Governance and Nominating Committee, the Board changed the Trustee Fees payable to the independent Trustees of the REIT. The new Trustee compensation framework was effective April 1, 2022 and is as follows:

Annual Board Retainer	
Non-management Trustee	$40,000
Committee Fees	
Compensation, Governance and Nominating Committee	$10,000
Audit Committee	$10,000
Chair Retainers	
Lead Trustee	$25,000
Audit Committee Chair	$15,000
Compensation, Governance and Nominating Committee Chair	$15,000

Travel and Expenses	
Reasonable Travel and Ancillary Expenses	Reimbursed

The Trustees do not receive any additional remuneration for acting as directors on the boards of any of NHT's subsidiaries. Trustees who are also members of management do not receive any remuneration for their role as a Trustee. Trustees have the option to elect to receive up to 100% of all fees that are otherwise payable in cash (i.e. annual board retainer fee, meeting fees and additional retainers) in the form of Deferred Units.

NHT, on recommendation from the Compensation, Governance and Nominating Committee, will determine whether, and to what extent, NHT will match up to 100% of the total value of the fees that a Trustee elects to receive in the form of Deferred Units. Accordingly, the number of Deferred Units to be awarded to a Trustee is equal to (i) the value of all fees that the Trustee elects to receive in the form of Deferred Units plus any additional Deferred Units pursuant to NHT's obligation to match as contemplated by the Omnibus Plan, (ii) divided by the volume weighted average trading price of a Unit on the TSXV for the five trading days prior to the date of the award. Trustees must complete an election form to receive Deferred Units in lieu of the cash component of their fees (i) in the case of an existing Trustee, no later than December 31 of the year preceding the applicable grant year; and (ii) in the case of a newly appointed or elected Trustee, within 30 days of such appointment or election with respect to compensation paid for services to be performed after such date. Elections are irrevocable for the year in respect of which they are made.

In respect of fiscal 2021, the total value of Trustee Fees payable to the independent Trustees was $172,000 ($88,500 of which was payable to Mr. Labatte and $83,500 of which was payable to Mr. Senst). Mr. Labatte and Mr. Senst elected to receive $56,250 and $53,333, respectively in cash, with the remaining amounts to be paid in Deferred Units (the "**2021 Deferred Units**").

In respect of fiscal 2022, the total value of Trustee Fees payable to the independent Trustees was $181,500 ($90,750 of which was payable to Mr. Labatte, $70,750 of which was payable to Mr. Senst, and $20,000 of which was payable to Mr. Patava). Mr. Labatte, Mr. Senst and Mr. Patava elected to receive the full amount of their 2022 Trustee Fees in Deferred Units (the "**2022 Deferred Units**").

In respect of fiscal 2023, the total value of Trustee Fees that have accrued as of June 30, 2023 is $117,500 ($50,000 of which is payable to Mr. Labatte, $37,500 of which is payable to Mr. Senst and $30,000 of which is payable to Mr. Patava). Mr. Labatte and Mr. Patava elected to receive the full amount of their 2023 Trustee Fees (accrued as of June 30, 2023) in Deferred Units (the "**2023 Deferred Units**"), while Mr. Senst has elected to receive $37,500 in cash.

The 2021 Deferred Units, 2022 Deferred Units and 2023 Deferred Units (collectively, the "**Outstanding Trustee Fees**") have yet to be paid due to the Insider Participation Limits in the REIT's current Deferred Unit Plan. The Outstanding Trustee Fees were conditionally granted to the independent Trustees on September 11, 2023 and are subject to (i) the REIT obtaining disinterested Unitholder approval of the Amended and Restated Deferred Unit Plan (see above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*") and (ii) the approval and ratification by Unitholders of the Prior DSU Grant (see above under *"Matters to be Considered at the Meeting–5. Approval of Previous Grant of Deferred Units*").

NHT, on recommendation from the Compensation, Governance and Nominating Committee, will determine whether, and to what extent, NHT will match up to 100% of the total value of the fees that a Trustee elects to receive in the form of Deferred Units. The REIT's current policy is to provide 100% matching for Deferred Units issued to the Trustees in lieu of their fees. Accordingly, the number of Deferred Units to be awarded to a Trustee is equal to (i) the value of all fees that the Trustee elects to receive in the form of Deferred Units plus any additional Deferred Units pursuant to NHT's obligation to match as contemplated by the Omnibus Plan, (ii) divided by the volume weighted average trading price of a Unit on the TSXV for the five trading days prior to the date of the award. Trustees must complete an election form to receive Deferred Units in lieu of the cash component of their fees (i) in the case of an existing Trustee, no later than December 31 of the year preceding the applicable grant year; and (ii) in the case of a newly appointed or elected Trustee, within 30 days of such appointment or election with respect to compensation

paid for services to be performed after such date. Elections are irrevocable for the year in respect of which they are made.

Table of Compensation Excluding Compensation Securities

The following table sets out information concerning the compensation paid by (i) the Advisor (or its affiliates) to the named executive officers in fiscal 2022 and 2021 in respect of the services provided by such officers to NHT and (ii) NHT to the Trustees; in each case, excluding compensation securities:

Name and Position	Year	Salary, consulting fee, retainer or commission ($)	Bonus ($)	Committee or meeting fees ($)	Value of perquisites ($)	Value of all other compensation ($)	Total compensation ($)[1]
James Dondero CEO, Trustee	2022	$100,000	$100,000	–	–	–	$200,000
	2021	$100,000	$100,000	–	–	–	$200,000
Brian Mitts CFO	2022	$75,000	$75,000	–	–	–	$150,000
	2021	$75,000	$75,000	–	–	–	$150,000
Matthew McGraner CIO	2022	$150,000	$150,000	–	–	–	$300,000
	2021	$150,000	$150,000	–	–	–	$300,000
Jesse Blair III Executive VP, Head of Lodging	2022	$150,000	$200,000	–	–	–	$350,000
	2021	$150,000	$150,000	–	–	–	$300,000
Paul Richards VP, Asset Management	2022	$50,000	$75,000	–	–	–	$125,000
	2021	$50,000	$75,000	–	–	–	$125,000
Neil Labatte[2] Trustee	2022	–	–	–	–	–	–
	2021	$26,250	–	$30,000	–	–	$56,250
Graham Senst[3] Trustee	2022	–	–	–	–	–	–
	2021	$23,333	–	$30,000	–	–	$53,333
Jerry Patava[4] Trustee	2022	–	–	–	–	–	–
	2021	–	–	–	–	–	–

Notes:

(1) All compensation for James Dondero (Chief Executive Officer), Brian Mitts (Chief Financial Officer), Matthew McGraner (Chief Investment Officer), Jesse Blair III (Executive Vice President, Head of Lodging) and Paul Richards (Vice President, Asset Management) is paid by the Advisor or its affiliates, and there is no reimbursement by NHT for such compensation. Messrs. Dondero, Mitts, McGraner, Blair and Richards act in a variety of capacities for the Advisor and their respective affiliates, and NHT, and accordingly, the total compensation that each such individual receives from the Advisor is not disclosed in this table, since total compensation is not solely attributable to the services that he will provide to NHT. The allocation of the total compensation disclosed in this table was determined by the Advisor solely for the purposes of this table, based on the time spent by each such individual in connection with NHT-related services during fiscal 2022 and 2021.

(2) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The trustee fees payable to Mr. Labatte in respect of fiscal 2020 and 2019

were $93,000 and $47,250 respectively. Mr. Labatte elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Labatte's service and performance during the COVID-19 pandemic, and to encourage Mr. Labatte to participate in the future growth of the REIT, Mr. Labatte was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Labatte was $88,500, of which $56,250 was paid in cash and the remaining $32,250 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $90,750 and $50,000 of Trustee Fees were payable to Mr. Labatte. Mr. Labatte elected to receive such fees in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 692,000 Deferred Units to Mr. Labatte in respect of his remaining portion of 2021 Trustee Fees, 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. As of the date hereof, Mr. Labatte holds 972,312 Deferred Units

(3) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Senst in respect of fiscal 2020 and 2019 were $88,000 and $43,500 respectively. Mr. Senst elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Senst's service and performance during the COVID-19 pandemic, and to encourage Mr. Senst to participate in the future growth of the REIT, Mr. Senst was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Senst was $83,500, of which $53,333 was paid in cash and the remaining $30,167 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $70,750 and $37,500 of Trustee Fees were payable to Mr. Senst. Mr. Senst elected to receive his 2022 Trustee Fees in the form of Deferred Units, and his accrued 2023 Trustee Fees (as of June 30, 2023) in cash. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 403,668 Deferred Units to Mr. Senst in respect of his remaining portion of 2021 Trustee Fees and 2022 Trustee Fees. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. As of the date hereof, Mr. Senst holds 673,043 Deferred Units.

(4) Mr. Patava was appointed to the Board on August 31, 2022. The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Patava in respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023) is US$20,000 and US$30,000 respectively. Mr. Patava elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 200,000 Deferred Units to Mr. Patava in respect of his remaining portion of his 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. As of the date hereof, Mr. Patava holds 200,000 Deferred Units.

Advisory and Management Agreements

Advisory Agreement

Pursuant to the Advisory Agreement, subject to the overall supervision of the Board, the Advisor manages the day-to-day operations of, and provides investment management services to NHT. As consideration for the Advisor's services, NHT pays to the Advisor an Advisory Fee at an annualized rate of 1.00% of REIT Asset Value (as defined therein), less certain fee waivers and adjustments, together with reimbursement of certain general and administrative expenses. The Advisory Agreement has an initial term of two years. Following the initial term, the Advisory Agreement will continue in full force and effect, subject to early termination, so long as such continuance is approved at least annually by (i) the board of managers of NHH, and (ii) either (a) the Board or (b) a vote of the Unitholders.

On April 29, 2020, in light of developments related to the outbreak of COVID-19 and corresponding impact on the hospitality industry, the Advisor agreed to waive the Advisory Fee and certain expenses provided for in the Advisory Agreement until operations of NHT and NHH stabilized. On November 25, 2020, the Advisor reinstated the Advisory Fee, however, the Advisor agreed to defer payment of the Advisory Fee until NHT is cash flow positive and can sustain the payments. The Advisor did not collect any fees for the year ended December 31, 2022. However, in August 2023, the REIT commenced repayment of a portion of the accrued Advisory Fees.

Hotel Management Agreements

NHT's hotel properties are operated pursuant to hotel management agreements (the "**Hotel Management Agreements**") between the affiliates of Aimbridge Hospitality Holdings, LLC (collectively, the "**Manager**"), a professional third-party hotel management company, and the taxable subsidiaries of NHT ("**TRS Entities**") that lease the properties from the OP and its subsidiaries. The Hotel Management Agreements require the TRS Entities to pay a base fee to the Manager calculated as a percentage of hotel revenues generated by the hotel operations. In addition, the Hotel Management Agreements sometimes provide that the Manager can earn an incentive fee for meeting certain performance metrics. Neither NHT nor any of its affiliates has any ownership or economic interest in the Manager engaged by the TRS Entities.

GOVERNANCE PRACTICES

A summary of the responsibilities and activities and the membership of each of NHT's Board committees is set out below. National Policy 58-201 – *Corporate Governance Guidelines* establishes corporate governance guidelines that apply to all public companies. NHT has reviewed its own corporate governance practices in light of these guidelines. In certain cases, NHT's practices comply with the guidelines, however, the Board considers that some of the guidelines are not suitable for NHT at its current stage of development and, therefore, these guidelines have not been adopted. The Board is committed to sound corporate governance practices in the interest of its Unitholders. NHT will continue to review and implement corporate governance guidelines as the business of NHT progresses.

In accordance with the corporate governance guidelines set out under National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("**NI 58-101**"), the following is a summary of the governance practices of NHT.

Composition of Board of Trustees and Independence

The Board is comprised of four Trustees, a majority of whom are independent Canadian residents. Pursuant to NI 58-101, an independent Trustee is one who is free from any direct or indirect relationship which could, in the view of the Board, be reasonably expected to interfere with a Trustee's independent judgment. NHT has determined that Neil Labatte (Lead Trustee), Graham Senst and Jerry Patava are independent under NI 58-101, and that James Dondero, NHT's Chief Executive Officer, is not independent. All of the trusteeships and directorships of the Trustees with other public entities are disclosed in the biographical information for each Trustee set out under "*Matters to be Considered at the Meeting – 2. Election of Trustees*".

The independent Trustees hold *in-camera* sessions at the conclusion of each regularly scheduled Board and committee meeting. The Lead Trustee of the Board conducts the *in-camera* sessions of the Board and the Chair of each committee conducts the *in-camera* sessions of its committee, as applicable, without management or the other non-independent Trustees present.

Nomination of Trustees

Other than the NexPoint Holders' nominees nominated pursuant to the Investor Rights Agreement, all Board nominees are nominated by the Compensation, Governance and Nominating Committee, who make such nominations after considering the mix of skills and experience it believes are necessary to further NHT's goals. The written charter of the Compensation, Governance and Nominating Committee sets out the committee's responsibilities with respect to nominating Board member candidates, which include to: (i) review annually the competencies, skills and personal qualities of the Board, in light of current and expected future needs; (ii) seek individuals qualified (in the context of the needs of NHT) to become members of the Board; (iii) review and recommend to the Board, the membership and allocation of Board members to the various committees of the Board; and (iv) consider the level of diversity on the Board.

The Compensation, Governance and Nominating Committee will seek prospective candidates who are independent, have recognized functional and industry experience, sound business judgement, high ethical standards, time to

devote to the Board and the ability to contribute to the Board's diversity (with respect to gender, experience, geography, ethnicity and age).

Trustees elected at an annual meeting are elected for a term expiring at the close of the subsequent annual meeting and are eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders in accordance with the Declaration of Trust are appointed for a term expiring at the close of the next annual meeting and are eligible for election or re-election, as the case may be.

Effective August 31, 2022, upon recommendation of the Compensation, Governance and Nominating Committee, after considering the benefits of a larger Board with new skillsets and experiences, the Board approved the appointment of Jerry Patava as Trustee. Mr. Patava's extensive experience in the hospitality industry and in public company governance will significantly contribute to the Board.

Term Limits

NHT does not impose term limits on its Trustees, as it takes the view that term limits are an arbitrary mechanism for removing Trustees that can result in valuable, experienced Trustees being forced to leave the Board solely because of length of service. NHT is committed to ensuring that its Board is comprised of individuals with appropriate skill sets.

Board Mandate

The mandate of NHT's Board is one of stewardship and oversight of NHT and its business. In fulfilling its mandate, the Board has adopted a written charter setting out its responsibility for, among other things, (i) participating in the development of and approving a strategic plan for NHT; (ii) supervising the activities and managing the investments and affairs of NHT; (iii) approving major decisions regarding NHT; (iv) defining the roles and responsibilities of management; (v) reviewing and approving the business and investment objectives to be met by management; (vi) assessing the performance of and overseeing management; (vii) reviewing NHT's debt strategy; (viii) identifying and managing risk exposure; (ix) ensuring the integrity and adequacy of NHT's internal controls and management information systems; (x) succession planning; (xi) establishing committees of the Board, where required or prudent, and defining their mandate; (xii) maintaining records and providing reports to Unitholders; (xiii) ensuring effective and adequate communication with Unitholders, other stakeholders and the public; (xiv) determining the amount and timing of distributions to Unitholders; and (xv) acting for, voting on behalf of and representing NHT as a holder of interests of certain of its subsidiaries. A copy of the Board's written charter is attached to this Information Circular as Appendix "E".

Position Descriptions

Chair of the Board, Lead Trustee and Committee Chairs

The Board has adopted a written position description for the Chair of the Board and the Lead Trustee (for instances where the Chair of the Board is not independent within the meaning of NI 58-101), which sets out the Chair's and the Lead Trustee's key responsibilities, including, as applicable, duties relating to setting Board meeting agendas, chairing Board and Unitholder meetings, Trustee development and communicating with Unitholders and regulators. The Board has also adopted a written position description for each of the committee chairs which sets out each of the committee chair's key responsibilities, including duties relating to setting committee meeting agendas, chairing committee meetings and working with the respective committee members and management to ensure, to the greatest extent possible, the effective functioning of the committee.

Chief Executive Officer

The Board has adopted a written position description and mandate for the Chief Executive Officer of NHT which sets out the key responsibilities of the Chief Executive Officer. The primary functions of the Chief Executive Officer are to

lead management of the business and affairs of NHT, to lead the implementation of the resolutions and the policies of the Board and to communicate with Unitholders and regulators.

Orientation and Continuing Education

New Trustees

When new Trustees are elected to the Board, they can be expected to participate in an orientation program. The orientation program will familiarize new Trustees with NHT's business and operations, including structure, operations, and risks. They will be briefed on the role of the Board, its committees and the contributions individual Trustees are expected to make. New Trustees can also be expected to receive an orientation package containing all committee mandates and charters, copies of NHT's policies and other background information on NHT's business, operations and risks.

Continuing Education

NHT's continuing education program for its Trustees involves the ongoing evaluation by the Compensation, Governance and Nominating Committee of the skills and competencies of existing Trustees. The Board is currently comprised of highly qualified and experienced Trustees with impressive levels of skill and knowledge. The Trustees are seasoned business executives, directors or professionals with considerable experience, including as directors or trustees of other public companies. The Compensation, Governance and Nominating Committee continually monitors the composition of the Board and will recommend the adoption of a formal continuing education program should it be determined to be necessary.

Ethical Business Conduct

NHT has adopted a written code of business conduct and ethics (the "**Code of Conduct**") that applies to all Trustees, officers, and management of NHT and its subsidiaries. The objective of the Code of Conduct is to provide guidelines for maintaining the integrity, reputation, honesty, objectivity and impartiality of NHT and its subsidiaries. The Code of Conduct addresses compliance with laws, rules and regulations, conflicts of interest, corporate opportunities, protecting NHT's assets, confidentiality, information protection, competition and fair dealing with securityholders, gifts and entertainment, payments to government personnel, lobbying, discrimination and harassment, health and safety, accuracy of records and reporting and use of e-mail and Internet services. As part of the Code of Conduct, any person subject to the Code of Conduct is required to avoid or fully disclose interests or relationships that are harmful or detrimental to NHT's best interests or that may give rise to real, potential, or the appearance of, conflicts of interest. The Board has the ultimate responsibility for the stewardship of the Code of Conduct.

In order to ensure compliance with the Code of Conduct, NHT personnel are encouraged to talk to supervisors, managers or other appropriate personnel about observed illegal or unethical behavior and when in doubt about the best course of action in a particular situation. Employees may report violations of the Code of Conduct anonymously. It is the policy of NHT not to allow retaliation for reports of misconduct by others made in good faith. It is, at the same time, unacceptable to file a report knowing it is false.

Board Committees

The Board has established two committees: the Audit Committee and the Compensation, Governance and Nominating Committee.

Audit Committee

The Audit Committee consists of four Trustees, all of whom are persons determined by NHT to be financially literate within the meaning of National Instrument 52-110 – *Audit Committees* ("**NI 52-110**"), and a majority of whom are persons determined by NHT to be Independent Trustees within the meaning of NI 52-110.

The Audit Committee is currently comprised of Graham Senst (Chair), Neil Labatte, Jerry Patava and James Dondero. Mr. Senst, Mr. Labatte and Mr. Patava have been determined by NHT to be independent and are residents of Canada. Each of the Audit Committee members has an understanding of the accounting principles used to prepare financial statements and varied experience as to the general application of such accounting principles, as well as an understanding of the internal controls and procedures necessary for financial reporting. For details regarding the relevant education and experience of each member of the Audit Committee, see "*Matters to be Considered at the Meeting – 2. Election of Trustees*".

The Board has adopted a written charter for the Audit Committee, which sets out the Audit Committee's responsibilities. A copy of the Audit Committee's written charter is attached to this Information Circular as Appendix "F". The Audit Committee has direct communication channels with the Chief Financial Officer and the external auditors of NHT to discuss and review such issues as the Audit Committee may deem appropriate.

Part 6 of NI 52-110 exempts issuers listed on the TSXV from the requirements of Parts 3 (Composition of the Audit Committee) and 5 (Reporting Obligations) of NI-52-110. As a result, all of the members of the Committee are not required to be independent within the meaning of NI 52-110; however, NHT is required to provide on an annual basis, the disclosure regarding its Audit Committee made in this Information Circular.

Audit Committee Oversight

At no time since the commencement of NHT's most recently completed financial year was a recommendation of the Audit Committee to nominate or compensate an external auditor not adopted by the Board.

Reliance on Certain Exemptions

At no time since the commencement of NHT's most recently completely financial year has NHT relied on the exemption in section 2.4 of NI 52-110 (De Minimis Non-Audit Services), or an exemption from NI 52-110, in whole or in part, granted under Part 8 of NI 52-110.

Pre-approval Policies and Procedures

The Audit Committee has adopted specific policies and procedures for the engagement of non-audit services as described in the Audit Committee's written charter.

External Auditor Service Fees (By Category)

The aggregate fees billed by NHT's external auditors in the last two fiscal years for audit fees are as follows:

Financial Year Ending	Audit Fee	Audit Related Fees	Tax Fees	All Other Fees
2022	$284,000	$0	$172,200	$0
2021	$298,000	$0	$162,769	$0

Compensation, Governance and Nominating Committee

The Compensation, Governance and Nominating Committee must be comprised of at least three Trustees, a majority of whom must be persons determined by the Board to be independent Trustees and a majority of whom must be residents of Canada. The Compensation, Governance and Nominating Committee is charged with reviewing, overseeing and evaluating the compensation, corporate governance and nominating policies of NHT. The Compensation, Governance and Nominating Committee is currently comprised of Neil Labatte (Chair), Graham Senst, Jerry Patava and James Dondero. Mr. Senst, Mr. Labatte and Mr. Patava have been determined by NHT to be independent within the meaning of NI 52-110 and are residents of Canada.

INDEBTEDNESS OF TRUSTEES AND OFFICERS

None of the Trustees, executive officers, employees, former executive officers or former employees of NHT or any of its subsidiaries, and none of their respective associates, is or has at any time since the beginning of the most recently completed financial year been indebted to NHT or any of its subsidiaries or another entity whose indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar agreement or understanding provided by NHT or any of its subsidiaries.

INTERESTS OF CERTAIN PERSONS OR COMPANIES IN MATTERS TO BE ACTED UPON

Other than as disclosed herein, none of the Trustees or executive officers of NHT who have been a Trustee or executive officer at any time since the beginning of NHT's last financial year, none of the proposed nominees for election as Trustees of NHT, and no associate or affiliate of any of the foregoing, has any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, in any matter to be acted upon at the Meeting.

INTEREST OF INFORMED PERSONS IN MATERIAL TRANSACTIONS

Other than as set forth in this Information Circular and below, to the knowledge of the Trustees of NHT, no informed person (as defined in National Instrument 51-102 – *Continuous Disclosure Obligations*) of NHT, no proposed Trustee of NHT and no known associate or affiliate of any such informed person or proposed Trustee, since the commencement of the year ended December 31, 2022, has or has had any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, in any transaction which has or would materially affect NHT or any of its subsidiaries.

In connection with NHT's initial public offering, NHT acquired its portfolio of 11 hotel properties, in part, from certain principals and affiliates of the Advisor, including James Dondero (the "**Initial Contribution**"). Details of the Initial Contribution are set forth in NHT's final initial public offering prospectus dated March 27, 2019 available on the SEDAR website at www.sedarplus.ca.

On March 29, 2019, NHT entered into the Advisory Agreement with the Advisor, an entity affiliated with certain named executive officers, including James Dondero. The Advisory Agreement is available on the SEDAR website at www.sedarplus.ca.

NexPoint Real Estate Opportunities LLC ("**NREO**"), an entity indirectly controlled by James Dondero, loaned NHT an aggregate of $2,643,000 evidenced by two promissory notes dated as of January 8, 2019 and one promissory note dated as of May 6, 2019 for general working capital purposes (the "**Advance**"). The Advance carried an interest rate of 2.06% per annum and matured on January 8, 2020.

On December 27, 2019, NREO, redeemed 13,370,573 Class B Units and received 13,370,573 Units as consideration (the "**Redemption**"). Following the Redemption, NREO distributed 13,370,573 Units as a dividend to NexPoint Strategic Opportunities Fund, an entity indirectly controlled by James Dondero. The early warning report related to the Redemption is available on the SEDAR website at www.sedarplus.ca.

On February 10, 2020, NHT completed a non-brokered private placement offering, pursuant to which certain existing unitholders of NHT purchased an aggregate of 850,705 Units (the "**Private Placement**") for aggregate gross proceeds of $4,253,525. Certain subscribers in the Private Placement are directly or indirectly controlled by certain named executive officers, including James Dondero and Jesse Blair. A news release containing the particulars of the Private Placement is available on the SEDAR website at www.sedarplus.ca.

On October 14, 2020, NHT entered into an indemnification agreement with, *inter alia*, the Advisor pursuant to which the Advisor or funds advised by it or its affiliates agreed to fully fund two settlement payments totaling $4,750,000 (the "**Settlement Payments**") and indemnify NHT and its subsidiaries for any losses incurred in relation to the settlement agreement executed on October 14, 2020 with Condor Hospitality Trust Inc. ("**Condor**") following Condor's termination of the parties' previously announced merger agreement. In exchange for funding the

Settlement Payments, a subsidiary of NHT agreed to issue $4,750,000 principal amount of promissory notes to the entities funding the Settlement Payments.

On March 30, 2020, NHT announced that one of its subsidiaries had, between November 2020 and January 2021, issued convertible notes (the "**Notes**") in the aggregate principal amount of US$5.4 million to an affiliate of NHT's Advisor for general working capital purposes. The Advisor is affiliated with certain named executive officers, including James Dondero. The Notes carry an interest rate of 2.25% per annum, and are convertible into Class B Units at the option of the noteholder in its sole discretion. Any conversion of the Notes is subject to any required approval of the TSXV.

Between June 2021 and September 2022, the REIT received 32 loans from entities controlled or managed by James Dondero in the aggregate amount of US$56,165,000 (the "**COVID Loans**"). The TSXV has requested that the REIT make certain amendments to the COVID loans. See "*Matters to be Considered at the Meeting – 6. Approval of Amendments to COVID Loans*" for a description of the COVID Loans.

OTHER BUSINESS

The Trustees are not aware of any matters intended to come before the Meeting other than those items of business set forth in the Notice of Meeting accompanying this Information Circular. If any other matters properly come before the Meeting, it is the intention of the persons named in the Form of Proxy and voting instruction form to vote in respect of those matters in accordance with their judgment.

ADDITIONAL INFORMATION

Financial information is provided in NHT's financial statements and NHT's MD&A for the year ended December 31, 2022. Copies of NHT's financial statements for the year ended December 31, 2022, together with the auditors' report thereon, the MD&A and this Information Circular are available upon written request to NHT (at NexPoint Hospitality Trust 300 Crescent Court, Suite 700, Dallas, Texas 75201 USA, Attention: Brian Mitts, Chief Financial Officer). NHT may require payment of a reasonable charge if the request is made by a person who is not a Unitholder. These documents and additional information relating to NHT may also be found on the SEDAR website at www.sedarplus.ca and on NHT's website at www.nexpointhospitality.com.

APPROVAL OF TRUSTEES

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

The contents of this Information Circular and its distribution to Unitholders have been approved by the Board of Trustees.

BY ORDER OF THE BOARD OF TRUSTEES

Dated: September 11, 2023

"James Dondero"

Chair of the Board
NexPoint Hospitality Trust

APPENDIX "A"
RESOLUTION REGARDING APPROVAL OF AMENDED AND RESTATED DEFERRED UNIT PLAN

BE IT RESOLVED THAT:

1. The Amended and Restated Deferred Unit Plan of the REIT, in the form substantially set forth in Appendix "B" to the REIT's Information Circular dated September 11, 2023, is hereby confirmed, ratified and approved.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX “B”
AMENDED AND RESTATED DEFERRED UNIT PLAN

NEXPOINT HOSPITALITY TRUST

AMENDED AND RESTATED DEFERRED UNIT PLAN

September 11, 2023

NEXPOINT HOSPITALITY TRUST
AMENDED AND RESTATED DEFERRED UNIT PLAN

ARTICLE 1
PURPOSE

1.01 The purpose of this Plan is to advance the interests of NexPoint Hospitality Trust (the "**REIT**") by enhancing the ability of the REIT and any of its Subsidiaries to attract, motivate and retain Trustees of the REIT to reward such persons for their sustained contributions and to encourage such persons to take into account the long-term corporate performance of the REIT.

1.02 This Plan amends and restates the Deferred Unit Plan of the REIT dated June 30, 2022.

ARTICLE 2
DEFINITIONS

The following terms used in this Plan have the meanings set out below:

(a) "**Additional Deferred Units**" has the meaning ascribed thereto in Section 8.03;

(b) "**Advisor**" means NexPoint Real Estate Advisors VI, L.P., or any subsequent external advisor to the REIT hired to perform similar services;

(c) "**Affiliate**" has the meaning given to such term in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time;

(d) "**Applicable Withholding Taxes**" means any and all taxes and other source deductions or other amounts that the REIT or a Subsidiary is required by law to withhold from any amounts to be paid or credited under the Plan;

(e) "**Average Market Price**" at any date in respect of the Units shall be the volume weighted average price of the Units on the TSXV, for the five trading days immediately preceding such date (or, if such Units are not then listed and posted for trading on the TSXV, on such stock exchange on which the Units are listed and posted for trading as may be selected for such purpose by the Board); provided that, for so long as the Units are listed and posted for trading on the TSXV, the Average Market Price shall not be less than the market price, as calculated under the policies of the TSXV and provided, further, that with respect to a Deferred Unit issued to a U.S. taxpayer, such Participant and the number of Units subject to such issuance shall be identified by the Board prior to the start of the applicable five trading day period. In the event that such Units are not then listed and posted for trading on any Exchange, the Average Market Price shall be the fair market value of such Units as determined by the Board in its sole discretion and, with respect to an Award made to a U.S. taxpayer, in accordance with Section 409A of the Code. In no event shall the Average Market Price be less than the Discounted Market Price (as such term is defined in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time);

(f) "**Award Date**" means the date upon which the Deferred Units are granted;

(g) "**Board**" means the Board of Trustees of the REIT;

(h) "**Business Day**" means a day on which there is trading on the TSXV or such other stock exchange on which the Units are then listed and posted for trading, and if none, a day that is not Saturday or Sunday or a national legal holiday in Ontario;

(i) "**Change in Control**" means the occurrence of any one or more of the following events:

(i) any transaction at any time and by whatever means, whether or not the REIT is a party thereto, pursuant to which any Person or any group of two or more Persons acting jointly or in concert (other than the REIT or a wholly-owned Subsidiary) hereafter acquires the direct or indirect "beneficial ownership" (as defined in the *Securities Act* (Ontario)) of, or acquires the right to exercise Control or direction over, securities of the REIT representing more than 50% of the then issued and outstanding voting securities of the REIT, including, without limitation, as a result of a take-over bid, an exchange of securities, an amalgamation of the REIT with any other entity, an arrangement, a capital reorganization or any other business combination or reorganization;

(ii) the sale, assignment or other transfer of all or substantially all of the consolidated assets of the REIT to a Person other than a wholly-owned Subsidiary or subsidiary of NHT Operating Partnership, LLC;

(iii) the approval by the REIT's unitholders of a complete dissolution or liquidation of the REIT, other than in connection with the distribution of assets of the REIT to one or more Persons which were wholly-owned Subsidiaries prior to such event;

(iv) the occurrence of a transaction requiring approval of the REIT's unitholders whereby the REIT is acquired through consolidation, merger, exchange of securities, purchase of assets, amalgamation, statutory arrangement or otherwise by any other Person (other than a short form amalgamation or exchange of securities with a wholly-owned Subsidiary); or

(v) individuals who comprise the Board as of the last annual meeting of unitholders of the REIT (the "**Incumbent Board**") for any reason ceasing to constitute at least a majority of the members of the Board, unless the election, or nomination for election by the REIT's unitholders, of any new trustee was approved by a vote of at least a majority of the Incumbent Board, and in that case such new trustee shall be considered as a member of the Incumbent Board;

provided that, notwithstanding clauses (i), (ii), (iii) and (iv) above, a Change in Control shall be deemed not to have occurred pursuant to clauses (i), (ii), (iii) and

(iv) above if immediately following the transaction set forth in clause (i), (ii), (iii) and (iv) above: (A) the holders of securities of the REIT that immediately prior to the consummation of such transaction represented more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of trustees of the REIT hold (x) securities of the entity resulting from such transaction (including, for greater certainty, the Person succeeding to assets of the REIT in a transaction contemplated in clause (ii) above) (the "**Surviving Entity**") that represent more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of directors or trustees of the Surviving Entity, or (y) if applicable, securities of the entity that directly or indirectly has beneficial ownership of 100% of the securities eligible to elect directors or trustees of the Surviving Entity (the "**Parent Entity**") that represent more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of directors or trustees of the Parent Entity, and (B) no Person or group of two or more Persons, acting jointly or in concert, is the beneficial owner, directly or indirectly, of more than 50% of the voting power of the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) (any such transaction which satisfies all of the criteria specified in clauses (A) and (B) above being referred to as a "**Non-Qualifying Transaction**" and, following the Non-Qualifying Transaction, references in this definition of "Change in Control" to the "REIT" shall mean and refer to the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) and, if such entity is a company or a trust, references to the "Board" shall mean and refer to the board of directors or trustees, as applicable, of such entity).

Notwithstanding the foregoing, for purposes of any Deferred Unit that constitutes "deferred compensation" (within the meaning of Section 409A of the Code), the payment of which would be accelerated upon a Change in Control, a transaction will not be deemed a Change in Control for Awards granted to any Participant who is a U.S. taxpayer unless the transaction qualifies as "a change in control event" within the meaning of Section 409A of the Code;

(j) "**Control**" means:

(i) when applied to the relationship between a Person and a corporation, the beneficial ownership by that Person, directly or indirectly, of voting securities or other interests in such corporation entitling the holder to exercise control and direction in fact over the activities of such corporation;

(ii) when applied to the relationship between a Person and a partnership, limited partnership, trust or joint venture, means the contractual right to direct the affairs of the partnership, limited partnership, trust or joint venture; and

(iii) when applied in relation to a trust, the beneficial ownership at the relevant time of more than 50% of the property settled under the trust, and

the words "**Controlled by**", "**Controlling**" and similar words have corresponding meanings; provided that a Person who controls a corporation, partnership, limited partnership or joint venture will be deemed to Control a corporation, partnership,

limited partnership, trust or joint venture which is Controlled by such Person and so on;

(k) "**Code**" shall mean the *United States Internal Revenue Code* of 1986, as amended from time to time and any successor thereto;

(l) "**Compensation Committee**" means the Compensation, Governance and Nominating Committee of the Board;

(m) "**Deferred Unit**" means a bookkeeping entry, equivalent in value to a Unit, credited to a Participant's Deferred Unit Account in accordance with the terms and conditions of the Plan and for greater certainty consists of both Granted DUs and Elected DUs;

(n) "**Deferred Unit Account**" has the meaning ascribed thereto in Section 8.02;

(o) "**Elected Amount**" means such portion of the Trustee Fees as an Electing Person elects to receive in Elected DUs;

(p) "**Elected DUs**" has the meaning ascribed thereto in Section 6.01;

(q) "**Electing Person**" has the meaning ascribed thereto in Section 6.02;

(r) "**Election Notice**" has the meaning ascribed thereto in Section 6.02;

(s) "**Exchange**" means the TSXV and any other exchange on which the Units are or may be listed from time to time;

(t) "**Granted DUs**" has the meaning ascribed thereto in Section 5.02;

(u) "**Insider**" has the meaning given to such term in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time;

(v) "**Officer**" means an executive or senior management employee of the REIT or any of its Subsidiaries;

(w) "**Participant**" has the meaning ascribed thereto in Section 5.01;

(x) "**Person**" means an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

(y) "**Plan**" means this Amended and Restated Deferred Unit Plan;

(z) "**Redemption Date**" has the meaning ascribed thereto in Section 10.02;

(aa) "**REIT**" has the meaning ascribed thereto in Article 1;

(bb) "**RTO**" has the meaning ascribed thereto in the TSXV Corporate Finance Manual.

(cc) "**Security Based Compensation Arrangement**" means an option, option plan, employee unit purchase plan, long-term incentive plan or any other compensation or incentive mechanism involving the issuance or potential issuance of Units to one or more directors, Trustees or Officers of the REIT or any Subsidiary, current or past full-time or part-time employees of the REIT or any Subsidiary, Insiders or service providers or consultants of the REIT or any Subsidiary including a Unit purchase from treasury by one or more Trustees, Officers, directors or officers of any Subsidiary, current or past full-time or part-time employees of the REIT or any Subsidiary, Insiders or service providers or consultants of the REIT or any Subsidiary which is financially assisted by the REIT or any Subsidiary by way of a loan, guarantee or otherwise;

(dd) "**Section 409A of the Code**" shall mean Section 409A of the Code, the U.S. Treasury Regulations promulgated thereunder as in effect from time to time, and related guidance as may be amended from time to time;

(ee) "**Separation from Service**" shall have the meaning given to such phrase in U.S. Treasury Regulation § 1.409A-1(h);

(ff) "**Subsidiary**" means any entity Controlled by the REIT;

(gg) "**Trustee**" means a non-employee trustee of the REIT, which for the purposes of determining Participants under the Plan, shall exclude James Dondero, Chief Executive Officer of the REIT;

(hh) "**Trustee Fees**" means the annual cash retainer (including fees for serving as Chair of the Board or a committee of the Board) and meeting fees payable by the REIT to a Trustee in a calendar year for service on the Board;

(ii) "**TSXV**" means the TSX Venture Exchange;

(jj) "**Unit**" means a trust unit of the REIT; and

(kk) "**Unitholder**" means a holder of Units.

ARTICLE 3
CONSTRUCTION AND INTERPRETATION

3.01 The effective date of the Plan is August [●], 2023. The Plan shall be governed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3.02 If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part hereof.

3.03 In the Plan, references to any gender include all genders; reference to the singular shall include the plural and vice versa, as the context shall require.

3.04 Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein contained.

ARTICLE 4
ADMINISTRATION

4.01 The Plan shall be administered by the Board and Compensation Committee.

4.02 The Compensation Committee is authorized, subject to the provisions of the Plan, to establish such rules and regulations as it deems necessary for the proper administration of the Plan, and to make determinations and take such other action in connection with or in relation to the Plan as it deems necessary or advisable. Each determination or action made or taken pursuant to the Plan, including interpretation of the Plan, shall be final and conclusive for all purposes and binding on all parties, absent manifest error.

4.03 The REIT will be responsible for all costs relating to the administration of the Plan.

4.04 The Compensation Committee may review and confirm the terms of the Plan from time to time and the Board may, upon recommendation of the Compensation Committee and subject to applicable stock exchange rules, amend or suspend the Plan in whole or in part as well as terminate the Plan without prior notice as it deems appropriate; provided, however, that any amendment to the Plan including an amendment that would increase the maximum amount of $200,000 referred to in Section 11.04, result in any increase in the number of Deferred Units issuable under the Plan will be subject to the approval of Unitholders.

Notwithstanding the foregoing and for greater certainty, the Board may at any time and from time to time, without Unitholder approval, amend any provision of the Plan, including, without limitation:

(a) for the purpose of making formal, minor or technical modifications to any of the provisions of the Plan, including amendments of a "housekeeping" nature;

(b) to correct any ambiguity, defective provision, error or omission in the provisions of the Plan;

(c) to amend the vesting provisions of the Deferred Units, except for decreasing the vesting term of Granted DUs to less than one year from the Award Date; or

(d) any other amendment that does not require unitholder approval under applicable laws or the rules of the TSXV;

provided, however, that no such act shall diminish any rights accrued in respect of grants of Deferred Units made prior to the effective date of such amendment.

If the Compensation Committee terminates the Plan, Deferred Units previously credited to Participants shall remain outstanding and in effect and shall be settled subject to and in accordance with the applicable terms and conditions of the Plan in effect immediately prior to the termination.

4.05 Unless otherwise determined by the Compensation Committee, the Plan shall remain an unfunded obligation of the REIT and the rights of Participants under the Plan shall be general unsecured obligations of the REIT.

4.06 A Participant shall be solely responsible for all federal, provincial, state and local taxes resulting from his or her participation in the Plan. In this regard, the REIT shall be able to deduct from any payments hereunder (whether in the form of securities or cash) or from any other remuneration otherwise payable to a Participant any Applicable Withholding Taxes or to require the Participant, as a condition to receiving entitlements under the Plan, to make arrangements satisfactory to the REIT to enable the REIT to satisfy its withholding obligations. Each Participant agrees to indemnify and save the REIT harmless from any and all amounts payable or incurred by the REIT or any of its Subsidiaries if it is subsequently determined that any greater amount should have been withheld in respect of Applicable Withholding Taxes.

ARTICLE 5
PARTICIPATION AND REGULAR GRANTS

5.01 Individuals who are *bona fide* Trustees of the REIT are participants in the Plan ("**Participants**").

5.02 Participants may be awarded Deferred Units from time to time at the discretion of the Board, on the recommendation of the Compensation Committee ("**Granted DUs**").

5.03 Nothing herein contained shall be deemed to give any person the right to be retained as a Trustee, Officer, employee or service provider of the REIT and its Subsidiaries.

ARTICLE 6
ELECTIONS BY TRUSTEES

6.01 Subject to Section 6.02, a Participant may, subject to the conditions stated herein, elect to receive up to 100% of his or her Trustee Fees otherwise payable in cash, in the form of Deferred Units ("**Elected DUs**" and together with the Granted DUs, shall all be considered Deferred Units). The Award Date for Elected DUs shall be the date that a Participant would have received the Trustee Fees otherwise payable in cash.

6.02 Each Participant that elects to receive Elected DUs (each, an "**Electing Person**") will be required to file a notice of election in the form of Schedule A-1 hereto (the "**Election Notice**") with the Chief Financial Officer of the REIT: (i) in the case of an existing Trustee, by December 31st in the year prior to the year to which such election is to apply; and (ii) in the case of a newly appointed Trustee, within 30 days of such appointment with respect to compensation paid for services to be performed after such date. If no election is made within the foregoing time frames, the Trustee shall be deemed to have elected not to receive any Elected DUs and to be paid his or her Trustee Fees entirely in cash.

6.03 Subject to Section 6.04, the election of a Trustee to be an Electing Person shall be deemed to apply to such proportion of the Trustee Fees set out in the Election Notice, payable to the Trustee subsequent to the filing of the Election Notice, and such Trustee is not required to file another Election Notice.

6.04 Each Electing Person is entitled once per calendar year to terminate his or her Election Notice by filing with the Chief Financial Officer of the REIT a notice in the form of Schedule A-2 hereto electing to terminate the receipt of Elected DUs. Such election shall be effective 30 days following receipt. Thereafter, any portion of such Trustee's Trustee Fees otherwise payable in cash and payable or paid in the same calendar year and, subject to complying with Section 6.02, all subsequent calendar years shall be paid in cash. For greater certainty, to the extent a Trustee terminates his or her Election Notice, he or she shall not be entitled to become an Electing Person again until the calendar year following the year in which the termination notice is delivered. For an Electing Person who is a U.S. taxpayer, his or her Election Notice may not be revoked or moedified with respect to the Elected DUs for any calendar year for which it is effective. The U.S. taxpayer Electing Person may terminate or modify his or her Election Notice with respect to compensation paid for services to be performed after such date by filing a new Election Notice before the first day of the calendar year to which such termination or modification applies.

ARTICLE 7
DEFERRED UNITS

7.01 Under no circumstances shall Deferred Units be considered Units nor entitle a Participant to any rights as a Unitholder, including, without limitation, voting rights, distribution entitlements (other than in accordance herewith) or rights on liquidation.

7.02 One Deferred Unit is economically equivalent to one Unit.

7.03 Elected DUs granted to Trustees pursuant to the terms of this Plan will vest immediately upon grant (including any Additional Deferred Units issued pursuant to Elected DUs credited to a Participant's account in connection with cash distributions pursuant to Section 8.03). Granted DUs granted to Trustees pursuant to the terms of this Plan will vest on the first anniversary of the Award Date (including any Additional Deferred Units issued pursuant to Granted DUs credited to a Participant's account in connection with cash distributions pursuant to Section 8.03).

ARTICLE 8
DEFERRED UNIT GRANTS AND ACCOUNTS

8.01 The number of Deferred Units (including fractional Deferred Units) granted at any particular time pursuant to this Plan will be equal to (i) the Elected Amount (in dollars) in respect of Trustee Fees which a Trustee has determined to take in the form of Deferred Units, as determined by a Trustee pursuant to an Election Notice (as contemplated by Section 6.02), divided by the Average Market Price of a Unit on the Award Date, plus (ii) the Granted DUs, if any, granted to such Trustee.

8.02 An account, to be known as a "**Deferred Unit Account**" shall be maintained by the REIT for each Participant and will be credited with grants of Deferred Units received by a Participant from time to time.

8.03 Whenever cash distributions are paid on the Units, additional Deferred Units will be credited to the Participant's Deferred Unit Account ("**Additional Deferred Units**"). The number of such Additional Deferred Units to be credited to a Participant's Deferred Unit Account in respect of a cash distribution paid on the Units shall be calculated by dividing the amount which is equal to the aggregate distributions that would have been paid to such Participant if the Deferred Units in the Participant's Deferred Unit Account had been Units divided by the Average Market Price on the distribution payment date.

8.04 For greater certainty, the number of Deferred Units credited to a Participant's Deferred Unit Account shall count towards that Participant's ownership requirements as prescribed from time to time by the Board.

8.05 For greater certainty, any Additional Deferred Units shall count toward the limits set forth in Article 11. Where an award of Additional Deferred Units would be prohibited by the limits set forth in Article 11, the REIT may make a cash distribution to the applicable Participant in lieu of Additional Deferred Units.

ARTICLE 9
ADJUSTMENTS AND EVENTS AFFECTING THE REIT

9.01 In the event of any Unit distribution, Unit split, combinations or exchange of Units, merger, consolidation, spin-off or other distribution of the REIT's assets to the Unitholders (other than normal cash distributions), or any other similar change affecting the Units, the account of each Participant and the Deferred Units outstanding under the Plan shall be adjusted in such manner, if any, as the Board may in its discretion deem appropriate to reflect the event. However, no amount will be paid to, or in respect of, a Participant under the Plan or pursuant to any other arrangement, and no additional Deferred Units will be granted to such Participant to compensate for a downward fluctuation in the price of the Units, nor will any other form of benefit be conferred upon, or in respect of, a Participant for such purpose.

9.02 Except as may be set forth in an award agreement or other written agreement between the REIT or a subsidiary of the REIT and the Participant, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required:

(a) Notwithstanding anything else in this Plan, the Board may, without the consent of any Participant, take such steps as it deems necessary or desirable, to ensure the preservation of the economic interests of the Participants in, and to prevent the dilution or enlargement of, any Deferred Units granted under the Plan, including to cause (i) the conversion or exchange of any outstanding Deferred Units into or for, rights or other securities of substantially equivalent value (or greater value), as determined by the Board in its discretion, in any entity participating in or resulting from a Change in Control (provided that for any Participant that is a resident of Canada for the purposes of the Tax Act, any such securities will be shares of a

corporation or units of a "mutual fund trust" (for the purposes of the Tax Act) and any such rights will be rights to acquire shares of a corporation or units of a "mutual fund trust", in any case of an entity that does not deal at arm's length with the REIT (for the purposes of the Tax Act) at the time such shares, units or rights are issued or granted); (ii) outstanding Deferred Units to vest and become exercisable, realizable, or payable, or restrictions applicable to a Deferred Unit to lapse, in whole or in part, prior to or upon consummation of a Change in Control, take-over bid, RTO or other similar transaction and, to the extent the Board determines, terminate upon or immediately prior to the effectiveness of such Change in Control, take-over bid, RTO or other similar transaction; or (iii) any combination of the foregoing. In taking any of the actions permitted under this Section 9.02(a), the Board will not be required to treat all Deferred Units similarly in the transaction. For greater certainty, the Board cannot cause any Participant that is a resident of Canada for the purposes of the Tax Act to receive anything other than shares of a corporation or units of a "mutual fund trust", or rights to acquire such shares or units, in any case of an entity that does not deal at arm's length with the REIT (for the purposes of the Tax Act) at the time such shares, units or rights are issued or granted.

(b) It is intended that any actions taken under this Section 9.02 will comply with the requirements of Section 409A of the Code with respect to Awards granted to U.S. taxpayers. For the avoidance of doubt, to the extent that there is a conflict in this Plan with Section 409A of the Code, Section 409A of the Code shall control.

9.03 Notwithstanding anything else in this Plan, the Board may, in its discretion, at any time, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required, permit the acceleration of vesting of any or all Deferred Units or waive termination of any or all Deferred Units, in the manner and on the terms as may be authorized by the Board; provided, that any such acceleration or waiver comply with the requirements of Section 409A of the Code with respect to Deferred Units granted to U.S. taxpayers.

ARTICLE 10
REDEMPTION AND TERMINATION OF DEFERRED UNITS

10.01 Except with respect to Participants that are U.S. taxpayers, the Deferred Units (or a portion thereof) shall be redeemable by the Participant (or, where the Participant has died, his or her estate) on or after the date (the "**Termination Date**") on which the Participant ceases to be a Trustee, provided any such redemption date is not later than one year following the date the Participant ceases to be a Trustee. For greater certainty, in the event that a Participant (or his or her estate) has not redeemed his or her Deferred Units prior to the date that is one year following the Termination Date, such Deferred Units shall be automatically redeemed on the date that is one year following the Termination Date without any action required on the part of the Participant (or his or her estate).

10.02 For Participants that are Canadian residents and are not U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit Account will be redeemed automatically on the date on which the Participant files a written notice of redemption in the form of Schedule B

hereto with the Chief Financial Officer of the REIT (the "**Redemption Date**") for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

10.03 For Participants that are U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit Account will be redeemed automatically on the date of the Trustee's Separation from Service for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

10.04 Any cash payments made under this Article 10 by the REIT to a Participant in respect of Deferred Units to be redeemed for cash shall be calculated by multiplying the number of Deferred Units to be redeemed for cash by the Average Market Price per Unit as at the Redemption Date or date of the Trustee's Separation from Service, as applicable.

10.05 No fractional Units will be issued pursuant to the redemption of Deferred Units. At the time of redemption fractional Deferred Units shall be rounded down, and no payment shall be made to the Participant with respect to the fractional Deferred Units standing to the Participant's credit after the maximum number of whole Units due to such Participant have been issued by the REIT.

10.06 Upon payment in full of the value of the vested Deferred Units and the forfeiture of the unvested Deferred Units, the Deferred Units shall be cancelled.

10.07 Notwithstanding anything in this Article 10, in the event of the death of a Participant, all previously awarded Deferred Units shall be redeemable only within the one year after such death, and then only by the person or persons to whom the Participant's rights under the Deferred Units shall pass by the Participant's will or the laws of descent and distribution.

ARTICLE 11
NUMBER AND VALUE OF UNITS

11.01 The maximum number of Units reserved for issuance under this Plan at any time shall be 2,844,256. Notwithstanding the above, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required, the Board may, in its discretion, amend this Plan to increase such limit without notice to Participants, subject to Unitholder approval. If any Deferred Unit granted under this Plan is terminated, surrendered, forfeited, expired or is cancelled, new Deferred Units may thereafter be granted covering such Units, subject to any required prior approval by the TSXV or other stock exchange upon which the Units are listed. At all times, the REIT will reserve and keep available a sufficient number of Units to satisfy the requirements of all outstanding Deferred Units granted under this Plan.

11.02 The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued in any 12 month period to any one person (and any entities that are wholly owned by that person) shall not exceed 5% of the

issued and outstanding Units, calculated as at the date any security based compensation award is granted or issued to the person, subject to the requisite disinterested Unitholder approval required by the TSXV.

11.03 No Deferred Unit may be granted if such grant would have the effect of causing the total number of Units subject to Deferred Units to exceed the total number of Units reserved for issuance pursuant to the exercise of Deferred Units as set forth in Section 11.01.

11.04 The aggregate fair market value on the Award Date of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued to any Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to awards (including Deferred Units) taken in lieu of any Trustee Fees and a one-time initial grant to a Trustee upon such Trustee joining the Board.

ARTICLE 12
ASSIGNMENT

12.01 In no event may the rights or interests of a Participant under the Plan be assigned, encumbered, pledged, transferred or alienated in any way, except to the extent that certain rights may pass to a beneficiary or legal representative upon death of a Participant, by will or as required by law.

12.02 Rights and obligations under the Plan may be assigned by the REIT to a successor in the business of the REIT.

ARTICLE 13
COMPLIANCE WITH APPLICABLE LAWS

13.01 The administration of the Plan shall be subject to and performed in conformity with all applicable laws, regulations, orders of governmental or regulatory authorities and the requirements of any stock exchange on which the Units are listed. Should the Compensation Committee, in its sole discretion, determine that it is not desirable or feasible to provide for the redemption of Deferred Units in Units pursuant to the provisions of Article 10, including by reason of any such laws, regulations, rules, orders or requirements, it shall notify the Participants of such determination and on receipt of such notice each Participant shall have the option of electing that such redemption obligations be satisfied by means of a cash payment by the REIT equal to the Average Market Price of the Units that would otherwise be delivered to a Participant in settlement of Deferred Units on the Redemption Date (less any Applicable Withholding Taxes). Each Participant shall comply with all such laws, regulations, rules, orders and requirements, and shall furnish the REIT with any and all information and undertakings, as may be required to ensure compliance therewith.

13.02 The REIT intends that the Plan and all Deferred Units be construed to avoid the imposition of additional taxes, interest, and penalties pursuant to Section 409A of the Code. Notwithstanding the REIT's intention, in the event any Deferred Unit is subject to such additional taxes, interest or penalties pursuant to Section 409A of the Code, the Board or the Compensation Committee, as applicable, may, in their sole discretion and without a Participant's prior consent, amend the Plan, adopt policies and procedures, or take any other actions (including amendments,

policies, procedures and actions with retroactive effect) as are necessary or appropriate to (a) exempt the Plan and/or any Deferred Unit from the application of Section 409A of the Code, (b) preserve the intended tax treatment of any such Deferred Unit, or (c) comply with the requirements of Section 409A of the Code, including without limitation any such regulations, guidance, compliance programs, and other interpretative authority that may be issued after the date of the grant. In no event shall the REIT or any of its Affiliates be liable for any additional tax, interest or penalties that may be imposed on a Participant under Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. To the extent a Participant who is a U.S. taxpayer is a "specified employee" within the meaning of U.S. Treasury Regulation § 1.409A-1(i) upon the Participant's Separation from Service, any amount payable upon such Separation from Service pursuant to a redemption under Article 10 will be delayed to the earliest Business Day following the end of the sixth month period from the date of such Participant's Separation from Service. Notwithstanding any provision in the Plan to the contrary, the timing of redemptions set forth in Article 10 with respect to U.S. taxpayers may be modified by the Compensation Committee as provided in U.S. Treasury Regulation § 1.409A-3(j)(4)(ix) with respect to the termination of a deferred compensation arrangement.

ARTICLE 14
NON-RECOURSE

14.01 Obligations created hereunder and any liability which arises in any manner whatsoever and of or in connection with this Plan are not personally binding upon, nor shall resort be had to, nor shall recourse or satisfaction be sought from, the private property of any trustee or officer of the REIT, any holder of units of the REIT, or annuitants under a plan of which a holder of units of the REIT acts as a trustee or carrier, but only the property of the REIT from time to time or a specific portion thereof shall be bound.

SCHEDULE A-1
NEXPOINT HOSPITALITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

ELECTION NOTICE

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

Pursuant to the Plan, I hereby elect to receive ____% of my Trustee Fees otherwise payable in cash, as applicable, in the form of Deferred Units in lieu of cash.

I confirm that:

a) I have received and reviewed a copy of the terms of the Plan and agreed to be bound by them.

b) I recognize that when Deferred Units credited pursuant to this election are redeemed in accordance with the terms of the Plan, income tax and other withholdings as required will arise at that time. Upon redemption of the Deferred Units, the REIT will make all appropriate withholdings as required by law at that time.

c) The value of Deferred Units is based on the value of the Units of the REIT and therefore is not guaranteed.

The foregoing is only a brief outline of certain key provisions of the Plan. For more complete information, reference should be made to the Plan's text.

Date: ________________________________ ________________________________
(Name of Participant)

____
(Signature of Participant)

SCHEDULE A-2
NEXPOINT HOSPITALITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

ELECTION TO TERMINATE RECEIPT OF ELECTED DEFERRED UNITS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

Notwithstanding my previous election in the form of Schedule A-1 to the Plan, I hereby revoke my previous election, such that no portion of the Trustee Fees otherwise payable in cash, as applicable, accrued after the date hereof shall be paid in Deferred Units in accordance with the terms of the Plan.[1]

I understand that the Deferred Units already granted under the Plan will remain outstanding and shall be redeemable only in accordance with the Plan.

I confirm that I have received and reviewed a copy of the terms of the Plan and agree to be bound by them.

Date: ______________________________ ______________________________
(Name of Participant)

____
(Signature of Participant)

Note: An election to terminate receipt of Elected DUs can only be made by a Participant once in a calendar year.

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[1] To be modified for U.S. taxpayers such that the election only applies to future fees earned starting with the next calendar year.

SCHEDULE B

NEXPOINT HOSPITLAITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

REDEMPTION NOTICE FOR CANADIAN RESIDENTS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

I hereby advise NexPoint Hospitality Trust (the "**REIT**") that I wish to redeem __________ of the Deferred Units credited to my account under the Plan in accordance with the terms of the Plan in the form of **[_______ Units of the REIT and $_____ in cash]**.

Date: ________________________________ ______________________________________
(Name of Participant)

____
(Signature of Participant)

Note: If the redemption notice is signed by a beneficiary or legal representative, documents providing the authority of such signature should accompany this notice.

APPENDIX "C"
RESOLUTION REGARDING APPROVAL AND RATIFICATION OF PRIOR DSU GRANT

BE IT RESOLVED THAT:

1. The conditional issuance of 1,295,668 Deferred Units to the independent Trustees on September 11, 2023 on the terms and conditions set out in the Deferred Unit Plan, are ratified, confirmed and approved.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX "D"
RESOLUTION REGARDING APPROVAL OF AMENDMENTS TO COVID LOANS

BE IT RESOLVED THAT:

1. The Amendments to the COVID Loans, as more particularly described in the REIT's Information Circular dated September 11, 2023, are hereby approved and authorized.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX "E"
BOARD CHARTER

NEXPOINT HOSPITALITY TRUST

CHARTER OF THE BOARD OF TRUSTEES

(the "Charter")

ADOPTED MAY 28, 2019

1. Purpose

The purpose of this Charter is to set out the mandate and responsibilities of the board of trustees (the "**Board**") of NexPoint Hospitality Trust (the "**REIT**"). By approving this Charter, the Board confirms its responsibility for the stewardship of the REIT and its affairs. This stewardship function includes responsibility for the matters set out in this Charter. The responsibilities of the Board described herein are pursuant to, and subject to, the provisions of applicable statutes and the Declaration of Trust of the REIT and do not impose any additional responsibilities or liabilities on the trustees at law or otherwise.

2. Composition

The Board shall be constituted with a majority of individuals who qualify as "independent" as defined in National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("**NI 58-101**"), provided, however, that if at any time a majority of the trustees are not independent because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any trustee who was an independent trustee within the meaning of NI 58-101, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining trustees shall appoint a sufficient number of trustees who qualify as "independent" to comply with this requirement.

Pursuant to NI 58-101, an independent trustee is one who is free from any direct or indirect relationship which could, in the view of the Board, be reasonably expected to interfere with a trustee's independent judgment.

In the event the chair of the Board (the "**Chair**") is not independent, the independent trustees will select one of the independent trustees to be appointed as the lead trustee of the Board for such term as the independent trustees may determine (the "**Lead Trustee**"). If the REIT has a non-executive Chair who is independent, then the role of the Lead Trustee will be filled by the non-executive Chair. The Lead Trustee or non-executive Chair will chair regular meetings of the independent trustees and assume other responsibilities that the independent trustees as a whole have designated.

3. Responsibilities of the Board of Trustees

The Board is responsible for the stewardship and oversight of the REIT and in that regard shall be specifically responsible for:

(a) participating in the development of and approving a strategic plan for the REIT;

(b) supervising the activities and managing the investments and affairs of the REIT;

(c) approving major decisions regarding the REIT;

(d) defining the roles and responsibilities of management;

(e) reviewing and approving the business and investment objectives to be met by management;

(f) assessing the performance of and overseeing management;

(g) issuing securities of the REIT for such consideration as the Board may deem appropriate, subject to applicable law;

(h) reviewing the REIT's debt strategy;

(i) identifying and managing risk exposure;

(j) ensuring the integrity and adequacy of the REIT's internal controls and management information systems;

(k) succession planning;

(l) establishing committees of the Board, where required or prudent, and defining their mandate;

(m) establishing and maintaining procedures and policies to ascertain trustee independence;

(n) maintaining records and providing reports to unitholders;

(o) ensuring effective and adequate communication with unitholders, other stakeholders and the public;

(p) determining the amount and timing of distributions to unitholders; and

(q) acting for, voting on behalf of and representing the REIT as a holder of interests in NHT Intermediary, LLC and, indirectly, interests in NHT Holdings, LLC and the Class A Units of NHT Operating Partnership, LLC.

It is recognized that every trustee in exercising powers and discharging duties must act honestly and in good faith with a view to the best interest of the REIT. Trustees must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In this regard, they will comply with their duties of honesty, loyalty, care, diligence, skill and prudence.

In addition, trustees are expected to carry out their duties in accordance with policies and regulations adopted by the Board from time to time, the current Trustees' Regulations being annexed as Schedule A to the REIT's Declaration of Trust.

It is expected that management will co-operate in all ways to facilitate compliance by the Board with its legal duties by causing the REIT and its subsidiaries to take such actions as may be

necessary in that regard and by promptly reporting any data or information to the Board that may affect such compliance.

4. Expectations of Trustees

The Board has developed a number of specific expectations of trustees to promote the discharge by the trustees of their responsibilities and to promote the proper conduct of the Board.

(a) ***Commitment and Attendance***. All trustees are expected to maintain a high attendance record at meetings of the Board and the committees of which they are members. Attendance by telephone or video conference may be used to facilitate a trustee's attendance.

(b) ***Preparation for Meetings***. All trustees are expected to review the materials circulated in advance of meetings of the Board and its committees and should arrive prepared to discuss the issues presented. Trustees are encouraged to contact the Chair of the Board (the "**Chair**"), the Chief Executive Officer and any other appropriate executive officer(s) of the REIT to ask questions and discuss agenda items prior to meetings.

(c) ***Participation in Meetings***. Each trustee is expected to be sufficiently knowledgeable of the business of the REIT, including its financial statements, and the risks it faces, to ensure active and effective, and candid and forthright participation in the deliberations of the Board and of each committee on which he or she serves.

(d) ***Loyalty and Ethics***. In their roles as trustees, all members of the Board owe a duty of loyalty to the REIT. This duty of loyalty mandates that the best interests of the REIT take precedence over any other interest possessed by a trustee. Trustees are expected to conduct themselves in accordance with the REIT's Code of Business Conduct and Ethics.

(e) ***Other Board Memberships and Significant Activities***. The REIT values the experience trustees bring from other boards on which they serve and other activities in which they participate, but recognizes that those boards and activities also may present demands on a trustee's time and availability and may present conflicts or legal issues, including independence issues. Each member of the Board should, when considering membership on another board or committee, make every effort to ensure that such membership will not impair the member's time and availability for his or her commitment to the REIT. Trustees should advise the Chair, the Lead Trustee and the Chief Executive Officer before accepting membership on other public company boards or any audit committee or other significant committee assignment on any other board, or establishing other significant relationships with businesses, institutions, governmental units or regulatory entities, particularly those that may result in significant time commitments or a change in the member's relationship to the REIT.

(f) ***Personal Conduct***. Trustees are expected to: (i) exhibit high standards of personal integrity, honesty and loyalty to the REIT; (ii) project a positive image of

the REIT to news media, the financial community, governments and their agencies, unitholders and employees; (iii) be willing to contribute extra efforts, from time to time, as may be necessary including, among other things, being willing to serve on committees of the Board; and (iv) disclose any potential conflict of interest that may arise with the affairs or business of the REIT and, generally, avoid entering into situations where such conflicts could arise or could reasonably be perceived to arise.

(g) ***Confidentiality***. The proceedings and deliberations of the Board and its committees are confidential. Each member of the Board will maintain the confidentiality of information received in connection with his or her service as a trustee.

5. Meetings

The Board will meet not less than four times per year: three meetings to review quarterly results and one meeting prior to the issuance of the annual financial results of the REIT. The Board shall meet periodically without management present to ensure that the Board functions independently of management. At each Board meeting, unless otherwise determined by the Board, an in-camera meeting of independent trustees will take place, which session will be chaired by the Chair of the Board or the Lead Trustee in the event that the Chair is non-independent. In discharging its mandate, the Board and any committee of the Board will have the authority to retain and receive advice from outside financial, legal or other advisors (at the cost of the REIT) as the Board or any such committee determines to be necessary to permit it to carry out its duties.

The Board appreciates having certain members of senior management attend each Board meeting to provide information and opinion to assist the trustees in their deliberations. Management attendees who are not Board members will be excused for any agenda items which are reserved for discussion among trustees only.

6. Board Meeting Agendas and Information

The Chair, in consultation with management, will develop the agenda for each Board meeting. Agendas will be distributed to the trustees before each meeting, and all trustees shall be free to suggest additions to the agenda in advance of the meeting.

Whenever practicable, information and reports pertaining to Board meeting agenda items will be circulated to the trustees in advance of the meeting. Reports may be presented during the meeting by members of the Board, management and/or staff, or by invited outside advisors. It is recognized that under some circumstances, due to the confidential nature of matters to be discussed at a meeting, it will not be prudent or appropriate to distribute written materials in advance.

7. Measures for Receiving Unitholder Feedback

All publicly disseminated materials of the REIT shall provide for a mechanism for feedback of unitholders.

8. Telephone Board Meetings

A trustee may participate in a meeting of the trustees or in a committee meeting by means of telephone, electronic or such other communications facilities as permit all persons participating in the meeting to communicate with each other and a trustee participating in such a meeting by such means is deemed to be present at the meeting.

While it is the intent of the Board to follow an agreed meeting schedule as closely as possible, it is felt that, from time to time, with respect to time sensitive matters telephone board meetings may be required to be called in order for trustees to be in a position to better fulfill their legal obligations. Alternatively, management may request the trustees to approve certain matters by unanimous written consent.

9. Expectations of and Access to Management

Management shall be required to report to the Board at the request of the Board on the performance of the REIT, new and proposed initiatives, the REIT's business and investments, management concerns and any other matter the Board or its Chair or the Lead Trustee may deem appropriate. In addition, the Board expects management to promptly report to the Chair any significant developments, changes, transactions or proposals respecting the REIT or its subsidiaries. All members of the Board should be free to contact management at any time to discuss any aspect of the REIT's business. Trustees should use their judgement to ensure that any such contact is not disruptive to the operations of the REIT. The Board expects that there will be frequent opportunities for members of the Board to meet with management in meetings of the Board and committees, or in other formal or informal settings.

10. Access to Outside Advisors

The Board may, in its sole discretion, retain and obtain the advice and assistance of such advisors as it deems necessary to fulfil its duties and responsibilities under this Charter. The Board may set the compensation and oversee the work of such advisors to be paid by the REIT.

11. Communications Policy

The Board shall approve the content of the REIT's major communications to unitholders and the investing public including any Annual Report, Management Information Circular, Annual Information Form and any prospectuses which may be issued. The Audit Committee shall review and recommend to the Board the approval of the quarterly and annual financial statements (including the Management Discussion & Analysis) and press releases relating to financial matters. The Board also has responsibility for monitoring all of the REIT's external communications. However, the Board believes that it is generally the function of management to speak for the REIT in its communications with the investment community, the media, customers, suppliers, employees, governments and the general public. The Board will appoint the Lead Trustee, or another independent, non-executive trustee, to be available to unitholders with concerns should communications with management fail to resolve the issue or such contact is inappropriate.

The Board shall have responsibility for reviewing the REIT's policies and practices with respect to disclosure of financial and other information including insider reporting and trading. The

Board shall approve and monitor the disclosure policies designed to assist the REIT in meeting its objective of providing timely, consistent and credible dissemination of information, consistent with disclosure requirements under applicable securities law. The Board shall review the REIT's policies relating to communication and disclosure on an annual basis.

12. Internal Control and Management Information Systems

The Board has responsibility for the integrity of the REIT's internal control and management information systems. All material matters relating to the REIT and its business require the prior approval of the Board, subject to the Board's ability to delegate such matters to, among others, the REIT's Audit Committee, Compensation, Governance and Nominating Committee and management. Management is authorized to act, without Board approval, on all ordinary course matters relating to the REIT's business subject to any management authority guidelines adopted by the Board.

The Audit Committee has responsibility for ensuring internal controls are appropriately designed, implemented and monitored and for ensuring that management's financial reporting is complete and accurate, even though management may be charged with developing and implementing the necessary procedures.

13. Delegation of Powers

The trustees may establish one or more committees and may delegate to such committees any of the powers of the Board. The trustees may also delegate powers to manage the business and affairs of the REIT to such of the officers of the REIT as they, in their sole and absolute discretion, may deem necessary or desirable to appoint, and define the scope of and manner in which such powers will be exercised by such persons as they may deem appropriate.

The Board retains responsibility for oversight of any matters delegated to any trustee(s) or any committee of the Board, to management or to other persons.

14. Board Effectiveness

The Board shall review and, if determined appropriate, approve the recommendations of the applicable committee of the Board, if any, concerning formal position descriptions for the Chair of the Board and for each committee of the Board, the Lead Trustee and for the Chief Executive Officer, provided that in approving a position description for the Chief Executive Officer, the Board shall consider the input of the Chief Executive Officer and shall develop and approve corporate goals and objectives that the Chief Executive Officer is responsible for meeting (which may include goals and objectives relevant to the Chief Executive Officer's compensation, as recommended by the applicable committee of the Board, if any).

The Board shall review and, if determined appropriate, adopt a process recommended by the applicable committee of the Board, if any, for reviewing the performance and effectiveness of the Board as a whole, the committees of the Board and the contributions of individual trustees on an annual basis.

15. Education and Training

The Board will provide newly elected trustees with an orientation program to educate them on the REIT, their roles and responsibilities on the Board or Committees, as well as the REIT's internal controls, financial reporting and accounting practices. In addition, trustees will, from time to time, as required, receive: (a) training to increase their skills and abilities, as it relates to their duties and their responsibilities on the Board; and (b) continuing education about the REIT to maintain a current understanding of the REIT's business, including its operations, internal controls, financial reporting and accounting practices.

16. No Rights Created

This Charter is a broad policy statement and is intended to be part of the Board's flexible governance framework. While this Charter should comply with all applicable law and the REIT's constating documents, this Charter does not create any legally binding obligations on the Board, any Committee, any trustee or the REIT.

APPENDIX "F"
AUDIT COMMITTEE CHARTER

NEXPOINT HOSPITALITY TRUST

CHARTER OF THE AUDIT COMMITTEE
(the "Charter")

ADOPTED MAY 28, 2019 AND AMENDED APRIL 28, 2020

1. General

A. Purpose

The Audit Committee (the "**Committee**") is a committee of the board of trustees (the "**Board**") of NexPoint Hospitality Trust (the "**REIT**"). The members of the Committee and the chair of the Committee (the "**Chair**") are appointed by the Board on an annual basis (or until their successors are duly appointed) for the purpose of overseeing the REIT's financial controls and reporting and monitoring whether the REIT complies with financial covenants and legal and regulatory requirements governing financial disclosure matters and financial risk management.

2. Composition

(1) The Committee should be comprised of a minimum of three trustees, and a maximum of five trustees.

(2) The Committee must be constituted as required under National Instrument 52-110 — *Audit Committees*, as it may be amended or replaced from time to time ("**NI 52-110**").

(3) All members of the Committee must (except to the extent permitted by NI 52-110) be independent (as defined by NI 52-110), and free from any relationship that, in the view of the Board, could be reasonably expected to interfere with the exercise of his or her independent judgment as a member of the Committee.

(4) All members of the Committee must (except to the extent permitted by NI 52-110) be financially literate (which is defined as the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the REIT's financial statements).

(5) Any member of the Committee may be removed or replaced at any time by the Board and shall cease to be a member of the Committee on ceasing to be a trustee. The Board may fill vacancies on the Committee by election from among the Board. If and whenever a vacancy shall exist on the Committee, the remaining members may exercise all powers of the Committee so long as a quorum remains.

3. Limitations on Committee's Duties

In contributing to the Committee's discharge of its duties under this Charter, each member of the Committee shall be obliged only to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Nothing in this Charter is intended or may be construed as imposing on any member of the Committee a standard of care or diligence that is in any way more onerous or extensive than the standard to which any member of the Board may be otherwise subject.

Members of the Committee are entitled to rely, absent actual knowledge to the contrary, on (i) the integrity of the persons and organizations from whom they receive information, (ii) the accuracy and completeness of the information provided, (iii) representations made by management of the REIT ("**Management**") as to the non-audit services provided to the REIT by the external auditor, (iv) financial statements of the REIT represented to them by a member of Management or in a written report of the external auditors to present fairly the financial position of the REIT in accordance with applicable generally accepted accounting principles, and (v) any report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person.

4. Meetings

The Committee should meet not less than four times annually. The Committee should meet within 60 days following the end of the first three financial quarters of the REIT and shall meet within 120 days following the end of the fiscal year of the REIT. A quorum for the transaction of business at any meeting of the Committee shall be a majority of the members of the Committee or such greater number as the Committee shall by resolution determine. The Committee shall keep minutes of each meeting of the Committee. A copy of the minutes shall be provided to each member of the Committee.

Meetings of the Committee shall be held from time to time and at such place as any member of the Committee shall determine upon two day's prior notice to each of the other Committee members. The members of the Committee may waive the requirement for notice. In addition, each of the Chief Executive Officer, the Chief Financial Officer and the external auditor shall be entitled to request that the Chair call a meeting.

The Committee may ask members of Management and employees of the REIT (including, for greater certainty, its affiliates and subsidiaries) or others (including the external auditor) to attend meetings and provide such information as the Committee requests. Members of the Committee shall have full access to information of the REIT (including, for greater certainty, its affiliates, subsidiaries and their respective operations) and shall be permitted to discuss such information and any other matters relating to the results of operations and financial position of the REIT with Management, employees, the external auditor and others as they consider appropriate.

The Committee or its Chair should meet at least once per year with Management and the external auditor in separate sessions to discuss any matters that the Committee or either of these groups desires to discuss privately. In addition, the Committee or its Chair should

meet with Management quarterly in connection with the REIT's interim financial statements.

The Committee shall determine any desired agenda items.

5. Committee Activities

As part of its function in assisting the Board in fulfilling its oversight responsibilities (and without limiting the generality of the Committee's role), the Committee will have the power and authority to:

A. Financial Disclosure

(1) Review, approve and recommend for Board approval the REIT's interim financial statements, including any certification, report, opinion or review rendered by the external auditor and the related management's discussion & analysis and press release.

(2) Review, approve and recommend for Board approval the REIT's annual financial statements, including any certification, report, opinion or review rendered by the external auditor, the annual information form, and the related management's discussion & analysis and press release.

(3) Review and approve any other press releases that contain financial information and such other financial information of the REIT provided to the public or any governmental body as the Committee requires.

(4) Satisfy itself that adequate procedures have been put in place by Management for the review of the REIT's public disclosure of financial information extracted or derived from the REIT's financial statements and the related management's discussion & analysis.

(5) Review any litigation, claim or other contingency and any regulatory or accounting initiatives that could have a material effect upon the financial position or operating results of the REIT and the appropriateness of the disclosure thereof in the documents reviewed by the Committee.

(6) Receive periodically Management reports assessing the adequacy and effectiveness of the REIT's disclosure controls and procedures.

B. Internal Control

(1) Review Management's process to identify and manage the significant risks associated with the activities of the REIT.

(2) Review the effectiveness of the internal control systems for monitoring compliance with laws and regulations.

(3) Have the authority to communicate directly with the internal auditor if one is present.

(4) Receive periodical Management reports assessing the adequacy and effectiveness of the REIT's internal control systems.

(5) Assess the overall effectiveness of the internal control and risk management frameworks through discussions with Management and the external auditors and assess whether recommendations made by the external auditors have been implemented by Management.

C. Relationship with the External Auditor

(1) Recommend to the Board the selection of the external auditor and the fees and other compensation to be paid to the external auditor.

(2) Have the authority to communicate directly with the external auditor and arrange for the external auditor to be available to the Committee and the Board as needed.

(3) Advise the external auditor that it is required to report to the Committee, and not to Management.

(4) Monitor the relationship between Management and the external auditor, including reviewing any Management letters or other reports of the external auditor, discussing any material differences of opinion between Management and the external auditor and resolving disagreements between the external auditor and Management.

(5) If considered appropriate, establish separate systems of reporting to the Committee by each of management and the external auditor.

(6) Review and discuss on an annual basis with the external auditor all significant relationships they have with the REIT, Management or employees that might interfere with the independence of the external auditor.

(7) Pre-approve all non-audit services (or delegate such pre-approval, as the Committee may determine and as otherwise permitted by applicable securities laws) to be provided by the external auditor.

(8) Review the performance of the external auditor and recommend any discharge of the external auditor when the Committee determines that circumstances warrant.

(9) Periodically consult with the external auditor out of the presence of Management about (a) any significant risks or exposures facing the REIT, (b) internal controls and other steps that Management has taken to control such risks, and (c) the fullness and accuracy of the financial statements of the REIT, including the adequacy of internal controls to expose any payments, transactions or procedures that might be deemed illegal or otherwise improper.

(10) Review and approve any proposed hiring of current or former partners or employees of the current (and any former) external auditor of the REIT.

D. Audit Process

(1) Review the scope, plan and results of the external auditor's audit and reviews, including the auditor's engagement letter, the post-audit management letter, if any, and the form of the audit report. The Committee may authorize the external auditor to perform supplemental reviews, audits or other work as deemed desirable.

(2) Following completion of the annual audit and quarterly reviews, review separately with each of Management and the external auditor any significant changes to planned procedures, any difficulties encountered during the course of the audit and, if applicable, reviews, including any restrictions on the scope of work or access to required information and the cooperation that the external auditor received during the course of the audit and, if applicable, reviews.

(3) Review any significant disagreements among Management and the external auditor in connection with the preparation of the financial statements.

(4) Where there are significant unsettled issues between Management and the external auditor that do not affect the audited financial statements, the Committee shall seek to ensure that there is an agreed course of action leading to the resolution of such matters.

(5) Review with the external auditor and Management significant findings and the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented.

(6) Review the system in place to seek to ensure that the financial statements, management's discussion & analysis and other financial information disseminated to regulatory authorities and the public satisfy applicable requirements.

E. Financial Reporting Processes

(1) Review the integrity of the REIT's financial reporting processes, both internal and external, in consultation with the external auditor.

(2) Periodically consider the need for an internal audit function, if not present.

(3) Review all material balance sheet issues, material contingent obligations and material related party transactions.

(4) Review with Management and the external auditor the REIT's accounting policies and any changes that are proposed to be made thereto, including all critical accounting policies and practices used, any alternative treatments of financial information that have been discussed with Management, the ramification of their use and the external auditor's preferred treatment and any other material communications with Management with respect thereto. Review the disclosure and

impact of contingencies and the reasonableness of the provisions, reserves and estimates that may have a material impact on financial reporting.

F. General

(1) Inform the Board of matters that may significantly impact on the financial condition or affairs of the business.

(2) Respond to requests by the Board with respect to the functions and activities that the Board requests the Committee to perform.

(3) Periodically review this Charter and, if the Committee deems appropriate, recommend to the Board changes to this Charter.

(4) Review the public disclosure regarding the Committee required from time to time by NI 52-110.

(5) The Committee may at its discretion retain independent counsel, accountants and other professionals to assist it in the conduct of its activities and to set and pay (as an expense of the REIT) the compensation for any such advisors.

(6) Review in advance, and approve, the hiring and appointment of the REIT's Chief Financial Officer and any other senior officers responsible for financial reporting.

(7) Perform any other activities as the Committee or the Board deems necessary or appropriate.

6. Complaint Procedures

(1) Anyone may submit a complaint regarding conduct by the REIT or its employees or agents (including its external auditor) reasonably believed to involve questionable accounting, internal accounting controls, auditing or other matters. The Chair will have the power and authority to oversee treatment of such complaints.

(2) Complaints are to be directed to the attention of the Chair.

(3) The Committee should endeavour to keep the identity of the complainant confidential.

(4) The Chair will have the power and authority to lead the review and investigation of a complaint. The Committee should retain a record of all complaints received. Corrective action may be taken when and as warranted.

EXHIBIT 19

IN THE MATTER OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

- and -

IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

APPLICATION
OF HIGHLAND CAPITAL MANAGEMENT, L.P.

(In connection with a transactional proceeding under Rule 16 and
Under Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

A. ORDERS SOUGHT

The applicant, Highland Capital Management, L.P., requests that the Tribunal make the following orders:

1. an order pursuant to s. 127(1)(5) of the *Securities Act* requiring NexPoint Hospitality Trust ("**NHT**") to amend its Notice of Annual and Special Meeting of Unitholders and Management Information Circular filed September 21, 2023 (the "**Information Circular**") to address the deficiencies in the Information Circular outlined in this application, and to provide Staff with a copy of the amended information circular at least five business days before it is sent to NHT's unitholders;

2. an order requiring NHT to postpone the annual and special meeting of unitholders, currently scheduled for October 12, 2023, to a date not earlier than 21 calendar days after the date the amended information circular is sent to NHT's unitholders;

3. an order pursuant to s. 127(1)(2) of the *Securities Act* requiring NHT to cease trading of its securities, or the securities of NHT Operating Partnership LLC, with any entities controlled or managed by James Dondero until such time that NHT complies with clauses 1 and 2 above;

4. an order requiring NHT to exclude the votes attached to units owned by Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation in determining minority approval at the 2023 annual and special meeting of the unitholders;

5. an order, if required, granting standing to the applicant to bring this application pursuant to s. 127 of the *Securities Act*;

6. an order for an expedited hearing to be held before October 12, 2023; and

7. such further and other relief as the Capital Markets Tribunal may deem just.

B. GROUNDS

The grounds for the request are:

8. In this application, a significant minority unitholder, the applicant, requires the Capital Markets Tribunal's assistance to correct a seriously deficient information circular that asks NHT's unitholders to approve amendments to over $56 million USD worth of convertible loans.

The parties

9. The applicant, Highland Capital Management, L.P. ("**Highland**"), is an investment advisory firm based in Texas. It owns 7.25% of NHT's units. In October 2019, Highland filed for bankruptcy in the US.

10. NHT is an Ontario real estate investment trust ("**REIT**") established in 2019. It currently trades on the TSX Venture Exchange (the "**TSXV**") at $0.25 USD per unit. It is a reporting issuer in Ontario and Alberta.

11. As disclosed in its prospectus, NHT's assets were held indirectly through NHT Operating Partnership LLC ("**OP**"), a limited liability company formed in Delaware, and NHT owned all Class A Units in OP through two wholly owned subsidiaries, NHT Intermediary LLC and NHT Holdings LLC.

12. James Dondero, Graham Senst, Jerry Patava, and Neil Labatte are NHT's trustees. Dondero, through various entities, owns 72.13% of NHT's units. Numerous court

decisions in Highland's bankruptcy proceedings have recognized that Dondero directly and indirectly owns, controls, and directs various entities, including unitholders of NHT.

13. Under the Limited Liability Corporation Agreement between NHT, OP, and NHT Holdings LLC, Class B Units in OP are redeemable after one year of their issuance for units in NHT at the discretion of NHT Holdings LLC. Dondero is the manager of NHT Holdings LLC.

NHT enters into related party transactions

14. From 2019 to 2022, NHT disclosed that it has entered into over $82 million USD worth of convertible notes with entities affiliated with Dondero (the "**Convertible Notes**"). None of the Convertible Notes was subjected to minority approval when they were entered into. NHT has provided very little information about the notes to its unitholders.

15. NHT's financial statements provide very few details about the terms of the Convertible Notes. They included a stock description of the Convertible Notes, disclosing that they are convertible to Class B units of OP at the election of NHT subject to TSXV approval, they mature in 20 years "in most cases", and they were used for general corporate and working capital purposes.

16. NHT's financial statements also vaguely and apparently inconsistently describe the interest rates of the Convertible Notes. NHT's Q3 2022 financial statement disclosed that the notes "bear interest at an annual rate ranging between 1.82% to 7.50% while outstanding". NHT's Q1 2023 financial statement disclosed that the notes "have rates ranging from 1.93% to 7.50% while outstanding". There is no explanation as to why the lowest interest rate in the range rose from 1.82% in Q3 2022 to 1.93% in Q1 2023.

17. NHT published multiple news releases about the Convertible Notes in 2021 and 2022. Each news release disclosed that the Convertible Notes constituted a related party transaction under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transaction*s ("**MI 61-101**"). The news releases disclosed that these notes were exempt from the formal valuation and minority approval requirements under s. 5.7(1)(a) of MI 61-101 because the fair market value of each note did not exceed 25%

of NHT's market capitalization when they were entered into. The news releases did not disclose any other reason for why there was no minority vote for the notes.

18. However, according to NHT's own disclosures, the Convertible Notes that NHT entered into in Q1 2022 total over 25% of its market capitalization in that quarter.

NHT undertakes to amend the Convertible Notes

19. On June 26, 2023, NHT announced via news release that NHT had undertaken, at the request of the TSXV, to amend the terms of $56,165,000 USD worth of the Convertible Notes issued to NexPoint Real Estate Opportunities LLC and Highland Income Funds during the COVID-19 pandemic (which NHT now refers to as the "**COVID Loans**" in the news release and Information Circular) as follows:

    a. Reduce the conversion term to five years from the date of issuance;

    b. Establish a minimum acceptable conversion price based on market prices at the time of each particular advance; and

    c. Remove the conversion of interest.

20. NHT also disclosed in this news release that the conversion terms of one $8.5 million USD note will be removed altogether. The removal of conversion terms of the $8.5 million USD note would result in outstanding Convertible Notes in the amount of approximately $74 million USD.

21. Since the notes are a related party transaction, this news release announced that MI 61-101 requires that NHT seek minority approval of the amendments at the upcoming annual and special meeting of the unitholders.

22. Article 9.3 of NHT's Declaration of Trust requires that NHT's trustees deliver notices of all meetings of the unitholders to each unitholder no less than 21 days before the meeting.

Highland requests information from NHT

23. Highland has requested information from NHT about the Convertible Notes and upcoming vote, but these requests have largely gone unsatisfied.

24. On July 11, 2023, Highland's counsel sent NHT's counsel a letter requesting more information about the Convertible Notes so that it could be fully informed about them for the upcoming vote. The letter requested, among other things, the terms of the original notes, the terms of the proposed amended notes, minutes of meetings and resolutions of the trustees, and correspondence between NHT and the TSXV related to the TSXV's requested amendments. Highland relied on Article 18.12 of NHT's Declaration of Trust, which stated that the unitholders have the right to examine any documents or records which the trustees determine should be available for inspection.

25. NHT's counsel responded on July 17, 2023, and refused to provide access to these documents.

26. On July 28, 2023, NHT set the date for the annual general and special meeting of the unitholders as October 2, 2023. On August 31, 2023, the meeting date was amended to October 12, 2023.

27. On September 18, 2023, Highland's counsel sent another letter to NHT's counsel outlining its concerns about NHT's inclusion of Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation as minority unitholders entitled to vote on the amendments, in view of the US Bankruptcy Court of the Northern District of Texas's having recognized that Dondero may indirectly direct or control these entities. The letter requested that NHT include in its upcoming information circular any information that the trustees have obtained in inquiring about the control and direction of these entities. As described below, this information, however, was not included in the Information Circular.

The Information Circular is released and is deficient

28. On September 21, 2023, NHT released the Information Circular. The Information Circular specified that NHT received 32 loans from entities controlled or managed by

Dondero between June 2021 and September 2022 in the aggregate amount of $56,165,000 USD. According to the Information Circular, each of these loans is unsecured, has a 20-year term and bears interest at rates ranging from 2.25% per year to 7.5% per year. The Information Circular notes that the principal and interest owing under the COVID Loans is convertible into Class B units of OP based on the value of a Class B unit at the time of conversion. The Information Circular provided that the Convertible Notes were principally used to fund NHT's operating expenses and loan repayments, but they were also used to acquire two hotel properties focused on the leisure travel market to modify NHT's asset mix.

29. The Information Circular discloses for the first time that the Convertible Notes are convertible at the option of the holder at any time. All previous NHT disclosures have described the Convertible Notes as convertible at the option of NHT.

30. Although NHT had consistently disclosed that these notes were exempted from MI 61-101's minority approval requirement under s. 5.7(1)(a) of MI 61-101 due to their being less than 25% of NHT's market capitalization, the Information Circular disclosed for the first time that NHT also relied upon the financial hardship exemption under s. 5.7(1)(e) of MI 61-101. The Information Circular explained that, at the time the notes were issued, NHT's trustees determined that the REIT was in serious financial difficulty and the notes were designed to improve its financial position.

31. The Information Circular also disclosed that the loans were filed with the TSXV at various points during 2021 and 2022 under TSXV Policy 5.1 – Loans, Loan Bonuses, Finder's Fees and Commissions. However, according to the Information Circular, the TSXV advised NHT in December 2022 that these loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – Private Placements, and, as a result, the TSXV required amendments to the notes. NHT never disclosed the TSXV's recategorization of the Convertible Notes until the Information Circular.

32. The Information Circular disclosed that if the amendments are implemented, a maximum number of 21,075,012 Class B units will be issuable upon conversion of the notes.

33. The Information Circular also disclosed that:

> The Board, having undertaken a thorough review of, and having: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units, and (iii) consulted with its legal advisors, concluded that the Amendments are in the best interests of the REIT and agreed to pursue the approval of the Amendments.
>
> …
>
> If the Amendments are not approved at the Meeting, the REIT will engage with the TSXV to seek alternative solutions to the [*sic*] satisfy the TSXV listing requirements; however, there can be no assurance that a satisfactory solution will be found, and if a solution is not found, the TSXV may halt trading in the Units, suspend trading in the Units and/or initiate a delisting review of the REIT's Units as, absent the Amendments, the REIT would not be in compliance with TSXV listing requirements.

34. The Information Circular disclosed that the units of NexPoint Real Estate Opportunities, Dugaboy, NHT Holdco, LLC, Governance Re Ltd, and NexPoint Real Estate Advisors, LP will be excluded from the minority vote. The Information Circular did not exclude Liberty CLO HoldCo, Ltd and Highland Dallas Foundation as voters and did not provide reasons for not doing so.

35. On September 29, 2023, NHT announced via news release that 817,905 units held by Liberty CLO Holdco, Ltd. through NHT Holdco, LLC will also be excluded from voting on the proposed amendments.

The Information Circular breaches securities law

36. S. 5.3(3) of MI 61-101 outlines the requirements of an information circular, which shall include, among other things:

    a. a description of the background to the transaction;

    b. a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

c. disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained; and

d. the identity of the holders of securities specified in subparagraph (c) together with their individual holdings.

37. The companion policy to MI 61-101 identifies other pieces of information in relation to a related party transaction that should be disclosed, including the trustees' "reasonable beliefs as to the desirability or fairness of the proposed transaction" and the material factors on which the beliefs are based, including the background of the trustees' deliberations.

38. The Information Circular makes significant material omissions and breaches these standards of disclosure. It does not provide sufficient detail about the Convertible Notes to enable Highland and other minority shareholders to make an informed decision on how to vote on the proposed amendments.

39. The unitholders can cast an informed vote on the amendments only if they know about the fairness of the proposed amendments. However, the trustees do not disclose in the Information Circular their reasonable beliefs as to the desirability or fairness of the amendments to the Convertible Notes. Nor do the trustees disclose in reasonable detail the material factors on which their beliefs about the proposed amendments are based. Instead, the Information Circular contains a list of vaguely described factors, with no elaboration on why or how these factors allowed the trustees to conclude that the amendments are "in the best interests of the REIT".

40. To cast an informed vote, the unitholders also need to know if the proposed amendments are the best terms for NHT. The Information Circular does not describe how the specific terms of the amendments were agreed to with the TSXV or the lenders; nor does it explain why, under the proposed amendments, at least one note would have its conversion terms removed altogether. The Information Circular does not at all discuss the trustees' deliberations about the amendments.

41. The unitholders also need to know the implications of approving or rejecting the amendments in order to make an informed vote. However, the Information Circular does not disclose how the notes will affect NHT in the future and there is no discussion about the impact of the notes' potential conversion on NHT's financial status. There is no discussion in the Information Circular about the likelihood that some or all of the notes will be converted. There is also no discussion about whether it would be beneficial for NHT to have the notes converted or pay back the notes in full.

42. The Information Circular also does not discuss NHT's options in the instances that the amendments are not approved. There is no discussion on possible alternative solutions, how they could affect NHT, or whether the trustees have engaged with the TSXV on available options.

43. To make an informed decision on how to vote, the unitholders need to know the TSXV's views on the amendments. The Information Circular is silent on why the Convertible Notes are being amended so long after the TSXV first advised NHT that they must be amended, or why the TSXV requested the amendment so long after their issuance. There is no description of any negotiations or discussions between NHT and the TSXV on the appropriate policy treatment or discussion on whether the TSXV provided options for amendments or demanded a single set of specified amendments.

44. The Information Circular does not provide an explanation for why only $56 million USD worth of notes are being amended when NHT has entered into over $82 million USD worth of Convertibles Notes in total. NHT's financial statements have never uniquely described any group of Convertible Notes such that they would be treated differently by the TSXV. If there will be future similar amendments to the rest of the Convertible Notes, that is a significant piece of information that would inform the unitholders on how to vote.

45. There is no further explanation on why the trustees and their advisors did not believe that the COVID Loans were to be treated as "convertible securities" under TSXV Policy 4.1 – Private Placements when they have been described as "convertible notes" in NHT's financial statements since 2020. This initial mischaracterization places the unitholders of

NHT in a difficult position since they are now forced to approve amendments to Convertible Notes that were already issued without minority approval, at the risk of delisting by the TSXV.

46. To make an informed decision on how to vote on the amendments to Convertible Notes that have already been issued, the unitholders need disclosure on why the Convertible Notes were not subjected to minority approval at the time they were issued. However, the Information Circular does not even provide basic information about the notes, such as who the lenders are, the amounts of the notes, each note's rate of interest, when they were entered into, or their purposes. Without this information, unitholders are unable to determine whether the Convertible Notes are potentially connected transactions under s. 5.7(1)(a) of MI 61-10 such that the notes would not qualify for the market capitalization exemption in that provision.

47. The Information Circular also does not discuss why the Convertible Notes are suddenly also exempted from MI 61-101's minority approval requirement under the financial hardship exemption in s. 5.7(1)(e) of MI 61-101. Before the Information Circular, NHT consistently disclosed only that the Convertible Notes were exempt under the market capitalization exemption in s. 5.7(1)(a) of MI 61-101. NHT had never made reference to the financial hardship exemption and the Information Circular provides no information on why the trustees are retroactively applying this exemption.

48. If Dondero-affiliated entities are included as minority unitholders for voting purposes, this would defeat the purpose of MI 61-101's minority approval requirements and would render Highland's vote meaningless. The Information Circular does not provide any commentary on the inclusion of Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation as minority unitholders, even though Highland had objected to their inclusion and requested that information relevant to any inquiries made by the trustees regarding the control or direction over these parties be included in the Information Circular.

49. The Information Circular also contains inadequate disclosure regarding how the conversion right can be exercised. While NHT's financial statements and news releases have consistently disclosed that the Convertible Notes are convertible at the option of

NHT, the Information Circular—for the first time—describes the Convertible Notes as convertible "at the option of the holder at the time". This change in the exercise of the conversion is not included as one of the three amendments for which NHT is seeking minority approval, suggesting that the change may already have been made.

50. Changing the exercise of the conversion from being at the option of NHT to being at the option of the Dondero-affiliated lenders consolidates Dondero's control over the Convertible Notes. Rather than needing the approval of NHT's independent trustees to convert the notes, Dondero can now seek to convert them at his will to his benefit. The Information Circular does not draw attention to this significant change, only briefly mentioning it among numerous other facts about the Convertible Notes, and it does not disclose any additional information about this change.

51. The Information Circular may also contain misrepresentations. The Highland Opportunities and Income Fund ("**HFRO**") disclosed in its US securities filings that it held a secured promissory note with OP for over $42 million USD maturing February 14, 2027.

52. The only entry in NHT's Q2 2023 financial statements that could accommodate the HFRO secured loan is the entry for the Convertible Notes. If this is true, NHT's Information Circular would contain a misrepresentation since it describes the COVID Loans as unsecured and having a 20-year term. NHT unitholders require additional disclosure to reconcile the HFRO secured note with NHT's Information Circular.

53. All of the above information is vital to enable Highland to vote on the amendments. NHT currently trades at $0.25 USD per unit and the TSXV lists its market capitalization as $7,338,014 USD with 29,352,055 outstanding units. The approval of over $52 million USD of convertible notes with Dondero-affiliated parties, which may result in the conversion of 21,075,012 units, poses a significant risk of dilution for Highland's shares and could drastically consolidate Dondero's control of NHT. NHT's trustees must provide much more disclosure in its Information Circular before asking NHT's unitholders to approve this significant transaction.

54. The Information Circular should be amended to include the following information to allow the unitholders to make an informed decision on how to vote on the amendments to the COVID Loans:

   a. Copies of all executed agreements, including any amendments or assignments, for the Convertible Notes;

   b. Details about the COVID Loans and Convertible Notes, and their terms, including:

      i. the amount of each note;

      ii. the date each note was entered into;

      iii. the terms of each note;

      iv. the identity of the lender of each note;

      v. the intended purpose of the proceeds of each note;

      vi. the terms related to the convertibility of each note;

      vii. all assignments of each note, if any; and

      viii. all proposed and executed amendments to each note;

   c. The reasonable beliefs of the NHT trustees on the desirability or fairness of the amendments, including:

      i. the background of the trustees' deliberations regarding the amendments;

      ii. the review and approval process adopted by the trustees regarding the amendments;

      iii. a description of how the trustees and the TSXV or NHT's lenders agreed to the specific terms of the amendments, including any alternative amendments proposed by the TSXV;

iv. a discussion on whether the terms of the amendments are the best terms that NHT could negotiate;

v. the reason for the complete removal of the conversion terms from one $8.5 million USD note;

vi. an analysis of whether it is in the best interests of NHT to remove the conversion terms from the $8.5 million USD note; and

vii. all other material factors on which the trustees based their beliefs regarding the Convertible Notes;

d. The implications of approving the proposed amendments, including:

i. a description of how the notes and their conversion will affect NHT in the future, including its financial status;

ii. the likelihood that the notes will be converted; and

iii. an analysis on whether it is beneficial for the Convertible Notes to be converted or be paid back in full;

e. The implications of not approving the proposed amendments, including:

i. alternative options available if the amendments are not approved at the annual and special meeting of the unitholders; and

ii. the details of any discussions or negotiations between NHT and the TSXV about these alternative options;

f. The details of any discussions or negotiations between NHT and the TSXV on the appropriate policy treatment of the Convertible Notes, including:

i. the reason why the TSXV has requested the amendments so long after the notes were issued;

ii. the reason why the TSXV requested an amendment of only $56 million USD worth of notes when NHT entered into over $82 million USD worth of notes;

iii. the reason why the trustees and their advisors did not believe the notes should be treated as "convertible securities" under TSXV Policy 4.1 when they first filed them with the TSXV; and

iv. the reason why NHT is attempting to amend the notes now when the TSXV advised NHT of the required treatment of the notes in December 2022;

g. An explanation of NHT's exemptions from minority approval, including:

i. an explanation as to why NHT is now relying on the financial hardship exemption under s. 5.7(1)(e) of MI 61-101 when it has never referenced this exemption before issuing the Information Circular; and

ii. an analysis related to the conclusion that the market capitalization exemption in s. 5.7(1)(a) of MI 61-101 was available, including clarification on whether the notes were connected transactions under MI 61-101; and

h. An explanation of the inclusion of Liberty CLO HoldCo Ltd. and Highland Dallas Foundation as minority unitholders, including information relevant to any inquiries made by the trustees regarding the control or direction over these parties.

The meeting should be postponed

55. In order that NHT may make the required amendments to the Information Circular, the annual and special meeting of unitholders, currently scheduled for October 12, 2023, should be postponed to a date not earlier than 21 calendar days after the date the amended information circular is sent to NHT's unitholders.

Highland should be granted standing to bring this application

56. This application involves both past and possible future conduct regulated by Ontario securities law, namely the contents of the Information Circular and how it impacts the validity of the vote scheduled for October 12, 2023.

57. This application is not purely enforcement in nature.

58. Highland seeks future-looking relief, namely the amendment of the Information Circular so that it can vote on the proposed amendments with adequate information.

59. This Tribunal has the authority to order an amendment of an information circular under s. 127 of the *Securities Act*.

60. Highland, as one of the few minority unitholders of NHT, is directly affected by the lack of disclosure in NHT's Information Circular.

61. It is therefore in the public interest to hear this application.

Highland requests an expedited hearing

62. Because the annual and special meeting of the unitholders is currently scheduled for October 12, 2023, Highland requests a hearing of this application before that date.

C. EVIDENCE

The applicant intends to rely on the following evidence at the hearing:

63. The affidavit of James P. Seery, Jr., to be affirmed; and

64. Such further and other evidence as this Tribunal may permit.

DATED this 2nd day of October, 2023

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EXHIBIT 20

NEXPOINT
HOSPITALITY TRUST

FOR IMMEDIATE RELEASE

NOT FOR DISSEMINATION TO U.S. NEWS WIRE SERVICES OR DISSEMINATION IN THE UNITED STATES

NexPoint Hospitality Trust Issues Clarifying and Supplemental Disclosure

DALLAS and TORONTO, October 19, 2023 -- NexPoint Hospitality Trust ("**NHT**" or the "**REIT**") (TSX-V: NHT.U) has received requests for (i) clarification regarding its previous disclosure relating to the approximate US$87 million of convertible loans provided by entities controlled or managed by James Dondero primarily during the COVID-19 pandemic (the "**Loans**"); and (ii) supplemental disclosure to its management information circular dated September 11, 2023 (the "**Circular**") regarding the process undertaken with the TSX Venture Exchange (the "**TSXV**") whereby the TSXV requested amendments to the Loans issued between June 2021 and September 2022 in the aggregate amount of US$56,165,000 (the "**COVID Loans**").

Clarification Regarding Previous Disclosure

As a result of the COVID-19 pandemic, the REIT experienced material decreases in revenues, results of operations and cash flows. The impact to the global economy caused by the response to the COVID-19 pandemic also negatively impacted the REIT's ability to obtain new financing. The Loans were advanced, in most cases, in critical moments to principally fund the REIT's ongoing operating expenses and to satisfy interest and principal payments due on third party debt. In certain situations, the proceeds from the Loans were used to fund acquisitions designed to improve the financial condition of the REIT. Without the Loans, the REIT would likely not have been able to continue its operations as a going concern.

Each of the Loans was unsecured, had a 20-year term and bore interest at rates ranging from 1.82% per year to 7.5% per year (which were market interest rates at the time of their issuance). Of those Loans, the COVID Loans bore interest at rates ranging from 2.25% per year to 7.5% per year. As of June 30, 2023, approximately US$83 million of the Loans remained outstanding. From the time of issuance to the present, the holder of the Loans has had the right to convert the principal and interest owing under the Loans into class B units (the "**Class B Units**") of NHT Operating Partnership, LLC (the "**OP**") on the basis of the market price of the REIT's trust units (the "**Units**") at the time of conversion.

Previous disclosure of the REIT stated that the Loans were, subject to approval of the TSXV, convertible at any time at the election of the REIT into Class B Units. The REIT wishes to clarify and correct this earlier disclosure. The Loans are, and have always been, only convertible into Class B Units at the option of their respective holder. However, if any of the Loans are converted by their respective holders into Class B Units and the holder then elects to redeem those Class B Units, the REIT may elect to satisfy the redemption by issuing Units to the holder. Any issuance of Units or repayment of the Loans in Units would be subject to the approval of the TSXV.

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Supplemental Disclosure to Circular

As disclosed in the Circular, the COVID Loans were filed with the TSXV at various points during 2021 and 2022, as loan submissions pursuant to TSXV Policy 5.1 – *Loans, Loan Bonuses, Finder's Fees and Commissions* ("**Policy 5.1**"). The REIT filed in this manner as the Loans were not, as described above, convertible by the holder into publicly traded Units (Units were only issuable at the election of the REIT, subject to TSXV approval) and therefore, based on the guidance in Policy 5.1, were subject to filing under Policy 5.1.[1] As a result of filing under Policy 5.1, since any issuance of Units on a redemption of Class B Units received by a holder of the COVID Loans was subject to TSXV approval, the REIT believed its position was consistent with the requirements and guidance of Policy 5.1. The REIT commenced filing on this basis in early 2021 and these filings were not questioned until December 2022, when the TSXV advised the REIT that it believed the COVID Loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – *Private Placements* ("**Policy 4.1**") rather than loans under Policy 5.1. While all the Loans were filed with the TSXV, the TSXV only raised this issue with respect to the COVID Loans; it did not raise it with respect to the other Loans. Following this notification, the REIT engaged with the TSXV and presented support for its filings under Policy 5.1, but ultimately the TSXV concluded that Policy 4.1 should apply. Due to this determination and in order to satisfy the requirements of Policy 4.1, the TSXV required the following amendments (the "**Amendments**") to the COVID Loans (which amendments would bring the COVID Loans into compliance with the terms expressly prescribed by Policy 4.1 for convertible securities): (i) either the conversion feature be removed or limited to five years from the date of issuance of each COVID Loan (which represents the maximum length of the conversion period); (ii) the conversion feature be limited to the principal amount of the COVID Loan (rather than the principal amount plus interest); and (iii) the conversion price be fixed at a price equal to the market price of the REIT's Units on the TSXV at the time of the issuance of such COVID Loan.

There was no negotiation with the TSXV regarding the substance of the Amendments as the TSXV's position was simply that the COVID Loans had to be amended to comply with Policy 4.1. The REIT worked expeditiously to obtain consent to the Amendments from each of the lenders (the "**Lenders**") under each of the COVID Loans. With the Lenders' cooperation and desire to ensure the REIT's compliance with TSXV policies, the Lenders agreed to implement the Amendments. However, the REIT was not in a position to negotiate these amendments with the Lenders – it was seeking the cooperation of the Lenders to adjust the conversion provisions or remove them altogether to satisfy the TSXV policies. For one COVID Loan, the Lender agreed to remove the conversion right altogether. For the remaining COVID Loans, the Lenders opted to limit the conversion period to five years. The REIT did not enter into any other agreement, beyond the Amendments themselves, with the Lenders in connection with the Amendments. In that

[1] Policy 5.1 provides as follows: "…For the purposes of this Policy, the term "loan" will include any form of debt instrument issued by an Issuer that is not convertible into Listed Shares."

NEXPOINT
HOSPITALITY TRUST

circumstance, the board of trustees of the REIT (the "**Board**") determined that the concessions obtained from the Lenders were fair and reasonable.

The Board undertook a thorough review of the terms of the Amendments to the COVID Loans and concluded that the Amendments were in the best interests of the REIT. As described in the Circular, the Board: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units; and (iii) consulted with its legal advisors, to reach this conclusion. In considering the terms of the Amendments under (i) above, the REIT and the Board considered that the Amendments would provide a clear benefit to the REIT and unitholders (including minority unitholders) by (i) shortening the time period in which the conversion right can be exercised from 20 years to five years (or removing the conversion right altogether); (ii) fixing conversion prices for the COVID Loans at prices greater than the current market price; and (iii) reducing the amount convertible from principal and interest to only principal. As a result of the Amendments, the potential dilution of the REIT's unitholders would be materially reduced. Further, as failure to implement the Amendments would potentially result in the delisting of the Units, the Board determined that the Amendments were in the best interests of unitholders due to the likely adverse impact of delisting on the liquidity and value of the Units.

The REIT, Mr. Dondero, and the trustees and officers of the REIT, conducted reasonable inquiries pursuant to Section 8.1(2) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* to determine the units to be excluded from the minority approval vote on the Amendments.

About NexPoint Hospitality Trust

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. NHT is principally focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 9 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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NEXPOINT
HOSPITALITY TRUST

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EXHIBIT 21

File No. 2023-25

IN THE MATTER OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

- and -

IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

NOTICE OF WITHDRAWAL

(In connection with a transactional proceeding under Rule 16 and
Under Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

The applicant, Highland Capital Management, L.P., withdraws the Application filed October 2, 2023.

DATED this 20th day of October, 2023.

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IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

File No. 2023-25

ONTARIO SECURITIES COMMISSION

CAPITAL MARKETS TRIBUNAL

NOTICE OF WITHDRAWAL

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EXHIBIT 22

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October 27, 2023

Mani Sanghera
Compliance & Disclosure - General Inquiries
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VIA EMAIL (complianceanddisclosure@tsxventure.com)

Dear Mr. Sanghera,

Re: NexPoint Hospitality Trust

We are Canadian counsel to Highland Capital Management, L.P. ("**Highland**"), a minority unitholder of NexPoint Hospitality Trust ("**NHT**"). We write this letter to draw your attention to three potential breaches of TSXV policies in relation to NHT's having entered into over $82 million in convertible notes with related parties.[1] While NHT has undertaken to amend $56 million of the convertible notes at the request of the TSXV, $26 million of the notes remain unamended and potentially remain in breach of TSXV Policy 4.1. Additionally, NHT inaccurately described the notes in its news releases contrary to TSXV Policy 3.3, and did not obtain minority approval of these notes as may have been required by TSXV Policy 5.9.

Currently, NHT is trading on the TSXV at $0.25 per unit with a market capitalization of $7,338,014. Conversion of the notes therefore poses a significant risk of dilution to NHT's minority unitholders.

Background of the convertible notes

NHT is a real estate investment trust (a "**REIT**") that began listing on the TSXV in March 2019.[2] According to NHT's Interim Consolidated Financial Statements for Q2 2023, NHT has $82,723,000 in convertible notes outstanding as of June 30, 2023.[3] These notes were entered into with entities controlled or managed by James Dondero (who is NHT's CEO and one of its trustees), starting in January 2019 through to the end of 2022. NHT consistently disclosed that these notes were exempted from the minority approval requirements under section 5.7(1)(a) of MI 61-101 ("**MI 61-101**") for related party transactions because the notes did not exceed 25% of NHT's market capitalization at the time they were entered into.[4]

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[1] All dollar amounts are USD.
[2] NHT Prospectus, dated March 27, 2019, **TAB 1**.
[3] NHT Interim Consolidated Financial Statements for Q2 2023, **TAB 2**, p. 23 ["**Q2 2023**"].
[4] See NHT News Releases dated March 30, 2021 (**TAB 3**), April 8, 2022 (**TAB 4**), May 27, 2022 (**TAB 5**), and November 14, 2022 (**TAB 6**).

The notes are described as maturing in 20 years "in most cases" and being convertible into Class B units of NHT's operating partnership (the "**OP**"),[5] which indirectly holds NHT's assets.[6] When the notes were originally disclosed throughout 2021 and 2022—including as recently as NHT's 2022 audited annual financial statements filed on April 4, 2023[7]—the loans were consistently described as being convertible at the option of NHT. For example, NHT's news release on March 30, 2021 described the notes as convertible "at the option of NHT *in its sole discretion*" [emphasis added],[8] and its Q2 2022 financial statements described the notes as "convertible at any time *at the election of the Company* into Class B Units" [emphasis added].[9]

However, in NHT's Q1 2023 financial statements, the description of the loans changed for the first time to "convertible at any time *at the election of the holders* into Class B Units" [emphasis added].[10] This deliberate change in the disclosure suggests that NHT became aware of the misleading disclosure in previous news releases and financial statements, but NHT made the change without any explanation and without any acknowledgement that it was in fact a change to the disclosure.

The TSXV's required amendments

In a June 26, 2023 news release, NHT announced that, at the request of the TSXV, it had undertaken to amend $56,165,000 of the convertible notes.[11] NHT also disclosed that MI 61-101 required minority approval of the amendments. On August 31, 2023, NHT set the 2023 annual and special meeting of the unitholders for October 12, 2023.[12]

In its Management Information Circular filed on September 21, 2023 (the "**Information Circular**"), NHT further disclosed that the TSXV required amendments to 32 of the convertible notes issued between June 2021 and September 2022 in the aggregate amount of $56,165,000.[13] The Information Circular explained that, although NHT initially filed the convertible notes with the TSXV under TSXV Policy 5.1 – *Loans, Loan Bonuses, Finder's Fees and Commissions,* the TSXV advised NHT in December 2022 that the notes were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – *Private Placements*. The Information Circular disclosed that "due to this determination, the TSXV required the following amendments":[14]

(i) either the conversion feature be removed or limited to five years from the date of issuance of the loan;
(ii) the conversion feature be limited to the principal amount of the loan; and

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[5] See Q2 2023, **TAB 2**, p. 23.
[6] NHT Prospectus, **TAB 1**, p. (i).
[7] NHT Audited Consolidated Financial Statements for the years ended December 31, 2022 and December 31, 2021, **TAB 7**.
[8] NHT News Release, dated March 30, 2021, **TAB 3**.
[9] NHT Interim Consolidated Financial Statements for Q2 2022, **TAB 8**, p. 24.
[10] NHT Interim Consolidated Financial Statements for Q1 2023, **TAB 9**, p. 24.
[11] NHT News Release, dated June 26, 2023, **TAB 10**.
[12] Notice, dated August 31, 2023, **TAB 11**.
[13] NHT Notice of Annual and Special Meeting of Unitholders and Management Information Circular, dated September 21, 2023 ["**Information Circular**"], **TAB 12**, p. 17.
[14] Information Circular, **TAB 12**, pp. 18-19.

(iii) the conversion price be fixed at a price equal to the market price of the REIT's units on the TSXV at the time of the issuance of the loan.

Highland's application for additional information on the convertible notes

Highland did not believe that the Information Circular provided sufficient disclosure to allow it to make an informed vote on the proposed amendments. Highland therefore commenced an application to the Capital Markets Tribunal seeking an amended information circular.

In response to Highland's application, NHT moved the meeting to October 26, 2023. Also in response to the application, NHT issued a news release on October 19, 2023 with additional information on the convertible notes.[15] The next day, Highland withdrew its application to the Capital Markets Tribunal. The news release disclosed two key pieces of information.

First, NHT clarified and corrected its earlier disclosure. It disclosed that:

> Previous disclosure of the REIT stated that the Loans were, subject to approval of the TSXV, convertible at any time at the election of the REIT into Class B Units. The REIT wishes to clarify and correct this earlier disclosure. The Loans are, and have always been, only convertible into Class B Units at the option of their respective holder. However, if any of the Loans are converted by their respective holders into Class B Units and the holder then elects to redeem those Class B Units, the REIT may elect to satisfy the redemption by issuing Units to the holder.

The news release does not explain why the previous disclosure did not properly describe the conversion rights, or why NHT failed to correct the misleading disclosure until Highland's application forced the issue.

Second, NHT disclosed that it had initially filed the convertible notes under TSXV Policy 5.1 because the convertible notes were convertible into units of the OP, rather than NHT's "publicly traded units". NHT cited that TSXV Policy 5.1 defined "loan" as excluding "any form of debt instrument issued by an Issuer that is not convertible into Listed Shares". This is an extremely narrow interpretation of TSXV Policy 5.1 that the TSXV clearly rejected as it required amendments to $56 million of the notes to bring them into compliance with Policy 4.1.

The remaining $26 million in convertible notes may breach Policy 4.1

Highland has serious concerns about the more than $26 million in convertible notes that have not been subjected to the TSXV's required amendments (the "**Unamended Notes**").

As described above, NHT issued over $82 million in convertible notes, but the TSXV required amendments to only just over $56 million worth of the notes. NHT has never disclosed that the Unamended Notes differ in any significant way from the convertible notes that the TSXV required to be amended. Nor has NHT offered any explanation as to why the Unamended Notes were not subject to the same amendments as the other notes. The Unamended Notes therefore likely also violate the

[15] NHT News Release, dated October 19, 2023, **TAB 13**.

requirements of TSXV Policy 4.1. If so, they should be subject to the same amendments as the other $56 million in notes.

Without being subject to amendments to bring about compliance with Policy 4.1, the $26 million in Unamended Notes could be converted at the holders' option at the current NHT unit market price of $0.25, which is a fraction of the unit market price when these notes were issued. This conversion could lead to an additional 104 million units being issued, when the total number of outstanding units is currently only 29,352,055. The Unamended Notes pose a significant risk of dilution for Highland and other minority unitholders. The required amendments would help to mitigate this risk and provide NHT's minority unitholders with the protection that Policy 4.1 intends.

Highland requests that the TSXV review the Unamended Notes, including any amendments to or assignments of those notes, to determine whether amendments are required to bring about compliance with TSXV Policy 4.1.

NHT may have breached TSXV Policy 3.3 – Timely Disclosure

TSXV Policy 3.3 requires accurate disclosure in news releases. Section 3.8(g) of the policy requires reporting issuers to immediately disclose "the borrowing or lending of a significant amount of funds" and section 8.3 states that "The responsibility for the adequacy and accuracy of the content of news releases rests with the directors of an Issuer."[16]

NHT has confirmed that its previous disclosures about its convertible notes are not accurate, as described above. To repeat, NHT disclosed on October 19, 2023 that:[17]

> Previous disclosure of the REIT stated that the Loans were, subject to approval of the TSXV, convertible at any time at the election of the REIT into Class B Units. The REIT wishes to clarify and correct this earlier disclosure. The Loans are, and have always been, only convertible into Class B Units at the option of their respective holder.

We note that under TSXV Policy 3.3 the TSXV has several remedies available to it, up to and including removal of the trustees.[18] We bring this potential breach of the policy to the TSXV's attention for its consideration and possible investigation.

NHT may have breached TSXV Policy 5.9 – Protection of Minority Security Holders in Special Transactions

TSXV Policy 5.9 adopts Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**").[19] Under section 5.6 of MI 61-101, NHT is required to obtain minority approval for related party transactions, subject to certain exemptions. NHT has consistently disclosed that the convertible notes were exempt from the requirement for minority approval because the fair market value of the transactions did not exceed 25% of NHT's market capitalization at the time they were entered into. However, section 5.5(iii) of MI 61-101 states that the fair market values of "connected transactions" shall be aggregated in determining whether the tests for this exemption are

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[16] TSXV Policy 3.3 – Timely Disclosure.
[17] NHT News Release, dated October 19, 2023, **TAB 13**.
[18] TSXV Policy 3.3 – Timely Disclosure, s. 12.
[19] TSXV Policy 5.9 – Protection of Minority Security Holders in Special Transactions, s. 2.2.

met.[20] MI 61-101 defines "connected transactions" as "two or more transactions that have at least one party in common, directly or indirectly…and are negotiated or completed at approximately the same time."

NHT's convertible notes appear to be connected transactions. NHT consistently entered into convertible notes with entities affiliated with Dondero between 2019 and 2022, and it disclosed that these notes were all entered into for the purpose of funding NHT's operating expenses. These convertible notes together have far exceeded 25% of NHT's market capitalization—in Q1 2022 alone, NHT entered into $22,925,000 of convertible notes, which was more than 25% of NHT's market capitalization in the same period.

It appears that minority approval may have been required before NHT entered into the convertible notes, even though such approval was not sought. Highland requests that should NHT file any new convertible notes for the TSXV's review, the TSXV consider as part of its review whether minority approval was required, and, if so, obtained.

If we can be of any assistance we would be pleased to discuss this matter further.

Sincerely,

POLLEY FAITH LLP

Jeffrey Haylock
JH/dc

Encls.

[20] MI 61-101, s. 5.5(iii).

TAB 1

No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise. This prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. These securities have not been, and will not be, registered under the United States Securities Act of 1933, as amended, or any state securities laws and, subject to certain exceptions, may not be offered or sold in the United States or to U.S. persons.

PROSPECTUS

Initial Public Offering March 27, 2019

NEXPOINT HOSPITALITY TRUST

US$4,588,500
917,700 Units

This prospectus qualifies the distribution to the public (the "**Offering**") of 917,700 trust units (each, a "**Unit**") of NexPoint Hospitality Trust (the "**REIT**"), a newly-created, unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario. In addition, this prospectus qualifies the distribution of 3,452,014 Units to certain persons in consideration for their indirect contribution of ownership interests in NHT Intermediary, LLC ("**US Holdco**"), which entity will be acquired by the REIT on or prior to closing of the Offering ("**Closing**"). NexPoint Real Estate Advisors VI, L.P. (the "**Advisor**") will manage the REIT and its subsidiaries. The REIT, indirectly through NHT Holdings, LLC ("**NHI**"), will own its properties through its subsidiary, NHT Operating Partnership, LLC (the "**OP**"). The REIT and NHI each intend to elect to be taxed as a real estate investment trust under the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), commencing with its taxable year ending December 31, 2019. In order for NHI, and thus the REIT, to qualify as a real estate investment trust for U.S. federal income tax purposes under the Code, the properties will be leased to taxable subsidiaries of the REIT (the "**TRS Entities**") which will in turn contract with eligible independent contractors (as defined in the Code) to manage the day-to-day operations of the hotels. The property managers for each of the hotels in the Initial Portfolio (as defined below) are affiliates of Aimbridge Hospitality Holdings, LLC (collectively, the "**Manager**"). The Advisor gives the REIT access to an experienced management team in the public and private real estate investment trust market, with an extensive track record and network of industry relationships, as well as a management platform with deep knowledge of the REIT's current assets and markets and target markets. The Advisor's team has over 100 combined years of combined experience in real estate acquisitions, dispositions, financing, rehab implementation and specific experience in hospitality, including the REIT's strategy. The Manager is a recognized leader in the hospitality space and as of September 30, 2018, manages over 812 hotel properties comprised of approximately 98,000 rooms across all segments of the hospitality space including select-service and extended stay properties. See "Management and Franchise Agreements".

The REIT and its subsidiaries have been formed to acquire, own, renovate and operate a portfolio of income-producing hotel properties located in the United States. The REIT will initially indirectly own a portfolio of 11 hotel properties located throughout the continental United States. See "The Initial Portfolio" and the "Contribution of the Initial Portfolio". The REIT's portfolio will generate cash flow in U.S. dollars and the distributions made on the Units will be denominated in U.S. dollars.

The objectives of the REIT are to: (a) provide unitholders of the REIT (the "**Unitholders**") with an opportunity to invest in an initial portfolio of extended-stay, select-service and efficient full-service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide Unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of the REIT's assets and maximize the long-term value of the Units through active asset and property management programs and procedures; and (d) expand the asset base of the REIT and increase the REIT's Core FFO (as defined below) per Unit primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures. See "Objectives of the REIT".

The REIT intends to adopt a distribution policy, as permitted under the Declaration of Trust, pursuant to which it will make *pro rata* quarterly cash distributions to Unitholders initially equal to, on an annual basis, approximately 65% to 80% of estimated Core FFO (as defined below) and initially expected to be approximately 65% of Core FFO.

Price US$5.00 per Unit

	Price to the Public[(1)(2)]	Agent's Fee	Net Proceeds[(3)]
Per Unit	US$5.00	US$0.50	US$4.50
Total	US$4,588,500	US$458,850	US$4,129,650

Notes:

(1) In addition to the Offering, this prospectus also qualifies the distribution of 3,452,014 Units to certain persons in consideration for their indirect contribution of ownership interests in US Holdco. The consideration for the sale of such Units will be membership interests of US Holdco. No Agent's fee is payable in connection with such distribution.

(2) The price of the Units (the "**Offering Price**") was established by negotiation among the REIT, the Promoter and the Agent.

(3) Before deducting expenses of the Offering estimated to be approximately $3,600,000 which, together with the Agent's fee, will be paid from the proceeds of the Offering.

There is no market through which the Units may be sold and, if a market for the Units does not develop or is not sustained, purchasers may not be able to resell Units purchased under this prospectus. This may affect the pricing of the Units in the secondary market, the transparency and availability of trading prices, the liquidity of the Units and the extent of issuer regulation. See "Risk Factors". The TSX Venture Exchange (the "TSXV") has conditionally approved the listing of Units under the symbol "NHT" (the "Listing"). Listing is subject to the REIT fulfilling all of the requirements of the TSXV, including the distribution of Units to a minimum number of public securityholders. See "Plan of Distribution".

As of the date of this prospectus, the REIT does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the Toronto Stock Exchange, Aequitas NEO Exchange Inc., a U.S. marketplace (as defined in National Instrument 41-101 – *General Prospectus Requirements*), or a marketplace outside Canada and the United States of America ("other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets opened by PLUS Markets Group plc.").

A return on a Unitholder's investment in Units is not comparable to the return on an investment in a fixed income security. The recovery of a Unitholder's initial investment is at risk, and the anticipated return on a Unitholder's investment is based on many performance assumptions. Although the REIT intends to make distributions from Core FFO to Unitholders, these distributions may be reduced or suspended. The actual amount distributed will depend on numerous factors including the financial performance of the REIT's properties, debt covenants and other contractual obligations, working capital requirements and future capital requirements, all of which are subject to a number of risks. The market value of the Units may decline if the REIT is unable to meet its Core FFO targets in the future, and that decline may be material. See "Non-IFRS Measures". **An investment in the Units involves a number of risks and it is important to consider the particular risk factors described in the "Risk Factors" section of this prospectus, which may affect the REIT, its business and the hotel industry, and therefore the availability of funds necessary to make distributions to a purchaser of Units.**

Because the REIT will be treated as a real estate investment trust for U.S. federal income tax purposes, distributions paid by the REIT to Canadian investors that are made out of the REIT's current or accumulated earnings and profits (as determined under U.S. federal income tax principles) generally will be subject to U.S. withholding tax at a rate of 30%, which may be reduced to 15% for investors that qualify for benefits under the United States-Canada Income Tax Convention (1980, as amended) (the "**Treaty**"), provided that the required form evidencing eligibility for such benefits is filed with the REIT or the appropriate withholding agent. To the extent a Canadian investor is subject to U.S. withholding tax in respect of distributions paid by the REIT on the Units out of the REIT's current or accumulated earnings and profits, the amount of such tax generally will be eligible for foreign tax credit or deduction treatment, subject to the detailed rules and limitations under the *Income Tax Act* (Canada) (the "**Tax Act**"). So long as the Units continue to be regularly traded on an established securities market, distributions with respect to Units in excess of the REIT's current and accumulated earnings and profits that are distributed to Canadian investors that have not owned (or been deemed to own) more than 10% of the outstanding Units generally will not be subject to U.S. withholding tax, although there can be no assurances that withholding on such amounts will not be required. The composition of distributions for U.S. federal income tax purposes may change over time, which may affect the after-tax return to Unitholders. Qualified residents of Canada that are tax-exempt entities

established to provide pension, retirement or other employee benefits (including trusts governed by a RRSP, a RRIF or a DPSP, but excluding trusts governed by a TFSA, an RESP or a RDSP (each as defined below)) may be eligible for an exemption from U.S. withholding tax. The foregoing is qualified by the more detailed summary in this Prospectus. See “Certain Canadian Federal Income Tax Considerations” and “Certain U.S. Federal Income Tax Considerations”. See also “Risk Factors – Tax-Related Risk Factors”.

The after-tax return from an investment in Units to Unitholders subject to Canadian federal income tax will depend, in part, on the composition for Canadian federal income tax purposes of distributions paid by the REIT, portions of which may be fully or partially taxable or may constitute tax deferred returns of capital (i.e., returns that initially are non-taxable but which reduce the adjusted cost base of the Unitholders’ Units). The composition of distributions for Canadian federal income tax purposes may change over time, thus affecting the after-tax return to Unitholders. See “Distribution Policy”, “Certain Canadian Federal Income Tax Considerations” and “Risk Factors – Tax-Related Risk Factors”.

Raymond James Ltd. (the “**Agent**”), conditionally offers the Units to be issued under the Offering, subject to prior sale, if, as and when issued by the REIT and accepted by the Agent in accordance with the conditions contained in the Agency Agreement (as defined below) and subject to the approval of certain legal matters on behalf of the REIT by Goodmans LLP and Baker & McKenzie LLP (with respect to U.S. tax matters only), and on behalf of the Agent by Blake, Cassels & Graydon LLP. Subscriptions will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. Closing is expected to occur on March 29, 2019 but in any event no later than April 12, 2019. Registrations and transfers of Units will be effected electronically through the non-certificated inventory (“**NCI**”) system administered by CDS Clearing and Depository Services Inc. (“**CDS**”). Beneficial owners of Units will not be entitled to receive physical certificates evidencing their ownership of Units. See “Plan of Distribution” and “Declaration of Trust — Non-Certificated Inventory System”. **The Agent may offer the Units at lower prices than stated above. See “Plan of Distribution”.**

NexPoint Real Estate Advisors VI, L.P., which has acted as promoter (the “**Promoter**”), is organized under the laws of a foreign jurisdiction and resides outside Canada. James Dondero, Brian Mitts, Matthew McGraner, Jesse Blair III and Paul Richards are executive officers of the REIT and reside outside Canada. Although such Promoter, non-resident trustees and non-resident persons executing a prospectus certificate have appointed GODA Incorporators, Inc., 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7, as its agent for service of process in Ontario, it may not be possible for investors to enforce judgments obtained in Canada against such Promoter, trustees or persons. See “Risk Factors” and “Enforcement of Judgments Against Foreign Persons”.

The REIT is not a trust company and is not registered under applicable legislation governing trust companies as it does not carry on or intend to carry on the business of a trust company. The Units are not “deposits” within the meaning of the *Canada Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of that statute or any other legislation.

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MEANING OF CERTAIN REFERENCES

In this prospectus, except where otherwise indicated or the context otherwise requires, it is assumed that the transactions described under "The Contribution of the Initial Portfolio" have been completed.

References to the "REIT" in this prospectus includes its subsidiaries, unless the context otherwise requires. Unless otherwise indicated, all dollar amounts in this prospectus are stated in U.S. dollars and references to dollars or "$" are to U.S. currency and references to Canadian dollars or "C$" are to Canadian currency.

Certain terms used in this prospectus are defined under "Glossary".

References to "management" in this prospectus means the persons acting in the capacities of the REIT's Chief Executive Officer ("**CEO**"), Chief Financial Officer ("**CFO**") and Chief Investment Officer ("**CIO**"). Any statements in this prospectus made by or on behalf of management are made in such persons' capacities as officers of the REIT or the Advisor and not in their personal capacities.

ELIGIBILITY FOR INVESTMENT

In the opinion of Goodmans LLP, counsel to the REIT, based on the current provisions of the Tax Act, and subject to the provisions of any particular plan, provided that the REIT qualifies at all times as a "mutual fund trust" (as defined in the Tax Act) or the Units are listed on a "designated stock exchange" (as defined in the Tax Act, which includes the TSXV), the Units will be a qualified investment for trusts governed by a registered retirement savings plan ("**RRSP**"), registered education savings plan ("**RESP**"), registered retirement income fund ("**RRIF**"), deferred profit sharing plan ("**DPSP**"), registered disability savings plan ("**RDSP**") and a tax-free savings account ("**TFSA**") (collectively, "**Exempt Plans**").

Notwithstanding the foregoing, if the Units are a "prohibited investment" (as defined in the Tax Act) for a trust governed by a TFSA, RRSP, RRIF, RESP or RDSP, the holder, annuitant or subscriber thereof will be subject to a penalty tax as set out in the Tax Act. The Units will not be a prohibited investment for a TFSA, RRSP, RRIF, RESP or RDSP provided the holder, annuitant or subscriber (as the case may be) of such registered plan deals at arm's length with the REIT, for purposes of the Tax Act, and does not have a "significant interest" (as defined for the purposes of the prohibited investment rules in the Tax Act) in the REIT. Generally, a holder, annuitant or subscriber will have a significant interest in the REIT if the holder, annuitant or subscriber and/or persons not dealing at arm's length with the holder, annuitant or subscriber, for the purposes of the Tax Act, own, directly or indirectly, 10% or more of the fair market value of the Units. In addition, the Units will not be a "prohibited investment" if the Units are "excluded property" as defined in the Tax Act for trusts governed by a TFSA, RRSP, RRIF, RESP or RDSP. Prospective purchasers who intend to hold their Units in their TFSAs, RRSPs, RRIFs, RESPs or RDSPs should consult their own tax advisors regarding their particular circumstances.

MARKET AND INDUSTRY DATA

This prospectus includes market and industry data and forecasts that were obtained from third party sources, industry publications and publicly available information as well as industry data prepared by management on the basis of its knowledge of the hotel industry in which the REIT will operate (including management's estimates and assumptions relating to the industry based on that knowledge). Some data and other information are also based on management's good faith estimates, which are derived from its review of proprietary and independent research, and independent sources. Management's knowledge of the United States hotel industry has been developed through its experience and participation in the industry. Management believes that its industry data is accurate and that its estimates and assumptions are reasonable, but there can be no assurance as to the accuracy or completeness of this data. Third party sources generally state that the information contained therein has been obtained from sources believed to be reliable, but there can be no assurance as to the accuracy or completeness of included information. Although management believes it to be reliable, the REIT has not independently verified any of the data from management or third party sources referred to in this prospectus, or analyzed or verified the underlying studies or surveys relied upon or referred to by such sources, or ascertained the underlying economic assumptions relied upon by such sources.

RELIANCE

Unless otherwise stated, the information contained in this prospectus is accurate only as of the date of this prospectus. The REIT's business, financial condition, results of operations and prospects may have changed since the date of this prospectus.

This prospectus contains summary descriptions of certain material agreements of the REIT. See "Material Contracts". The summary descriptions disclose attributes of such agreements material to an investor in Units but are not complete and are qualified in their entirety by reference to the terms of the material agreements, which will be filed with the Canadian securities regulatory authorities and made available electronically on SEDAR at www.sedar.com. Investors should read the full text of such material agreements.

NON-IFRS MEASURES

In this prospectus, the REIT uses certain non-IFRS financial measures, which include core funds from operations ("**Core FFO**"), earnings before interest, taxes, depreciation and amortization ("**EBITDA**"), funds from operations ("**FFO**"), net operating income ("**NOI**") and net operating income margin ("**NOI Margin**"). These terms are not measures recognized under International Financial Reporting Standards ("**IFRS**") and do not have standardized meanings prescribed by IFRS. Management believes that these measures are helpful to investors because they are widely recognized measures of a real estate investment trust's performance and provide a relevant basis for comparison among real estate entities.

"**Core FFO**" means FFO with certain adjustments which are either not likely to occur on a regular basis or are otherwise not representative of the ongoing operating performance of the REIT's portfolio. Core FFO adjusts FFO to remove items such as losses on extinguishment of debt and modification costs (includes prepayment penalties incurred and the write-off of unamortized deferred financing costs and fair market value adjustments of assumed debt related to the retirement of debt and costs incurred in connection with a debt modification that are expensed), casualty-related expenses and recoveries, the amortization of deferred financing costs incurred in the current period, and the non-controlling interests related to these items.

"**Debt**" means the total principal amounts outstanding by the REIT under mortgages payable, mezzanine debt and term preferred equity which under IFRS is accounted for as a liability, and for greater certainty excludes the Class B OP Units.

"**Debt to Gross Real Estate Value Ratio**" is calculated by dividing Debt, which consists of the total principal amounts outstanding under mortgages payable, mezzanine debt and term preferred equity which under IFRS is accounted for as a liability, by Gross Real Estate Value.

"**EBITDA**" means earnings before interest, taxes, depreciation and amortization.

"**FFO**" means net income (loss) and comprehensive income (loss) calculated in accordance with IFRS, excluding: (i) depreciation of depreciable real estate assets and amortization of customer relationships and intangible assets arising from a business combination; (ii) gains (or losses) from sales of hotel properties and equipment; (iii) deferred income tax expense (recovery); (iv) impairment losses or reversals recognized on land and depreciable real estate properties; (v) transaction costs expensed as a result of the purchase of a hotel property being accounted for as a business combination; (vi) fair value adjustments to certain financial instruments; and (vii) the non-controlling interests in respect of the above. FFO has been prepared consistently with the definition presented in the White Paper on funds from operations prepared by the Real Property Association of Canada for all periods presented.

"**Gross Real Estate Value**" means, at any time, the fair value of the real estate held by the REIT, before accounting for depreciation, as determined by the most recent appraisal, plus unrestricted cash.

"**Mortgage Debt to Gross Real Estate Value Ratio**" is calculated by dividing principal amounts outstanding under mortgages payable by Gross Real Estate Value.

"**NOI**" means total revenues from properties (being the sum of revenues from rooms, food and beverage and other revenue) less hotel operating expenses as presented in the combined statements of income prepared in accordance with IFRS.

"**NOI Margin**" means NOI divided by the total revenues from properties as presented in the combined statements of income prepared in accordance with IFRS.

"**Non-Room Revenues**" means ancillary revenues generated by a hotel property, such as food and beverage, parking, telephone and other guest service revenues.

Core FFO, Debt, Debt to Gross Real Estate Value Ratio, EBITDA, FFO, Gross Real Estate Value, Mortgage Debt to Gross Real Estate Value Ratio, NOI, NOI Margin and Non-Room Revenues should not be construed as alternatives to net income and comprehensive income determined in accordance with IFRS as indicators of the REIT's performance. The REIT's method of calculating Core FFO, Debt, Debt to Gross Real Estate Value Ratio, EBITDA, FFO, Gross Real Estate Value, Gross Real Estate Value, Mortgage Debt to Gross Real Estate Value Ratio, NOI, NOI Margin and Non-Room Revenues may differ from other issuers' methods and accordingly may not be comparable to measures used by other issuers.

SELECT INDUSTRY TERMS

In this prospectus, the REIT uses certain terms commonly used in the hotel and lodging industry, including the following:

"**Average Daily Rate**" or "**ADR**" represents hotel room revenues (excluding Non-Room Revenues and taxes) divided by the total number of rooms sold in a given period, divided by the number of days in the period.

"**Occupancy**" means the total number of room nights sold divided by the total number of room nights available at a hotel or group of hotels.

"**Revenue per Available Room**" or "**RevPAR**" means hotel room revenue divided by total number of room nights available to guests for a given period. RevPAR does not include Non-Room Revenues. Management uses RevPAR to identify trend information with respect to room revenues from comparable properties and to evaluate hotel performance. RevPAR is a commonly used performance measure in the hotel industry. RevPAR changes that are driven predominantly by changes in occupancy have different implications for overall revenue levels and incremental profitability than do changes that are driven predominantly by changes in average room rates.

FORWARD-LOOKING STATEMENTS

This prospectus contains "forward-looking information" as defined under Canadian securities laws (collectively, "**forward-looking statements**") which reflect management's expectations regarding objectives, plans, goals, strategies, future growth, results of operations, performance and business prospects and opportunities of the REIT. The words "plans", "expects", "does not expect", "scheduled", "goals", "seek", "strategy", "future", "estimates", "intends", "anticipates", "does not anticipate", "projects", "believes" or variations of such words and phrases or statements to the effect that certain actions, events or results "may", "will", "could", "would", "should", "might", "likely", "occur", "be achieved" or "continue" and similar expressions identify forward-looking statements. In addition, any statements that refer to expectations, intentions, projections or other characterizations of future events or circumstances contain forward-looking statements. Statements containing forward-looking information are not historical facts but instead represent management's expectations, estimates and projections regarding future events or circumstances.

Some of the specific forward-looking statements in this prospectus include, but are not limited to, statements with respect to the following:

- the closing of the other transactions expected to occur on or prior to Closing, which are described in this prospectus;

- the listing of the Units on the TSXV;
- the intention of the REIT to pay, preserve, protect and grow Unitholders' distributions;
- the ability of the REIT to execute its growth strategies;
- the REIT's competitive position within its industry;
- expectations regarding laws, rules and regulations applicable to the REIT;
- the expected tax treatment of the REIT and of the REIT's distributions to Unitholders;
- the expected industry and demographic trends; and
- the expected increase in NOI/EBITDA based on the renovation of 1,012 rooms to be renovated throughout the Initial Portfolio.

Such forward-looking statements are qualified in their entirety by the inherent risks, uncertainties and changes in circumstances surrounding future expectations which are difficult to predict and many of which are beyond the control of the REIT, including that the transactions contemplated herein are completed.

Forward-looking statements are necessarily based on a number of estimates and assumptions that, while considered reasonable by management of the REIT as of the date of this prospectus, are inherently subject to significant business, economic and competitive uncertainties and contingencies. The REIT's estimates, beliefs and assumptions, which may prove to be incorrect, include the various assumptions set forth herein, including, but not limited to, the REIT's future growth potential, results of operations, future prospects and opportunities, demographic and industry trends, no change in legislative or regulatory matters, future levels of indebtedness, the tax laws as currently in effect, the continuing availability of capital and the current economic conditions.

When relying on forward-looking statements to make decisions, the REIT cautions readers not to place undue reliance on these statements, as forward-looking statements involve significant risks and uncertainties. Forward-looking statements should not be read as guarantees of future performance or results and will not necessarily be accurate indications of whether or not the times at or by which such performance or results will be achieved. A number of factors could cause actual results to differ, possibly materially, from the results discussed in the forward-looking statements, including, but not limited to, the factors discussed under "Risk Factors".

Certain statements included in this prospectus may be considered a "financial outlook" for purposes of applicable Canadian securities laws, and as such, the financial outlook may not be appropriate for purposes other than this prospectus. All forward-looking statements are based only on information currently available to the REIT and are made as of the date of this prospectus. Except as expressly required by applicable Canadian securities laws, the REIT assumes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. All forward-looking statements in this prospectus are qualified by these cautionary statements.

EXCHANGE RATE INFORMATION

The properties comprising the Initial Portfolio are located in the United States. The REIT discloses all financial information contained in this prospectus in U.S. dollars. The following table sets forth, for the periods indicated, the high, low, average and period-end indicative rates of exchange for US$1.00, expressed in Canadian dollars, published by the Bank of Canada.

	Nine months ended September 30	Year ended December 31		
	2018[1]	2017[1]	2016[2]	2015[2]
	($)	($)	($)	($)
Highest rate during the period	1.3310	1.3743	1.4589	1.399
Lowest rate during the period	1.2288	1.2128	1.2544	1.1728
Average rate for the period	1.2876	1.2986	1.3248	1.2787
Rate at the end of period	1.2945	1.2545	1.3427	1.384

Notes:

(1) 2018 and 2017 data from the Bank of Canada reflects the daily average exchange rates.

(2) 2016 and 2015 data from the Bank of Canada reflects the noon exchange rates.

On March 26, 2019, the daily average rate of exchange posted by the Bank of Canada for conversion of U.S. dollars into Canadian dollars was $1.00 equals C$1.3386.

PROSPECTUS SUMMARY

The following is a summary of the principal terms of the prospectus and should be read together with the more detailed information and financial data and statements contained elsewhere in this prospectus. For an explanation of certain terms and abbreviations used in this prospectus, please refer to the "Glossary" section of this prospectus.

Overview

NexPoint Hospitality Trust (the "**REIT**") is a newly-created, unincorporated, open-ended real estate investment trust established pursuant to a declaration of trust (the "**Declaration of Trust**") under the laws of the Province of Ontario. The REIT has been created for the purpose of acquiring a portfolio of 11 hospitality assets located in the United States (the "**Initial Portfolio**"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. The REIT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "**Advisor**"), which has been formed for the purpose of managing the REIT and its subsidiaries.

The REIT will indirectly wholly-own NHT Holdings, LLC ("**NHI**"), a newly formed Delaware limited liability company. The REIT and NHI each intend to elect to be treated as a real estate investment trust under U.S. tax laws, commencing with its taxable year ending December 31, 2019. Substantially all of NHI's business will be conducted through NHT Operating Partnership, LLC (the "**OP**"), the REIT's operating partnership, which is a newly formed Delaware limited liability company. The REIT will own its properties through the OP and its subsidiaries. In order for NHI, and thus the REIT to qualify as a real estate investment trust for U.S. federal income tax purposes under the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), each of the REIT's properties will be leased to taxable REIT subsidiaries which will, in turn, engage eligible independent contractors (as defined in the Code), affiliates of Aimbridge Hospitality Holdings, LLC (the "**Manager**"), to manage the day-to-day operations of the hotels.

The Advisor gives the REIT access to an experienced management team and extensive network of industry relationships, as well as a management platform with deep knowledge of the assets and markets. The Advisor is an affiliate of various entities managed by the principals and officers of the Advisor, which manage approximately $4.5 billion of real estate investments as of October 31, 2018. The Advisor's team has over 100 years of combined experience in real estate acquisitions, dispositions, financing, rehab implementation and specific experience in hospitality, including the REIT's strategy. Over the past five years, the Advisor's team has closed $5.5 billion of U.S. real estate transactions across multiple property types including: multifamily, hospitality, single family rental, storage, health care, office and retail. The team also externally manages, through an affiliate of the Advisor, a publicly traded REIT, NexPoint Residential Trust, which focuses on class B multifamily assets with a value-enhancing opportunity located in high growth cities in the Southeastern and Southwestern United States. Since listing of NexPoint Residential Trust on the New York Stock Exchange on April 1, 2015, the Advisor's team has delivered a return of 216.2% to shareholders (inclusive of reinvested dividends) through February 25, 2019. The structure and history of NexPoint Residential Trust is very similar to that of the REIT in that the Initial Portfolio was acquired through private entities that were later aggregated into a real estate investment trust and then listed on a public exchange.

Objectives of the REIT

The objectives of the REIT are to: (a) provide Unitholders with an opportunity to invest in an initial portfolio of extended-stay, select-service and efficient full-service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide Unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of the REIT's assets and maximize the long-term value of the Units through active asset and property management programs and procedures; and (d) expand the asset base of the REIT and increase the REIT's Core FFO per Unit primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures. See "Objectives of the REIT".

Investment Opportunity

The REIT intends to achieve its investment objectives by acquiring hotel properties that will offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. The Advisor plans to target markets that have a stable yet

growing and reliable demand base and limited present and future competitive supply growth. The REIT expects that its hotel properties will be located in areas that it believes exhibit strong economic attributes such as job growth, strong business or transitory travel and leisure travel. Select-service and extended stay hotel properties, which the REIT expects to comprise a majority of its portfolio, typically do not include amenities provided in full-service hotel properties; therefore, select-service and extended stay hotel properties primarily derive their revenues from hotel room rentals and, to a lesser extent, from restaurants, meeting space and other similar income streams. Extended-stay hotel properties are generally high-quality, residential style hotels that offer a package of services and amenities for extended-stay business and leisure travelers. The REIT may also opportunistically invest in efficient full-service hotel properties, although it does not expect such properties to comprise a substantial portion of its portfolio in the long-term. Full-service hotel properties generally provide a full complement of guest amenities including restaurants, large meeting facilities, concierge, and room service, porter service or valet parking. The REIT may also originate or make investments in debt related to targeted hotel properties.

See “Investment Opportunity”.

Investment Highlights

The following describes the investment highlights of the Offering.

Access to Hospitality Assets Located in the United States on a Tax Efficient Basis

Management believes that the United States real estate market is one of the most dynamic, stable and liquid real estate markets in the world. The ability for Canadian investors to access hospitality assets located in the U.S. is difficult as investing directly in real estate investment trusts domiciled in the U.S. is a tax inefficient avenue for exposure to this important asset class. Currently, there are very few alternatives domiciled in Canada that invest primarily in hospitality properties located in the U.S. Using the REIT’s structure whereby it is taxed as a U.S. real estate investment trust but is domiciled in Canada, the REIT offers a tax efficient way for Canadian investors to gain exposure to U.S. hospitality assets.

Attractive Asset Class with Favorable Fundamentals

Hospitality properties offer the shortest duration leases of any real estate sector which offers the ability to adjust pricing of rooms immediately to meet market demand, which should provide an inflation hedge during periods of economic expansion. The REIT believes its strategy of targeting older properties in need of capital improvements that can be repositioned to generate higher revenues will work in all market cycles and produce high current returns to investors. The REIT expects to benefit from the increase in overall economic activity, increased discretionary spending and business and leisure travel in the U.S. as well as benefit from its ability to adjust its operations to weather an economic downturn and provide consistent relative returns through all economic cycles.

Unique, Internal Growth Strategy Offering a Total Return Profile

Management believes that the REIT’s strategy of buying older properties that need capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space, gives it the opportunity to generate high current yield as well as capital appreciation over time. In executing this value-add strategy, management believes the REIT can generate Core FFO growth and superior total returns to investors within the Initial Portfolio, irrespective of whether the REIT acquires additional hotels.

Attractive and Stable Yield

The REIT intends to pay a quarterly cash distribution, representing approximately 65% of the REIT’s Core FFO and to increase the REIT’s dividend over time such that the REIT pays out annually 65% to 80% of its Core FFO.

Sizeable Quality Portfolio with Embedded Growth Opportunity

The Initial Portfolio is comprised of 11 properties located throughout the U.S. in the select-service and extended stay hospitality categories. Each property has a long-term franchise agreement with Marriott, Hilton or InterContinental Hotels Group sponsored brands. The REIT believes each property in the Initial Portfolio has the opportunity to generate outsized market share improvements and topline increases as leading select-service or extended stay hotels in their respective

submarkets. In addition to organic growth, the REIT is expected to realize additional embedded growth from its capital improvement strategy.

Attractive External Growth Strategy

In addition to executing an internal growth strategy, the REIT expects to capitalize on a pipeline of target hospitality investments requiring funding for capital improvements or brand repositioning that exist in the U.S. market by utilizing its ability to raise new capital as a publicly traded entity. The REIT believes it will be able to react more quickly and more opportunistically in its investment program as compared to private investors or funds. Additionally, the Offering, and potential future offerings, will allow the REIT to avoid the lengthy and time consuming private fundraising process, which will increase the time available to focus on investment and asset management activity for the REIT.

Management Team Aligned with Shareholders

Members of the management team will be aligned with shareholders through a significant ownership percentage in the REIT. At Closing, the management team will directly or indirectly own or exercise control or direction over approximately 71.1% of the REIT and 38.2% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units), assuming the Offering is fully subscribed.

See “Investment Highlights” and “Risk Factors”.

Growth Strategies

The REIT intends to grow in three ways. First, through organic growth expected from favorable economic and demographic fundamentals within its existing markets. Second, the REIT believes the Initial Portfolio will provide opportunities for further embedded, internal growth through value-enhancing initiatives such as the REIT’s capital improvement and renovation program. Third, the REIT believes there are ample assets that fit its strategy and intends to pursue a disciplined external growth strategy by acquiring well located hospitality properties that it believes have the potential to generate higher yields and growth prospects through the REIT’s capital improvement program.

To find hotel properties that best meet its selection criteria for investment, the Advisor’s property acquisition team will study regional demographics and market conditions, interview local brokers and operators, and utilize its network of external real estate professionals to gain the practical knowledge that studies sometimes lack. The property acquisitions team will also work with various property managers and affiliates to tap into their vast network and broad market exposure. Additionally, where the REIT believes it gives it a comparative advantage, it will partner with firms that have an expertise in the property class and geographic area where it is seeking to acquire properties. An experienced commercial construction engineer will inspect the structural soundness and the operating systems of each building, and an environmental firm will investigate environmental issues to ensure each property meets its quality specifications. The Advisor’s management team will emphasize thorough market research, local market knowledge, underwriting discipline, and risk management in evaluating potential investments.

See “Growth Strategies”.

Initial Portfolio

The Initial Portfolio consists of 11 properties comprised of 1,607 rooms. The Initial Portfolio is located across six major metropolitan statistical area (“**MSA**”) markets in five states in the continental United States.

The following table highlights certain information about the Initial Portfolio as at September 30, 2018:

Brand	Location	Chain Scale	Service Scale	Location Segment	Year Built/Last Renovation	Rooms
Hilton						
Hilton Garden Inn	Dallas, Texas	Upscale	Select-Service	Urban	1995/2016	240
DoubleTree	Beaverton, Oregon	Upscale	Limited-Service	Suburban	1997/2016[(1)]	98
DoubleTree	Bend, Oregon	Upscale	Full-Service	Suburban	1998/2013[(1)]	117
DoubleTree	Olympia, Washington	Upscale	Full-Service	Suburban	2000/2016[(1)]	102
DoubleTree	Tigard, Oregon	Upscale	Limited-Service	Suburban	1996/2016[(1)]	101
DoubleTree	Vancouver, Washington	Upscale	Limited-Service	Suburban	1997/2016[(1)]	98
Homewood Suites	Plano, Texas	Midscale	Select-Service	Suburban	1996/2018	99
Homewood Suites	Addison, Texas	Upper Midscale	Select-Service	Suburban	1990/2018	120
Homewood Suites	Irving, Texas	Midscale	Select-Service	Suburban	1990/2018	136
Marriott						
Marriott	St. Petersburg, Florida	Upper Upscale	Full-Service	Suburban	2001/2010[(1)]	209
InterContinental Hotels Group						
Holiday Inn Express	Nashville, Tennessee	Upper Midscale	Select-Service	Urban	1968/2017[(1)]	287
Total Rooms:						**1,607**

Note:

(1) Currently undergoing renovations.

Description of the Initial Portfolio

Hilton Garden Inn Dallas Market Center

The hotel is centrally located and proximate to many of the region's major demand generator's including Dallas Love Field and several medical facilities in the Dallas Medical District. The hotel is also within walking distance to the more than five million square foot Dallas Market Center and one of the largest convention hotels in the southwest United States, the 1,600 room Hilton Anatole. The hotel is an upscale class, select-service hotel that was most recently renovated in 2016 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

DoubleTree Beaverton

The hotel benefits from its strategic positioning in the heart of "Silicon Forest", a high-technology industry cluster in Oregon. The hotel is situated near corporate headquarters or a major presence of several consumer brands such as Nike, Adidas, Intel, IBM, and Columbia Sportswear. The hotel is also proximate to downtown Portland. The hotel is an upscale

class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Bend

The hotel is situated in an idyllic scenic setting that provides year round recreational activities, a high standard of living, as well as becoming renowned for its industries that include software and high-technology, bioscience, outdoor recreation products, aviation, manufacturing, and craft brewing and distilling. The hotel is located in the heart of downtown Bend within walking distance to numerous shops, restaurants, bars and breweries and a short drive to the Mount Bachelor Ski Resort. The hotel is an upscale class, full-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Olympia

The hotel is located at a waterfront location less than one mile north of the capital building in the capital of Washington State, in Thurston County. The hotel benefits greatly from a diverse demand base, an expanding port facility, a vibrant arts scene, recreational activities, and the steady influence of the state government. The hotel is an upscale class, full-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Tigard

The hotel benefits from its strategic positioning in the heart of "Silicon Forest", a high-technology industry cluster in Oregon. The hotel is situated in the heart of nearly 8.6 million square feet of office within three miles and is proximate to downtown Portland. The hotel is an upscale class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Vancouver

The hotel is proximate to Portland International Airport as well as the various corporate and leisure demand generators of Vancouver, Washington and Portland, Oregon, which includes over 3.3 million square feet of office space and a 450 bed medical facility within three miles. The hotel is an upscale class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

Homewood Suites Plano

The hotel is conveniently located off of Preston Road, in an affluent suburb of Dallas, with more than 60 million square feet of office in the Far North Dallas submarket. Management believes this hotel will benefit from its proximity to a growing market within the United States. The hotel is a midscale class, select-service hotel that was most recently renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Homewood Suites Addison

Located along the highly trafficked Belt Line Road in Dallas' "Platinum Office Corridor", the hotel benefits from the dense surrounding concentration of office, restaurant, and entertainment venues. Within a three mile radius of the hotel is approximately 31 million square feet of office and over 13 million square feet of retail. The hotel is an upper midscale class, select-service hotel that was most recently renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Homewood Suites Las Colinas

The hotel is centrally located within Las Colinas' urban center, providing access to more than 2,000 companies (including five fortune 500 headquarters) within the 12,000 acre master-planned submarket as well as one of the nation's busiest airports, DFW International Airport. The hotel is a midscale class, select-service hotel that was most recently

renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Marriott St. Petersburg

The hotel is situated less than a mile from Raymond James Ltd., one of the larger employers in the greater Tampa Bay MSA as well as a variety of corporate and leisure demand generators including Tampa International Airport and the world class beaches of Clearwater. Management of the REIT believes this hotel presents a variety of value add opportunities related to institutionalizing management and completion of several capital improvement projects that will drive rates and improve the properties RevPAR penetration and further enhance operating margins due to the properties lean and efficient layout. The hotel is an upper upscale class, full-service hotel that was renovated in 2010.

Holiday Inn Express Nashville

The hotel is located within walking distance of several of Nashville's numerous tourist destinations and demand generators, including the Country Music Hall of Fame & Museum, Bridgestone Arena and Music City Center. In addition, starting in 2019 Amazon will be opening a logistics hub adjacent to the hotel that is expected to create an estimated 5,000 new jobs in the city of Nashville. The hotel is currently undergoing a rehabilitation that management of the REIT believes will help to fully realize a materially improved competitive position that leverages its central location and strong in-place cash-flow. Management believes that this rehabilitation will make the hotel an attractive destination for visitors, residents, and businesses driven by the city's distinct culture, tourist attractions, highly desirable tax incentives, and employment opportunities. The hotel is an upper midscale class, select-service hotel that is currently undergoing renovations to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

See "The Initial Portfolio".

Renovation Status of the Initial Portfolio

The following is a discussion of the renovations on the Initial Portfolio that have been performed, are currently under way or are scheduled to begin in the near term:

Hilton Garden Inn Dallas Market Center

The HGI Property was acquired by a subsidiary of NREO in December 2014. The plan upon acquisition was to do an extensive renovation on the property, which began in July 2015. NREO spent $5.6 million or $23,333 per room, completing the renovations in December 2015. During the renovation, the décor was upgraded, flooring, furniture and bathroom fixtures were replaced (other than guestroom showers) in all rooms to conform to the then required brand standards and general improvements were made to common areas. No major renovation is anticipated on the HGI Property until the next required property improvement plan ("**PIP**"), which is estimated to be in 3 – 5 years. The estimated cost will be $9,600 per room or $2.3 million. The year following completion of the renovation, RevPAR and occupancy each increased 14.9%, which exceeded underwritten projections.

DoubleTree Portfolio

The DoubleTree Portfolio was acquired by a subsidiary of NREO in May 2018 and included five DoubleTree properties located in the Pacific Northwest of the United States. The plan upon acquisition was to do an extensive renovation on each property, which began in October 2018. The REIT anticipates spending an additional $8.6 million or $16,667 per room to complete the renovation, which will be funded by the mezzanine debt secured at the acquisition and cash flow from operations. As of February 28, 2019, approximately $2.3 million has been funded under the mezzanine debt reserved for approved PIP expenses and approximately $3.4 million remains available to fund ongoing renovations at the DT Portfolio. It is estimated the renovations will be completed in May 2019. During the renovation the furniture and bathroom fixtures are being replaced in all rooms and a significant portion of the bathtubs are being converted to showers to conform to the currently required brand standards, changes in guest preferences. In addition general improvements are being made to common areas. Following completion of the current renovation, no major renovations are anticipated on the DoubleTree Portfolio until the next required PIP, which is estimated to be in 6 - 8 years. The estimated cost will be $10,000 – 15,000 per room or $7.7 million.

Homewood Suites Portfolio

The Homewood Suites Portfolio was acquired by HCBH 11611 Ferguson, LLC in May 2017. The plan upon acquisition was to do an extensive renovation on the Portfolio, which began in June 2017 and was completed in May 2018. The renovation cost $12.2 million or $34,542 per room. During the comprehensive renovation, the décor was upgraded, flooring, furniture and bathroom fixtures were replaced in all rooms to conform to the then required brand standards and changing consumer tastes, and general improvements were made to common areas. Following completion of the renovation, no major renovation is anticipated on the Homewood Suites Portfolio until the next required PIP, which is estimated to be in approximately 6 years. The estimated cost will be $10,000 - $15,000 per room or $5.3 million. In the period following completion of the renovation, RevPAR and occupancy have been trending upward and the properties are regaining a competitive position in their respective sub-markets.

Marriott St. Petersburg

The Marriott St. Petersburg was acquired by Meritage Residential Partners LLC in September 2018. The prior owner completed an extensive renovation in 2010 to bring the property into compliance with the then current brand standards. The plan upon acquisition was to do an extensive renovation on the portfolio, which is estimated to begin in 2019 and be completed in 2020. Capital expenditures of $7.0 million or $33,400 per room have been budgeted for the renovation, which will be funded by cash flow from operations and capital previously contributed by NREO. During the renovation, the décor will be upgraded, flooring, furniture and bathroom fixtures will be replaced in all rooms to conform to the currently required brand standards and general improvements will be made to common areas. Case goods are expected to be replaced in 2022 and should be the only major renovation is anticipated on the St. Petersburg Property until the next required PIP, which is estimated to be in 6 - 8 years. The estimated cost will be $6,000 - $10,000 per room or $1.3 million - $2.1 million.

Holiday Inn Express Nashville

The Holiday Inn Express Nashville was indirectly acquired by NHT Holdco, LLC in January 2019. At the time of acquisition, the prior owner was undertaking a PIP program in furtherance of a partially completed process commenced in the prior year to bring the hotel décor, furniture, fixtures and common areas up to the current brand standards. After acquisition, the prior owner is completing the PIP renovations as agreed to in the purchase agreement. At closing of the acquisition, the prior owner paid $3 million to fund the remaining renovation costs and capped NHT Holdco, LLC's exposure to overruns per the purchase agreement. The renovations are expected to be completed in 2019. Subsequent to completion of the renovation, no major renovation is anticipated on the Nashville Property until the next required PIP, which is estimated to be in 8 years. The estimated cost will be $10,000 - $15,000 per room or $4.3 million.

Future Anticipated Renovations

Pursuant to the franchise agreements between the REIT and various hotel brands under which the REIT operates its properties, the REIT is required to undertake periodic PIP programs to conform the properties to the then current brand standards mandated by each brand. PIPs are not generally prescribed on a set timeline but rather are required when a property's current décor, furniture and fixture package falls materially outside of the current brand standards. The REIT estimates that PIPs will be required generally 6 - 8 years after completion of the prior PIP. Because each brand develops its own standards that continuously change, it is impossible to accurately estimate the cost of a future PIP. However, the REIT believes that for the brands the REIT operates, costs will be approximately $15,000 per room at the high end. Once a PIP is required, the REIT will generally have approximately 24 months to complete the required upgrades. Furthermore, because of the extensive renovations done recently, in progress, or to be completed in the next 12 months, the anticipated time frame for future PIPs are 4 years at the earliest and will be required to be completed in 6 years, based on the REIT's best estimate with currently available information.

The REIT employs several mechanisms to fund the required periodic PIPs. First, 4% of gross revenue is generally reserved annually for each property. Cash reserved for future PIP expenditures is reflected on the statement of financial position as restricted cash, or as a receivable. In addition to funding reserves for future PIP expenditures, the REIT anticipates having additional free cash flow after payment of the dividend that may be used to fund PIPs. Additionally, depending on the state of debt markets at the time the PIP is required, it is possible the REIT may refinance certain mortgages and take out additional cash to fund the PIP.

In addition to periodically required PIPs, each property requires capital expenditures for ongoing repairs and maintenance. These costs are usually expensed as incurred, unless the repair is of a nature such that it is extending the life of a component of the property, in which case it is capitalized. Ongoing repair and maintenance expenses are budgeted annually and capital is reserved throughout the year to fund these expenditures.

See "Renovation Status of the Initial Portfolio".

Assessment and Valuation of the Initial Portfolio Properties

The REIT has retained JLL Valuation & Advisory Services, LLC (the "**Appraiser**") to provide an independent opinion as to the aggregate market value of the Initial Portfolio. The Appraiser estimated the prospective market value at stabilization of each hotel property in the Initial Portfolio, which takes into account the completed and ongoing renovation projects. The estimated total aggregate value upon stabilization is approximately $383.7 million, representing a value per room of approximately $238,768.

See "Assessment and Valuation of the Initial Properties".

Debt Strategy and Indebtedness

The REIT plans to use leverage in the portfolio to help increase returns and yields to Unitholders. The REIT will seek to maintain a debt profile consisting of various sources of low cost capital, including debt from regional and national banks, insurance companies, and non-bank lenders. Each of the properties in the Initial Portfolio is encumbered. Immediately following Closing, management anticipates the REIT's Debt will consist of (i) $184.2 million of secured mortgage loans, implying a Mortgage Debt to Gross Real Estate Value Ratio of approximately 50% and (ii) $73.3 million of mezzanine debt, implying a total Debt to Gross Real Estate Value of approximately 70%. Longer-term, the REIT intends to target and maintain a Mortgage Debt to Gross Real Estate Value Ratio of between 40% to 50% in order to maximize returns while minimizing leverage risk. The ratio of Debt to the aggregate appraised value of the Initial Portfolio upon stabilization (being $383.7 million) is approximately 67%.

Lender	Interest Rate/Spread	Amortization Period (Years)	Maturity Date[3]	Number of Encumbered Properties	Principal Amount Outstanding as of February 28, 2019 ($)[9]
Societe Generale	5.12%	30	July 1, 2026	1[4]	69,842,343
Acore Capital Mortgage, LP[7]	3.45%[1]	30	March 1, 2022	5[5]	88,000,000
ACRC Lender LLC[8]	3.45%[2]	30	May 9, 2021	5[6]	64,653,944
Acore Capital Mortgage, LP	6.25%[2]	N/A	January 8, 2020	5[5]	35,000,000
Total Mortgage and Mezzanine Loans				**11**	**$257,496,287**

Notes:

(1) Variable based on one-month LIBOR plus the noted spread.

(2) Variable based on one-month LIBOR plus the noted spread. LIBOR floor of 2.25%.

(3) Does not include extension options which apply for a majority of the mortgage loans.

(4) Secured by Holiday Inn Express Nashville.

(5) Secured by Marriott St. Petersburg, Hilton Garden Inn Dallas Market Center, Homewood Suites Plano, Homewood Suites Addison and Homewood Suites Las Colinas.

(6) Secured by DoubleTree Beaverton, DoubleTree Bend, DoubleTree Olympia, DoubleTree Tigard and DoubleTree Vancouver.

(7) The loan with Acore Capital Mortgage is separated into two different loans: 1) $59,400,000 mortgage (Note A) and 2) $28,600,000 mezzanine (Note B).

(8) The loan with ARC Lender LLC is separated into three different loans: 1) $55,000,000 mortgage, 2) $7,365,000 mezzanine debt (Note A) and 3) $5,700,000 mezzanine debt (Note B) that is to be used for approved PIP expenses. As of February 28, 2019, $2,288,944 has been funded under the facility reserved for approved PIP expenses and $3,411,056 remains available to fund ongoing renovations at the DT Portfolio.

(9) The REIT has recorded gross deferred financings costs of $5,371,450 that is not reflected in this balance. If the deferred financing costs were netted against the principal balances of mortgages and mezzanine debt, as required by IFRS, the net balance would be $252,124,837.

As of the date of this prospectus: (i) the mortgage in favour of Societe Generale is guaranteed by the OP; (ii) the mortgage in favour of Acore Capital Mortgage, LP is guaranteed by NexPoint Real Estate Advisors, L.P. and NHT Holdco, LLC; (iii) the mortgage in favour of ACRC Lender LLC is guaranteed by NREO; and (iv) the preferred equity in favour of Acore Capital Mortgage, LP in the amount of is guaranteed by The Dugaboy Investment Trust. The mortgage loans are non-recourse debt and as a result, the corresponding guarantees are effective only upon the occurrence of certain non-recourse carve-outs and the preferred equity is guaranteed on a full-recourse basis. It is anticipated that following Listing, the REIT will replace NHT Holdco, LLC as the guarantor of the mortgage in favour of Acore Capital Mortgage, LP.

Following Closing, the REIT's mortgage debt will have a weighted average maturity of 3.60 years and a weighted average interest rate of 6.10% based on a one-month LIBOR rate of 2.49% (as of February 28, 2019).

See "Debt Strategy and Indebtedness".

Governance and Management of the REIT

The REIT will be externally managed by the Advisor under the Advisory Agreement (as defined below). In order for NHI, and thus the REIT, to qualify as a real estate investment trust for U.S. federal income tax purposes under the Code, the day-to-day operations of the REIT's hotel properties must be managed by an eligible independent contractor (as defined in the Code). The entities through which the REIT owns the hotel properties will lease the hotel properties to one or more TRS Entities, which will enter into Hotel Management Agreements (as defined below) with the Manager, pursuant to which the Manager will operate and manage the REIT's hotel properties. The TRS Entities will also enter into franchise agreements (as described below).

The following table sets forth the name, municipality of residence, positions held with the REIT and principal occupation of the trustees of the REIT (the "**Trustees**"):

Name	Position with the REIT	Principal Occupation
NEIL LABATTE .... Toronto, Ontario, Canada	Lead Trustee and chair of the Compensation, Governance and Nominating Committee	President and CEO Global Dimension Capital, Inc.
JAMES DONDERO .... Dallas, Texas, U.S.A.	Trustee, Chair and Chief Executive Officer	Chief Executive Officer, NexPoint Hospitality Trust
GRAHAM D. SENST .... Toronto, Ontario, Canada	Trustee and chair of the Audit Committee	Trustee, BSR Real Estate Investment Trust

The following table sets forth the name, municipality of residence and positions held with the REIT of each executive officer of the REIT on Closing:

Name and Municipality of Residence	Office with the REIT
JAMES DONDERO... Dallas, Texas, USA	Chief Executive Officer
BRIAN MITTS... Dallas, Texas, USA	Chief Financial Officer, Executive Vice President-Finance, Treasurer and Corporate Secretary
MATTHEW MCGRANER .... Dallas, Texas, USA	Chief Investment Officer
JESSE BLAIR III .... Dallas, Texas, USA	Executive Vice President, Head of Lodging
PAUL RICHARDS .... Dallas, Texas, USA	Vice President, Asset Management

See “Governance and Management of the REIT”.

On or prior to Closing, the REIT and the Advisor (or an affiliate thereof) will enter into certain agreements governing the relationships among such parties following Closing. These agreements are described below.

Management and Franchise Agreements

Advisory Agreement

Pursuant to an amended and restated advisory agreement (the “**Advisory Agreement**”), subject to the overall supervision of the board of trustees of the REIT (the “**Board**”) and the board of managers of NHI, as applicable, the Advisor will manage the day-to-day operations of, and provide investment management services to, the REIT and NHI. Under the terms of the Advisory Agreement, the Advisor will:

- find, present and recommend to the Board investment opportunities consistent with the REIT’s investment policies and objectives;
- execute investments on behalf of the REIT and NHI, provided that the Advisor shall obtain the prior approval of (i) the Board and (ii) any particular committee of the Board or the board of managers of NHI specified by the Board, in connection with any investment for which the cash and/or equity consideration paid by the REIT or any subsidiary of the REIT is equal to or exceeds the lesser of (a) 10% of the aggregate of the book value of the equity of the REIT plus the value of the Class B OP Units, each as reflected on the most recent statement of financial position of the REIT or (b) $25,000,000;
- identify, evaluate, negotiate and recommend to the Board the structure of the REIT’s investments (including performing due diligence);
- evaluate and negotiate the terms of dispositions within the discretionary limits and authority granted by the Board;
- review and analyze financial information for each underlying property of the REIT’s portfolio;
- within the discretionary limits and authority as granted by the Board, identify, evaluate, negotiate and recommend to the Board financing and funding opportunities with banks or other lenders;
- subject to the overall supervision of the Board, manage the REIT’s capital improvement program including determining when to execute the program at each property;
- close, monitor and administer the investments made by the REIT;
- maintain the accounting and financial records of the REIT and its subsidiaries (including NHI) and file required information with the Ontario Securities Commission upon approval of the Board;
- perform investor-relations functions; and
- manage Canadian and U.S. regulatory compliance, including making all required filings and preparing all documents, data and analysis required for regulatory filings, including all documents necessary for continuous disclosure requirements pursuant to applicable stock exchange rules and securities laws.

As consideration for the Advisor’s services, the REIT will pay to the Advisor an advisory fee at an annualized rate of 1.00% of REIT Asset Value, less certain fee waivers and adjustments, resulting in an advisory fee on the Initial Portfolio of approximately 0.58% of REIT Asset Value at the time of Listing, paid monthly (the “**Advisory Fee**”), together with reimbursement of certain general and administrative expenses. Additionally, an omnibus equity incentive plan (the “**Omnibus Plan**”) will be put in place pursuant to which restricted equity units, performance-based awards, deferred trust units, units of the OP designated as “Profits LTIP Units” and other awards convertible, exercisable or exchangeable into or

otherwise based on the Units may be granted to Trustees, officers of the REIT and employees of the Advisor. The Omnibus Plan implemented and effective on the date of the listing of the Units on the TSXV (the "**Listing**") will reserve a maximum of 3,026,155 Units for issuance, representing 20% of the issued and outstanding Units of the REIT following completion of the Listing. Grants under the Omnibus Plan may be awarded by Independent Trustees of the Board at their discretion.

Pursuant to the Advisory Agreement, and subject to certain exceptions including expenses associated with a future debt or equity raise or unusual expenses related to litigation or other unusual activity, the REIT shall not incur annual general and administrative expenses (inclusive of the Advisory Fee and other compensation expenses paid to the Advisor and including compensation from Omnibus Plan grants) in excess of 1.5% of REIT Asset Value for any calendar year or portion thereof, provided that this cap will not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with a future debt or equity raise, extraordinary litigation, mergers and acquisitions and other events outside the REIT's or NHI's ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets (the "**Total G&A Cap**") and the Advisor shall backstop and shall be liable for any general and administrative expenses in excess of such Total G&A Cap.

The Advisory Agreement will have an initial term of two years. Following the initial term, the Advisory Agreement will continue in full force and effect, subject to early termination, so long as such continuance is approved at least annually by (i) the board of managers of NHI, and (ii) either (a) the Board or (b) a vote of the Unitholders. The REIT will have the right to terminate the Advisory Agreement on 60 days' written notice without payment of a termination fee in the case of a breach of the Advisory Agreement by the Advisor; provided that no such notice shall be required in the event of fraud, misappropriation of funds, gross negligence, general assignment for the benefit of creditors or bankruptcy of the Advisor. The REIT will be permitted to terminate the Advisory Agreement without cause or due to a change in control of the REIT with 180 days' written notice to the Advisor. In the event of termination (other than termination for cause) or non-renewal of the Advisory Agreement (including if the services provided pursuant to the Advisory Agreement are internalized), the Advisor will be entitled to compensation equal to three times the Advisory Fee paid to the Advisor over the last 12 months subject to a cap at 7.5% of the combined equity value of the REIT and the OP on a consolidated basis, as of the date the Advisory Agreement is terminated, calculated by multiplying the aggregate number of outstanding Units and Class B OP Units by the volume weighted average price of Units over the prior 30 day period of the Units on the TSXV, provided, however, if the Advisory Agreement is terminated prior to the one year anniversary of the date of the Advisory Agreement, the Advisory Fee will be annualized for such 12-month period based on such Advisory Fee earned by the Advisor during such period.

The Advisor will have the right to terminate the Advisory Agreement upon default or the general assignment for the benefit of creditors or bankruptcy by the REIT. Principals of the Advisor and its affiliates and subsidiaries, (collectively, "**NexPoint**"), as applicable, shall grant to the REIT and its subsidiaries the right to continue the use of the "NexPoint" name and logo and related marks and designs under a non-exclusive, royalty-free license agreement entered into on or prior to Closing. NexPoint will be permitted to terminate the license at any time on 180 days' written notice following any date on which the Advisor ceases to be the Advisor for the REIT.

See "Management and Franchise Agreements – Advisory Agreement".

Hotel Management Agreements

Because the REIT and NHI are prohibited from operating the hotel properties pursuant to certain U.S. tax laws relating to its qualification as a real estate investment trust, the OP and its subsidiaries will lease the hotel properties to the TRS Entities. Moreover, such U.S. tax laws require all of the REIT's hotel properties to be operated pursuant to hotel management agreements (the "**Hotel Management Agreements**") between the Manager, a professional third-party hotel management company, and the TRS Entities that lease the property from the OP and its subsidiaries. The Hotel Management Agreement will require the TRS Entities to pay a base fee to the Manager calculated as a percentage of hotel revenues generated by the hotel operations. In addition, the Hotel Management Agreements will on occasion provide that the Manager can earn an incentive fee for EBITDA, gross operating profit or an owner's priority return over certain thresholds.

The terms of the REIT's Hotel Management Agreements initially range from one to five years with various extension and termination provisions. The Hotel Management Agreements for the DoubleTree hotels in the Initial Portfolio were entered into in May 2018 and may be terminated on 60 days' notice by the hotel owner without payment of a termination fee. The Hotel Management Agreements for the Homewood Suites hotels in the Initial Portfolio were entered into in May 2017 and may be terminated without cause upon 60 days' notice after June 1, 2019 by the hotel owner without

payment of a termination fee. The Hotel Management Agreement for Hilton Garden Inn Dallas Market Center was entered into in December 2014 and may be terminated on 90 days' notice by the hotel owner without payment of a termination fee. The Hotel Management Agreement for Marriott St. Petersburg was entered into in September 2018 and may be terminated on 60 days' notice by the hotel owner after April 30th, 2019 without payment of a termination fee. The Hotel Management Agreement for Holiday Inn Express Nashville was entered into in January 2019 and may be terminated on 60 days' notice by the hotel owner after January 2020 without payment of a termination fee. Termination fees under the Hotel Management Agreements are generally equal to 2.5% of annual gross revenue generated by the applicable hotel.

The TRS Entities may employ hotel managers in the future other than the Manager. Neither the REIT nor any of its affiliates has any ownership or economic interest in the Manager engaged by the TRS Entities. If in the future, the REIT or any of its affiliates have an ownership stake in a hotel manager engaged by the TRS Entities, the ownership will be limited such that the hotel manager still qualifies as an eligible independent contractor as defined by the Code, allowing the REIT (and NHI) to maintain its ability to qualify as a real estate investment trust for federal U.S. tax purposes.

See "Management and Franchise Agreements – Hotel Management Agreement".

Franchise Agreements

All of the REIT's hotel properties will operate under franchise agreements with Marriott, Hilton or InterContinental Hotels Group brands. The REIT believes that the public's perception of the quality associated with a branded hotel is an important feature in its attractiveness to guests. Franchisors provide a variety of benefits to franchisees, including centralized reservation systems, national advertising, marketing programs and publicity designed to increase brand awareness, loyalty programs, training of personnel and maintenance of operational quality at hotels across the brand system.

The terms of the REIT's franchise agreements initially range from 10 to 20 years with various extension provisions. The expiry dates of the franchise agreements range from December 2029 to December 2039, subject to earlier extension. The Each franchisor receives franchise fees ranging from 2% to 6% of each hotel property's room revenue, and some agreements require that the REIT pay marketing fees of up to 4.5% of room revenue. In addition, some of these franchise agreements require that the REIT deposit into a reserve fund for capital expenditures up to 4% of the hotel property's gross or room revenues depending on the franchisor to ensure the REIT complies with the franchisors' standards and requirements. The REIT also pays fees to its franchisors for services such as reservation and information systems.

The previous owner of the Marriott St. Petersburg property was in default of certain covenants in the franchise agreement in respect of such property. Upon the acquisition of Marriott St. Petersburg, the current owner of the property executed a new franchise agreement with the franchisor. The previous franchise agreement is no longer in force or effect and the REIT does not have any exposure to liability under the previous franchise agreement. Each of the franchisees is in material compliance with its respective franchise agreement.

See "Management and Franchise Agreements – Franchise Agreements".

Investor Rights Agreement

Pursuant to an investor rights agreement (the "**Investor Rights Agreement**") to be entered into on Closing, certain unitholders of the REIT who are principals and affiliates of the Advisor (the "**NexPoint Holders**") will be granted the right to nominate two Trustees (such nominees will be subject to election together with the remaining Trustees at annual meetings of Unitholders) subject to the NexPoint Holders owning, in the aggregate, 20% or more of the then-outstanding Units, such number being reduced to one nominee if the NexPoint Holders own, in the aggregate, less than 20% but 10% or more of the then-outstanding Units (in each case, determined as if all Class B units of the OP ("**Class B OP Units**") are redeemed for Units). Notwithstanding the foregoing, where the Board is comprised of four or less Trustees, the NexPoint Holders will be entitled to nominate a maximum of one Trustee pursuant to the Investor Rights Agreement. On Closing, the Board will be comprised of three Trustees and it is expected that NexPoint Holders will own, in the aggregate, 38.2% of the outstanding Units (determined as if all Class B OP Units are redeemed for Units). Therefore the NexPoint Holders will be entitled to nominate one Trustee so long as the total number of Trustees equals three and two Trustees if the total number of Trustees increases to five or more. In no event will NexPoint Holders be entitled to nominate Trustees where a majority of the Trustees are not deemed to be independent.

Certain transactions involving the REIT and/or the OP will require the consent of the NexPoint Holders, provided that the NexPoint Holders own, in the aggregate, 33% or more of the Units (determined as if all Class B OP Units are redeemed for Units).

The Investor Rights Agreement will provide the NexPoint Holders with a piggy-back registration right to require the REIT to include Units (including Units issuable upon the redemption of Class B OP Units) held by the NexPoint Holders in any future offering undertaken by the REIT by way of prospectus that it may file with applicable Canadian securities regulatory authorities. In addition, the Investor Rights Agreement will provide the NexPoint Holders with a demand registration right to require the REIT to use reasonable commercial efforts to file one or more prospectuses with applicable Canadian securities regulatory authorities, qualifying Units held (or issuable upon the redemption of Class B OP Units) by the NexPoint Holders for distribution, provided that such demand registration right may only be exercised by one designee on behalf of the NexPoint Holders.

The Investor Rights Agreement will provide that the NexPoint Holders, for so long as they continue to own, in the aggregate, at least 10% of the outstanding REIT Units (determined as if all Class B OP Units are redeemed for Units), shall have pre-emptive rights to purchase Units, Class B OP Units or such other securities as are being contemplated for issuance by the REIT, the OP or one of their subsidiaries to maintain their *pro rata* ownership interest in the REIT. The pre-emptive rights will not apply to certain excluded issuances.

For so long as the NexPoint Holders own, in the aggregate, directly or indirectly, 20% or less of the outstanding Units (determined as if all Class B OP Units are redeemed for Units), each of the NexPoint Holders will be obligated to, upon the written request of the REIT, exercise their respective redemption right in respect of the Class B OP Units then held by the NexPoint Holders if the REIT enters into certain transactions involving the (i) the transfer, directly or indirectly, of all or substantially all of its assets to a third party; and (ii) the winding up, dissolution or termination of the REIT, or exchange of Units for securities of a third party issuer or successor issuer.

For so long as the NexPoint Holders own, in the aggregate, directly or indirectly, at least 10% of the outstanding Units (determined as if all Class B OP Units are redeemed for Units) the NexPoint Holders will have tag-along rights that will apply in respect of any sale by the REIT of its interest in the OP.

See “Investor Rights Agreement”.

Restrictions on Ownership and Transfer of the Units

The Declaration of Trust contains restrictions on ownership and transfer of the Units that are intended to assist the REIT in qualifying as a real estate investment trust for U.S. federal income tax purposes. In particular, the Declaration of Trust prohibits any person from actually, beneficially or constructively owning more than 6.2% of the Units, subject to any exemption granted by the Board. In addition, in order for the REIT to comply with its U.S. federal income tax withholding obligations under the *Foreign Investment in Real Property Tax Act of 1980* (“**FIRPTA**”), the Declaration of Trust provides that certain non-U.S. persons that otherwise would own more than 5% of the Units are subject to notice requirements and transfer restrictions. These ownership limits and transfer restrictions may delay or impede transfers of Units. See “Declaration of Trust — Restrictions on Ownership and Transfer” for a more detailed discussion of these ownership limits and transfer restrictions. In addition, a non-U.S. person that holds or has held, actually or constructively, more than 10% of the outstanding Units, as determined for U.S. federal income tax purposes, may be subject to additional U.S. taxes under FIRPTA in respect of their investment in Units. See “Certain U.S. Federal Income Tax Considerations”.

OFFERING SUMMARY

Offering:	917,700 Units.
Amount:	US$4,588,500
Price:	US$5.00 per Unit.
Use of Proceeds:	The net proceeds of the Offering are estimated to be approximately $3,600,000 after deduction of the Agent's fee and will be used to fund a portion of the expenses of the Offering.
Unit Attributes:	The REIT is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the REIT. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the REIT; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders. See "Declaration of Trust".
Retained Interest:	Immediately following Closing, principals and affiliates of the Advisor will own or indirectly or directly exercise control or direction over approximately 71.1% of the REIT and 38.2% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units)
Distribution Policy:	The REIT initially intends to adopt a distribution policy pursuant to which the REIT will make quarterly cash distributions to Unitholders equal to, on an annual basis, approximately 65% of estimated Core FFO. Pursuant to this distribution policy, distributions will be paid to Unitholders of record at the close of business on the applicable distribution record date determined by the Trustees from time to time.
Risk Factors:	An investment in Units is subject to a number of risk factors that should be carefully considered. Cash distributions by the REIT are not guaranteed and will be based, in part, upon the financial performance of the REIT's properties, which is susceptible to a number of risks. These risks, and other risks associated with an investment in Units, include but are not limited to those related to the hotel and real estate industries, as well as the REIT and its business. See "Risk Factors" and the other information included in this prospectus for a discussion of the risks that an investor should carefully consider before deciding to invest in Units.

THE REIT

Overview

NexPoint Hospitality Trust (the "**REIT**") is a newly-created, unincorporated, open-ended real estate investment trust established pursuant to the Declaration of Trust under the laws of the province of Ontario. The registered and head office of the REIT is located at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7. The REIT has been created for the purpose of acquiring, owning and operating a portfolio primarily consisting of select-service and extended stay income-producing hotel properties located in the United States.

The REIT will indirectly own a portfolio of 11 hotel properties located across the U.S. (the "**Initial Portfolio**"). All of the 11 hotels in the Initial Portfolio are franchised with: Hilton Hotels under the following brands: (i) DoubleTree (five hotels); (ii) Homewood Suites (three hotels); (iii) Hilton Gardens Inn (one hotel); InterContinental Hotels Group under the Holiday Inn Express brand (one hotel); or Marriott under the Marriott brand (one hotel).

Subject to the overall supervision of the Board, the REIT will be managed by the Advisor, which provides expertise across the full spectrum of real estate investment management, including acquisitions, financing and asset management, and the Manager, which provides expertise in hotel operations, sales and marketing, construction, information technology, accounting and human resource management.

The REIT will own its properties through its subsidiary, NHI. The REIT and NHI each intend to elect to be taxed as a real estate investment trust under the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), commencing with its taxable year ending December 31, 2019. If the REIT and NHI each qualify as a real estate investment trust for U.S. federal income tax purposes, the REIT and NHI generally will not be subject to U.S. federal income tax on income that it distributes. If the REIT and/or NHI fail to qualify as a real estate investment trust in any taxable year, the REIT and/or NHI will be subject to U.S. federal income tax on its taxable income at regular corporate rates. In order for NHI, and thus the REIT, to be eligible to elect to be taxed as a real estate investment trust under the Code, the properties will be leased to TRS Entities, which will in turn contract with the Manager, an eligible independent contractor (as defined in the Code), to manage the day-to-day operations of the hotels. The TRS Entities are subject to income tax at regular corporate rates. Accordingly, the net effect of the leases to the TRS Entities is that a portion of the net operating cash from the properties is subject to U.S. federal and state corporate income tax.

The Advisor

The Advisor is a recently formed Delaware limited partnership that was formed specifically to be Advisor to the REIT. The Advisor gives the REIT access to an experienced management team and extensive network of industry relationships, as well as a management platform with deep knowledge of the assets and markets. The Advisor is an affiliate of various entities managed by the principals and officers of the Advisor, which manage approximately $4.5 billion of real estate investments as of October 31, 2018. The Advisor's team has over 100 years of combined experience in real estate acquisitions, dispositions, financing, rehab implementation and specific experience in hospitality, including the REIT's strategy. Over the past five years, the Advisor's team has closed $5.5 billion of U.S. real estate transactions across multiple property types including: multifamily, hospitality, single family rental, storage, health care, office and retail. The team also externally manages, through an affiliate of the Advisor, a publicly traded REIT, NexPoint Residential Trust, which focuses on class B multifamily assets with a value-enhancing opportunity located in high growth cities in the Southeastern and Southwestern United States. Since listing of NexPoint Residential Trust on the New York Stock Exchange on April 1, 2015, the Advisor's team has delivered a return of 216.2% to shareholders (inclusive of reinvested dividends) through February 25, 2019. The structure and history of NexPoint Residential Trust is very similar to that of the REIT in that the Initial Portfolio was acquired through private entities that were later aggregated into a real estate investment trust and then listed on a public exchange. In its capacity as the advisor to the REIT, the Advisor will:

- find, present and recommend to the Board investment opportunities consistent with the REIT's investment policies and objectives;

- execute investments on behalf of the REIT and NHI, provided that the Advisor shall obtain the prior approval of (i) the Board and (ii) any particular committee of the Board or the board of managers of NHI specified by the Board, in connection with any investment for which the cash and/or equity consideration paid by the REIT or any subsidiary of the REIT is equal to or exceeds the lesser of (a) 10% of the aggregate of the book value of the equity of the REIT plus the value of the Class B OP Units, each as reflected on the most recent statement of financial position of the REIT or (b) $25,000,000;

- identify, evaluate, negotiate and recommend to the Board the structure of the REIT's investments (including performing due diligence);

- evaluate and negotiate the terms of dispositions within the discretionary limits and authority granted by the Board;

- review and analyze financial information for each underlying property of the REIT's portfolio;

- within the discretionary limits and authority as granted by the Board, identify, evaluate, negotiate and recommend to the Board financing and funding opportunities with banks or other lenders;

- subject to the overall supervision of the Board, manage the REIT's capital improvement program including determining when to execute the program at each property;

- close, monitor and administer the investments made by the REIT;

- maintain the accounting and financial records of the REIT and its subsidiaries (including NHI) and file required information with the Ontario Securities Commission upon approval of the Board;

- perform investor-relations functions; and

- manage Canadian and U.S. regulatory compliance, including making all required filings and preparing all documents, data and analysis required for regulatory filings, including all documents necessary for continuous disclosure requirements pursuant to applicable stock exchange rules and securities laws.

The Manager

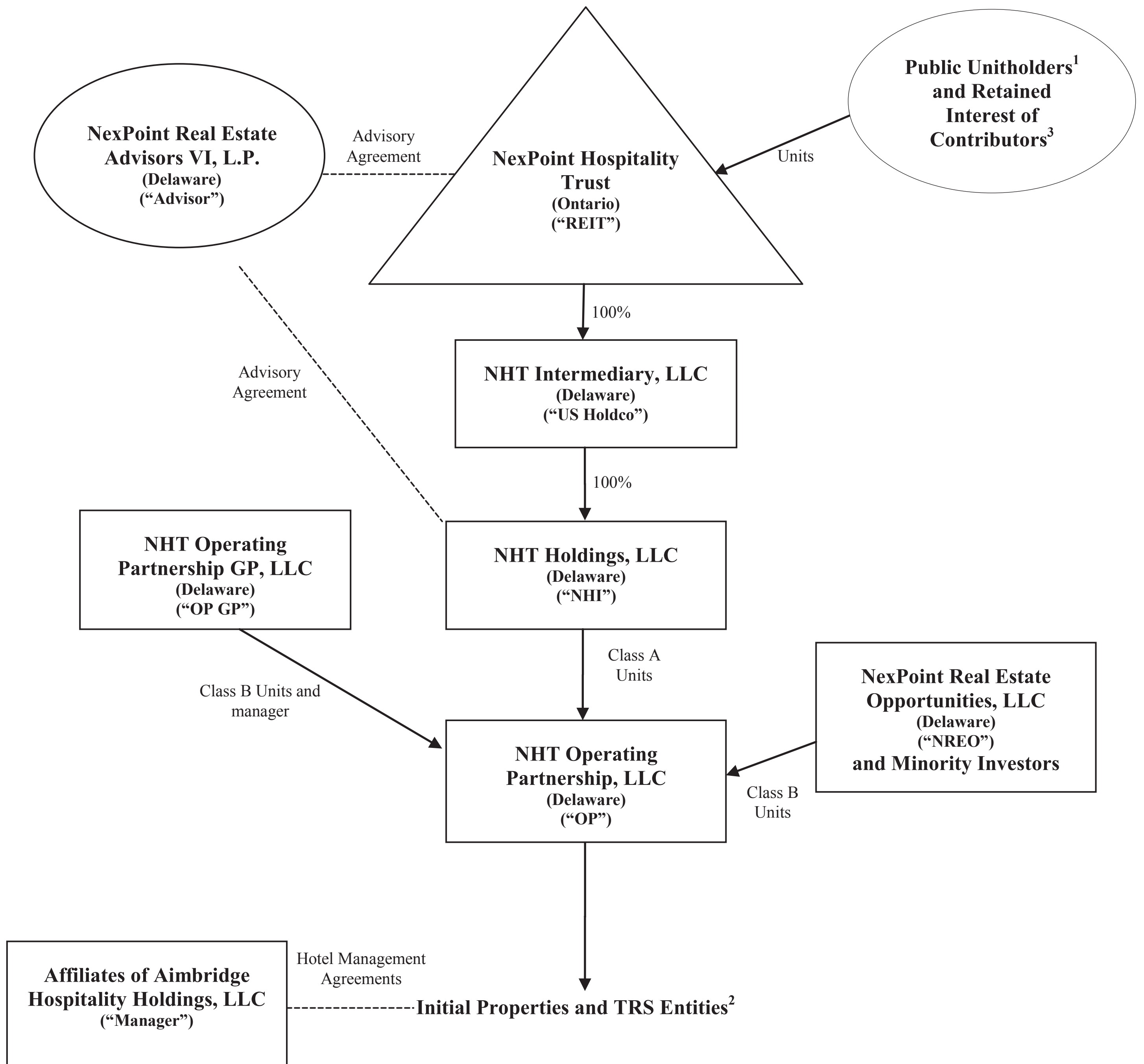
The Manager is a recognized leader in the hospitality space and manages over 812 hotel properties comprised of approximately 98,000 rooms across all segments of the hospitality space from full-service hotels to select-service and extended stay brands. See "Management and Franchise Agreements". The Manager operates across a full spectrum of property types including resorts, franchise branded, independent luxury, boutique, and lifestyle hotels. The Manager provides management, asset management, development, renovation and consulting services and has its corporate headquarters in Plano, Texas with regional offices in Chicago, San Clemente and San Juan. The Manager also offers investors the experience required to manage a diverse portfolio of hotels and resorts throughout the United States and the Caribbean.

The Manager brings together an experienced team of hospitality executives offering creative solutions to accomplishing the goals and objectives of each and every owner. The Manager understands the real estate and operational components of the industry and with its dedicated and highly accomplished team have the unique ability to continuously drive value. The executive team at the Manager is comprised of veteran hoteliers. Averaging over 26 years of hospitality experience, the senior executives focus on maximizing returns to partners by utilizing a unique blend of experience, resources, and relationships.

LEGAL STRUCTURE

The following chart sets out the simplified organizational structure of the REIT immediately following Closing:

Structure Chart



Notes:

(1) It is anticipated that upon the Closing, the public will hold an approximate 28.9% ownership interest in the REIT.

(2) Initial Properties will be owned by Subsidiaries of NHT Operating Partnership, LLC. The properties are leased to the TRS Entites, which have engaged the Manager to manage the day-to-day operations pursuant to Hotel Management Agreements.

OBJECTIVES OF THE REIT

The objectives of the REIT are to:

(a) provide Unitholders with an opportunity to invest in an initial portfolio of extended-stay, select-service and efficient full-service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole;

(b) provide Unitholders with predictable, sustainable and growing tax efficient cash distributions;

(c) enhance the value of the REIT's assets and maximize the long-term value of the Units through active asset and property management programs and procedures; and

(d) expand the asset base of the REIT and increase the REIT's Core FFO per Unit primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

INVESTMENT OPPORTUNITY

The REIT intends to achieve its investment objectives by acquiring hotel properties that will offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. The Advisor plans to target markets that have a stable yet growing and reliable demand base and limited present and future competitive supply growth. The REIT expects that its hotel properties will be located in areas that it believes exhibit strong economic attributes such as job growth, strong business or transitory travel and leisure travel. Select-service and extended stay hotel properties, which the REIT expects to comprise a majority of its portfolio, typically do not include amenities provided in full-service hotel properties; therefore, select-service and extended stay hotel properties primarily derive their revenues from hotel room rentals and, to a lesser extent, from restaurants, meeting space and other similar income streams. Extended-stay hotel properties are generally high-quality, residential style hotels that offer a package of services and amenities for extended-stay business and leisure travelers. The REIT may also opportunistically invest in efficient full-service hotel properties, although it does not expect such properties to comprise a substantial portion of its portfolio. Full-service hotel properties generally provide a full complement of guest amenities including restaurants, large meeting facilities, concierge, and room service, porter service or valet parking. The REIT may also originate or make investments in debt related to targeted hotel properties.

Generally, for each property the REIT may seek a capital event, which may include a sale of the property or a refinancing of a mortgage or other debt in respect of the property, within three to five years after the original acquisition date of a property. In pursuing a liquidity event for a property, the REIT will take into consideration the prohibited transaction tax rules under the Code. Management's primary goals of shareholder friendly capital allocation may potentially include a liquidity event involving the sale of assets, the entire company, a merger into an existing publicly traded real estate investment trust or other publicly traded vehicle, or a listing of its shares on a national securities exchange.

INVESTMENT HIGHLIGHTS

The following describes the investment highlights of the Offering.

Access to Hospitality Assets Located in the United States on a Tax Efficient Basis

Management believes that the United States real estate market is one of the most dynamic, stable and liquid real estate markets in the world. The ability for Canadian investors to access hospitality assets located in the U.S. is difficult as investing directly in real estate investment trusts domiciled in the U.S. is a tax inefficient avenue for exposure to this important asset class. Currently, there are very few alternatives domiciled in Canada that invest primarily in hospitality properties located in the U.S. Using the REIT's structure whereby it is taxed as a U.S. real

estate investment trust but is domiciled in Canada, the REIT offers a tax efficient way for Canadian investors to gain exposure to U.S. hospitality assets.

Attractive Asset Class with Favorable Fundamentals

Hospitality properties offer the shortest duration leases of any real estate sector which offers the ability to adjust pricing of rooms immediately to meet market demand, which should provide an inflation hedge during periods of economic expansion. The REIT believes its strategy of targeting older properties in need of capital improvements that can be repositioned to generate higher revenues will work in all market cycles and produce high current returns to investors. The REIT expects to benefit from the increase in overall economic activity, increased discretionary spending and business and leisure travel in the U.S. as well as benefit from its ability to adjust its operations to weather an economic downturn and provide consistent relative returns through all economic cycles.

Unique, Internal Growth Strategy Offering a Total Return Profile

Management believes that the REIT's strategy of buying older properties that need capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space, gives it the opportunity to generate high current yield as well as capital appreciation over time. In executing this value-add strategy, management believes the REIT can generate Core FFO growth and superior total returns to investors within the Initial Portfolio, irrespective of whether the REIT acquires additional hotels.

Attractive and Stable Yield

The REIT intends to pay a quarterly cash distribution, representing approximately 65% of the REIT's Core FFO and to increase the REIT's dividend over time such that the REIT pays out annually 65% to 80% of its Core FFO.

Sizeable Quality Portfolio with Embedded Growth Opportunity

The Initial Portfolio is comprised of 11 properties located throughout the U.S. in the select-service and extended stay hospitality categories. Each property has a long-term franchise agreement with Marriott, Hilton or InterContinental Hotels Group sponsored brands. The REIT believes each property in the Initial Portfolio has the opportunity to generate outsized market share improvements and topline increases as leading select-service or extended stay hotels in their respective submarkets. In addition to organic growth, the REIT is expected to realize additional embedded growth from its capital improvement strategy.

Attractive External Growth Strategy

In addition to executing an internal growth strategy, the REIT expects to capitalize on a pipeline of target hospitality investments requiring funding for capital improvements or brand repositioning that exist in the U.S. market by utilizing its ability to raise new capital as a publicly traded entity. The REIT believes it will be able to react more quickly and more opportunistically in its investment program as compared to private investors or funds. Additionally, the Offering, and potential future offerings, will allow the REIT to avoid the lengthy and time consuming private fundraising process, which will increase the time available to focus on investment and asset management activity for the REIT.

Management Team Aligned with Shareholders

Members of the management team will be aligned with shareholders through a significant ownership percentage in the REIT. At Closing, the management team will directly or indirectly own or exercise control or direction over approximately 71.1% of the REIT and 38.2% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units).

GROWTH STRATEGIES

The REIT intends to grow in three ways. First, through organic growth expected from favorable economic and demographic fundamentals within its existing markets. Second, the REIT believes the Initial Portfolio will provide opportunities for further embedded, internal growth through value-enhancing initiatives such as the REIT's capital improvement program. Third, the REIT believes there are ample assets that fit its strategy and intends to pursue a disciplined external growth strategy by acquiring well located hospitality properties that it believes have the potential to generate higher yields and growth prospects through the REIT's capital improvement program.

To find hotel properties that best meet its selection criteria for investment, the Advisor's property acquisition team will study regional demographics and market conditions, interview local brokers and operators, and utilize its network of external real estate professionals to gain the practical knowledge that studies sometimes lack. The property acquisitions team will also work with various property managers and affiliates to tap into their vast network and broad market exposure. Additionally, where the REIT believes it gives it a comparative advantage, it will partner with firms that have an expertise in the property class and geographic area where it is seeking to acquire properties. An experienced commercial construction engineer will inspect the structural soundness and the operating systems of each building, and an environmental firm will investigate environmental issues to ensure each property meets its quality specifications. The Advisor's management team will emphasize thorough market research, local market knowledge, underwriting discipline, and risk management in evaluating potential investments.

Organic Growth from Favourable Economic and Demographic Fundamentals

The REIT believes the current macroeconomic environment, demographic trends, historical average supply growth, cost of new brand required programming and new construction costs, favorable debt capital markets, and current market conditions will continue to create attractive opportunities to acquire hotel properties at prices that are generally discounts to replacement cost, provide potential for significant long-term value appreciation and generate attractive yields for its Unitholders. Given the conditions of the current economic environment in the markets where the REIT is focused and the experience of the Advisor and its network, the REIT expects to be well-positioned to capitalize on these opportunities to create an attractive investment portfolio that will maximize Unitholder yields and total returns.

Internal Growth Through Value-Enhancing Initiatives

The REIT has 1,012 rooms that are currently undergoing some level of renovation throughout seven of the hotels in the Initial Portfolio (DoubleTree Beaverton ("**DT Beaverton**"), DoubleTeee Bend ("**DT Bend**"), DoubleTree Olympia ("**DT Olympia**"), DoubleTree Tigard ("**DT Tigard**"), DoubleTree Vancouver ("**DT Vancouver**" and together with DT Beaverton, DT Bend, DT Olympia and DT Tigard, the "**DT Portfolio**"), Marriott St. Petersburg (the "**St. Pete Property**") and Holiday Inn Express Nashville (the "**Nashville Property**")). Management expects the properties to begin realizing an increase in NOI and EBITDA within six months of completion of the renovations at each property. Management anticipates that the REIT will benefit from value-enhancing renovations by driving outsized market share growth relative to each asset's competitive market within 12-36 months of completion. Assets coming out of the value-enhancing initiatives are less reliant on growth from local market conditions, and are dependent on generating organic growth from new found competitiveness in local markets. As new acquisitions are made in the future, a similar program will generally be implemented at each newly acquired property. Management anticipates that the renovations will enable newly acquired properties to increase in NOI and EBITDA.

Four of the properties in the Initial Portfolio (Hilton Garden Inn Dallas Market Center (the "**HGI Property**"), Homewood Suites Addison ("**HS Addison**"), Homewood Suites Las Colinas ("**HS Las Colinas**") and Homewood Suites Plano ("**HS Plano**" and together with HS Addison and HS Las Colinas, the "**HWS Portfolio**")) underwent extensive renovation programs prior to the date of this prospectus, encompassing 595 rooms. The HGI Property completed its renovation program in December 2015 and the HWS Portfolio completed their renovation program in May 2018.

Once all ongoing improvements at the hotel properties in the Initial Portfolio are completed, the strategy described under this heading "Internal Growth Through Value-Enhancing Initiatives" will no longer be applicable to the Initial Portfolio.

External Growth Through Acquisitions

Seek Properties Meeting the REIT's Investment Criteria

The REIT's strategy will focus primarily on acquiring existing select-service and extended stay hotel properties, and on an opportunistic basis, full-service hotel properties, that are classified in the "upper upscale", "upscale" and "upper-midscale" chain scales of the hospitality industry, as defined by Smith Travel Research, Inc. ("**STR**"), and operated under widely recognized brands such as Marriott, Hilton, Hyatt, Starwood Hotels & Resorts and the InterContinental Hotels Group. Chain scale segments are a method by which branded hotels are grouped by STR based on the actual average room rates. The REIT expects that its hotel properties offer a high current yield and/or be underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. The Advisor plans to target markets that have a varied stable and/or growing and reliable demand base and/or limited present and future supply growth. The REIT expects that its hotel properties will be located in areas that it believes exhibit strong economic features. Select-service and extended stay hotel properties, which it expects to comprise a majority of its portfolio, typically do not include amenities provided in full-service hotel properties; therefore, select-service and extended stay hotel properties primarily derive their revenues from hotel room rentals and, to a lesser extent, from restaurants, meeting space and other similar income streams. Extended-stay hotel properties are generally high-quality, residential style hotels that offer a package of services and amenities for extended-stay business and leisure travelers. The REIT may also opportunistically invest in full-service hotel properties, although it does not expect such properties to comprise a substantial portion of its portfolio. Full-service hotel properties generally provide a full complement of guest amenities including restaurants, large meeting facilities, concierge, and room service, porter service or valet parking. The REIT may also originate or make investments in debt related to targeted hotel properties.

The REIT's Opportunistic Investment Strategy

Hotel properties can provide investors with an attractive blend of current cash flow, opportunity for capital appreciation, and can mitigate inflationary impacts through shorter duration commercial rents. Growth in the United States hotel Revenue per Available Room, or RevPAR, has historically been closely correlated with macroeconomic trends, including growth in United States gross domestic product ("**GDP**"), corporate profitability, capital investments, consumer confidence and employment. Therefore, as the United States economy continues to strengthen, the REIT anticipates RevPAR growth, along with related growth in property operating income and valuations, to culminate in an overall improvement of hotel industry fundamentals over the course of its investments.

Focusing on Hotel Properties with a Value-Enhancing Component

The operationally intense nature of hotel assets presents opportunities to employ a variety of strategies to enhance value, including strategic capital expenditures and repositioning, brand and management changes, revenue and expense management. For a majority of the hotel properties it acquires, the REIT intends to execute a value-add strategy, whereby the REIT acquires assets underperforming its full potential in high-demand markets, remedy operational and/or managerial inefficiencies, implement sophisticated revenue optimization strategies, invest additional capital to improve the competitiveness of the assets, and reposition the properties to increase occupancies, average daily rates, and resale value. The REIT expects its value-add component to consist, on average, of investments of $10,000 to $25,000 per room in the first 24 months of ownership, in an effort to add value to the asset's exterior and interior. The REIT's value-add strategy is to primarily target hotel properties that will provide both current income and capital appreciation.

Market Research

The Advisor's acquisition team will originate, underwrite, research, diligence, and finance each acquisition utilizing both real-time market data and the transactional knowledge and experience of the network of professionals of the Advisor.

Local Market Knowledge

The Advisor, either directly through its relationships with real estate professionals in the area or through its property managers, will develop information concerning the locality of the property to assess its competitive position.

Underwriting Discipline

The Advisor will follow a disciplined process to evaluate a potential investment in terms of its income-producing capacity and prospects for capital appreciation, which will include a review of property fundamentals (including expense structure, occupancy rates, and property capital expenditure), capital markets fundamentals (including cap rates, interest rates and holding period) and market fundamentals (including rental rates, concession and occupancy levels at comparable properties), as well as projected Occupancy and Average Daily Rates, which when multiplied together equal Revenue per Available Room, or RevPAR. The Advisor will strive to verify all assumptions by third-party research from credible sources, to the extent practical, in order to ensure consistency in the underwriting approach. In addition, the Advisor will perform stress tests on each acquisitions by reducing RevPAR growth assumptions and increasing the interest rate in its assumptions prior to acquiring each asset.

Risk Management

Risk management is a fundamental principle in the Advisor's construction of the portfolio. The REIT intends to acquire and in the management of each investment, diversify the portfolio by investment size, geographic location, and interest rate risk critical to controlling portfolio-level risk.

When evaluating potential acquisitions and dispositions, the Advisor generally will consider the following factors as applicable:

- strategically targeted markets;
- income levels and employment growth trends in the relevant market;
- demand growth characteristics supported by demographic indicator;
- supply of undeveloped or developable real estate, local building costs and construction costs;
- the age, location, construction quality, condition and design of the property;
- the current and projected cash flow of the property and the ability to increase cash flow;
- the potential for capital appreciation of the property;
- purchase price relative to the replacement cost of the property;
- the potential for economic growth and the tax and regulatory environment of the community in which the property is located;
- the rental demand by hotel guests for similar hotel properties in the vicinity;
- significant barriers to entry in the market, such as scarcity of development sites, regulatory hurdles, high room per development costs, availability of hotel franchise, and long lead times for new development;
- the prospects for liquidity through sale, financing or refinancing of the property;
- the benefits of integration into existing operations;

- the benefits from the brand to which the property is associated;
- potential return on investment initiatives, including redevelopment, rebranding, redesign, expansion and change of management;
- competition from existing hotel properties and properties under development and the potential for the construction of new hotel properties in the area; and
- potential for opportunistic selling based on demand and price of high quality assets.

THE U.S. LODGING INDUSTRY

Introduction

The lodging sector generated approximately $208 billion of industry revenues in 2017, according to data provided by STR. As of 2017, the U.S. lodging sector comprised of approximately 55,000 hotels with more than five million rooms. Over the past 15 years, lodging sector revenue has grown at a compound annual growth rate ("**CAGR**") of 4.4% while the number of hotel rooms has grown at a CAGR of 1.9%. As of August 31, 2018, STR reports that the trailing 12 month average for room night demand stood at 1.88 billion room nights sold through July 2018. Additionally, STR notes that demand growth in the U.S. lodging market is strong and that absolute changes are actually getting stronger, which led to an updated U.S. RevPAR forecast for full year 2018 and 2019 of 3.2% and 2.6% respectively. STR expects the demand increase to continue to be a source of record rooms sold, resulting in the highest occupancies ever recorded for the U.S., which is projected to allow hoteliers to realize pricing power above the consumer price index.

Generally, lodging industry performance is highly correlated with macroeconomic conditions in the U.S. Fluctuations in lodging demand and, therefore, financial and operating performance, are caused largely by general economic and local market conditions, which affect levels of business and leisure travel. In particular, macroeconomic trends relating to GDP growth, corporate profits, capital investments and employment growth are some of the primary drivers of lodging demand. Lodging supply growth is typically driven by overall lodging demand, as extended periods of strong demand growth tend to encourage new hotel development. However, the pace of supply growth is typically influenced by several additional factors, including the availability and cost construction financing, construction costs and other local market considerations. As of August 31, 2018, new supply in the U.S. is actually forecast to fall to the long-term average of 1.9%.

The U.S. lodging market is the largest in the world and in 2016 accounted for approximately 50% of transaction volume globally. Since 2012, at least $170 billion of merger and acquisition transactions have been completed in the United States with private equity investors and foreign capital accounting for approximately 60% of buyers. 2018 is expected to be another strong year for transaction volume with a significant amount of debt and equity capital seeking transactions. The U.S. lodging market is characterized as a highly liquid market with a significant amount of capital from a diverse investor base comprised of private equity, public real estate investment trusts, private developers, hotel franchisors and operators and offshore investors.

U.S. Lodging Industry Segmentation Descriptions

Chain scale segmentation is a grading system used to group branded hotels based on actual average room rates. Hotels are classified along a scale ranging from highest actual average room rate to lowest actual average room rate. Independent hotels, regardless of actual average room rate, are included in a separate chain scale category. Chain scale segments are defined as: luxury, upper upscale, upscale, upper midscale, midscale, economy and independent.

Luxury

Luxury hotels offer the highest quality amenities and personalized services to guests. These hotels cater primarily to business travelers and first class leisure travelers and are generally situated in urban locations. Amenities typically include one or more restaurants, a lounge/bar area, banquet and conference facilities, full-

service business centers, spa and fitness centers and boutique retail stores. Services offered by luxury hotels include room service, concierge, valet, shoe shine, laundry, dry cleaning services and local transportation. Examples of hotels within this chain scale include Fairmont, Four Seasons, InterContinental and Ritz-Carlton. Luxury hotels are also distinguished by unique investment characteristics including lower cap rates and cash yields and a higher proportion of investor returns being realized in the form of capital appreciation.

Upper Upscale

The upper upscale lodging segment consist of hotels that cater to both business travelers who do not require luxury hotel amenities and leisure travelers who desire greater amenities than those typically found in midscale hotels. Hotels in this segment are typically capable of hosting blocks of group travelers (defined as parties needing 10 or more guestrooms), and offer meeting space and food and beverage options, and, as a result, have diversified demand segments and revenue streams. Additionally, the upper upscale hotel amenities and price point cater precisely to the large and fast growing market in the U.S. of corporate travelers, which customer type primarily consists of Fortune 1000 and similar companies and is characterized with burgeoning lodging demand and significant corporate profits. The upscale and upper upscale hotel segments typically include full-service hotels in both urban and suburban locations. Examples of hotels within this chain scale include Embassy Suites, Marriott, Westin, Hyatt and Hilton.

Upscale Hotels

Similar to the upper upscale tier, the upscale lodging segment consists of hotels that cater to both business and leisure travelers who desire a premier product. With a few exceptions, hotels in this segment typically are of the select-service variety and do not cater to group customers. This results in a larger portion of revenue derived from rooms business relative to the upper upscale segment. Additionally, the upscale hotel amenities and price point caters to discerning but price conscious corporate travelers. The upscale segment consists primarily of hotels in both urban and suburban markets. Examples of full-service hotels within this chain scale include DoubleTree and Crowne Plaza, and examples of limited-hotels within this chain scale include Hilton Garden Inn, Homewood Suites, Aloft, Hyatt Place and Staybridge Suites.

Midscale (Including Upper Midscale)

Midscale and upper midscale lodging segments are primarily comprised of hotels offering both studio and one bedroom suites designed for both business and leisure travelers. Midscale and upper midscale hotel rooms often contain both a living/work area and a sleeping area. Additional amenities may include limited fitness areas, guest laundry facilities and a local diner or restaurant. The midscale segment comprises the largest portion of hotel rooms in the United States. Examples of hotels within this chain scale include Holiday Inn, Best Western and Howard Johnson (upper midscale) and Comfort Inn, Fairfield Inn and Hampton Inn (midscale).

Economy

The economy lodging segment is almost exclusively comprised of hotels with inexpensive room rates and a very limited offering of additional services or amenities. The segment is comprised of two primary user bases: industrial and leisure customers. Industrial customers are primarily comprised of corporate accounts seeking accommodations for work crews in rural or remote locations and generally sign multi-year contracts. Leisure customers are typically price conscious travelers seeking basic accommodations, often near transportation routes. Examples of hotels within this chain scale include Oak Tree Inn, Motel 6 and Super 8.

Independent

Independent hotels are independently owned and operated and not associated with any hotel brand or banner. Independent hotels have the flexibility to provide special and personalized services typically not provided by branded hotels. Independent hotels typically are found in locations which require unique customer service offerings and do not require the marketing support of a major brand. Examples of hotels within this chain scale include High Peaks Resort, the Shorecrest Hotel and the Virgin Hotel.

Lodging Industry Franchising

Branded hotels represent approximately 75% of all hotel rooms in the United States lodging market. Hotel owners enter into franchise agreements to brand their hotels with franchisors such as Hilton, Marriott and International Hotels Group with a goal of servicing demand from business and leisure travelers with strong brand awareness. These business and leisure travelers are often attracted with loyalty program incentives and hotel franchisors focus on maximizing customer retention rates. Strong affiliation and long term franchise agreements with premier hotel brands often increase a hotel's operational and financial performance through improved occupancy and reduced income volatility. As a result, franchised hotels have greater market competitiveness and increased liquidity leading to greater interest from institutional investors and, consequently, higher valuations. Hotel franchisors also offer reservation systems, corporate partnerships to attract group customers and transient business travelers, marketing programs and training programs to ensure a similar first-rate guest experience regardless of location.

Service Level Segmentation

Service level segmentation is a classification system used to group hotels with different product and service offerings to guests. Hotels are typically grouped into full-service and select-service categories.

While chain scale and service levels of hotels do not directly correlate, management believes that upper upscale and luxury chain scales are predominantly comprised of full-service hotels, and lower chain scales (upscale, midscale and economy) are predominantly comprised of select-service hotels.

Full-Service Hotels

Full-service hotels are generally comprised of upper upscale or luxury hotels and provide a full suite of amenities, including food and beverage services for both individuals and groups comprised of restaurant style dining, room service and banquet services for large gatherings such as business meetings or conferences. Management believes that offering a full suite of food and beverage amenities is essential for group customers, business travelers and first class leisure travelers. These services cannot be replicated by other lodging alternatives such as Airbnb and select-service hotels. As a result, full-service hotels are able to differentiate themselves from other lodging accommodations which find themselves in direct competition with Airbnb. Full-service hotels are also more attractive lodging investments due to the higher levels of group reservations, increased booking visibility and diverse revenue streams. With higher replacement costs than select-service hotels, new supply in full-service hotels is limited, placing upward pressure on RevPAR. Management believes that full-service assets have the benefit of diversified revenue streams which helps insulate full-service hotels from new lodging inventory supplied by select-service hotels and Airbnb.

Select-Service Hotels

Select-service or limited-service hotels can belong to any chain scale segmentation but are most often seen in the upscale, midscale or economy lodging segments. Select-service hotels typically have rooms-only operations with limited additional amenities and services. Although select-service hotels may offer amenities such as a continental breakfast, they typically do not have dedicated food and beverage departments and do not have restaurant style dining, room service or banquet services. Select-service hotels often have higher margin operations given the limited array of services offered but lower levels of overall profitability resulting from typically having lower levels of group customers and higher levels of transient leisure customers, resulting in lower booking visibility and shorter booking windows often making it difficult to maximize revenue. Select-service hotels often face competition from Airbnb, especially in downtown urban markets, given the similarity of product offerings, including basic sleeping accommodations and the lack of a dedicated food and beverage department. Select-service hotels typically generate more than 95% of total revenues from rooms.

Customer Segmentation

Customer segmentation is a classification system that groups customers based on their booking preferences and characteristics. The main difference between the different customer segments is the ability to increase visibility and forward bookings to reduce volatility. Customer segmentation categories include: transient, group and contract.

- ***Transient***. Transient customers include both business and leisure travelers and typically include rooms sold to individuals or groups occupying less than 10 rooms per night.

- ***Group***. Group customers include both business and leisure travelers who reserve rooms in blocks of 10 or more rooms per night and are often sold pursuant to a master signed agreement. Group customers are generally part of defined groups (i.e., corporate, tour operator or religious institution) and often use the meeting, conference and banquet facilities.

- ***Contract***. Contract customers typically refer to corporations with long term contracts with specified room and rental rate commitments for extended periods of time with guaranteed payments regardless of use. Contract customers include airline crews, railroad employees and other travel intensive oriented industries.

Location Segmentation

Location segmentation is a classification system that groups hotels based on their physical location in any given market. Location categories include: urban, suburban, airport, interstate/motorway, resort, and small metro/town. Urban and suburban hotels comprise approximately 57% of total U.S. hotel market share and are popular location segments for institutional investors. Suburban hotels have several attractive investment characteristics compared to urban hotels, including stronger RevPAR performance over the past three, five and seven years, respectively. RevPAR in suburban markets has outperformed urban markets in part because supply growth has been approximately 1.1% lower in suburban markets on a compounded annual basis over the last three years, resulting in approximately 3.6% greater total supply growth in urban markets relative to suburban markets over that period. Management believes that the suburban markets of the Initial Portfolio further insulate the assets from Airbnb, which is primarily concentrated in urban markets.

THE INITIAL PORTFOLIO

The REIT will indirectly own an 11-property portfolio located in five states in the United States across six major MSA markets and four brands.

Initial Portfolio

The following table highlights certain information about the Initial Portfolio as at September 30, 2018:

Brand	Location	Chain Scale	Service Scale	Location Segment	Year Built/Last Renovation	Rooms
Hilton						
Hilton Garden Inn	Dallas, Texas	Upscale	Select-Service	Urban	1995/2016	240
DoubleTree	Beaverton, Oregon	Upscale	Limited-Service	Suburban	1997/2016[(1)]	98
DoubleTree	Bend, Oregon	Upscale	Full-Service	Suburban	1998/2013[(1)]	117
DoubleTree	Olympia, Washington	Upscale	Full-Service	Suburban	2000/2016[(1)]	102
DoubleTree	Tigard, Oregon	Upscale	Limited-Service	Suburban	1996/2016[(1)]	101
DoubleTree	Vancouver, Washington	Upscale	Limited-Service	Suburban	1997/2016[(1)]	98
Homewood Suites	Plano, Texas	Midscale	Select-Service	Suburban	1996/2018	99

Brand	Location	Chain Scale	Service Scale	Location Segment	Year Built/Last Renovation	Rooms
Homewood Suites	Addison, Texas	Upper Midscale	Select-Service	Suburban	1990/2018	120
Homewood Suites	Irving, Texas	Midscale	Select-Service	Suburban	1990/2018	136
Marriott						
Marriott	St. Petersburg, Florida	Upper Upscale	Full-Service	Suburban	2001/2010[(1)]	209
InterContinental Hotels Group						
Holiday Inn Express	Nashville, Tennessee	Upper Midscale	Select-Service	Urban	1968/2017[(1)]	287
Total Rooms:						**1,607**

Note:

(1) Currently undergoing renovations.

Description of the Initial Portfolio

Hilton Garden Inn Dallas Market Center

The hotel is centrally located and proximate to many of the region's major demand generator's including Dallas Love Field and several medical facilities in the Dallas Medical District. The hotel is also within walking distance to the more than five million square foot Dallas Market Center and one of the largest convention hotels in the southwest United States, the 1,600 room Hilton Anatole. The hotel is an upscale class, select-service hotel that was most recently renovated in 2016 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

DoubleTree Beaverton

The hotel benefits from its strategic positioning in the heart of "Silicon Forest", a high-technology industry cluster in Oregon. The hotel is situated near corporate headquarters or a major presence of several consumer brands such as Nike, Adidas, Intel, IBM, and Columbia Sportswear. The hotel is also proximate to downtown Portland. The hotel is an upscale class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Bend

The hotel is situated in an idyllic scenic setting that provides year round recreational activities, a high standard of living, as well as becoming renowned for its industries that include software and high-technology, bioscience, outdoor recreation products, aviation, manufacturing, and craft brewing and distilling. The hotel is located in the heart of downtown Bend within walking distance to numerous shops, restaurants, bars and breweries and a short drive to the Mount Bachelor Ski Resort. The hotel is an upscale class, full-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Olympia

The hotel is located at a waterfront location less than one mile north of the capital building in the capital of Washington State, in Thurston County. The hotel benefits greatly from a diverse demand base, an expanding port facility, a vibrant arts scene, recreational activities, and the steady influence of the state government. The hotel is an

upscale class, full-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Tigard

The hotel benefits from its strategic positioning in the heart of "Silicon Forest", a high-technology industry cluster in Oregon. The hotel is situated in the heart of nearly 8.6 million square feet of office within three miles and is proximate to downtown Portland. The hotel is an upscale class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

DoubleTree Vancouver

The hotel is proximate to Portland International Airport as well as the various corporate and leisure demand generators of Vancouver, Washington and Portland, Oregon, which includes over 3.3 million square feet of office space and a 450 bed medical facility within three miles. The hotel is an upscale class, limited-service hotel that is currently undergoing renovations to upgrade bathroom facilities and fixtures in all rooms and to update common areas.

Homewood Suites Plano

The hotel is conveniently located off of Preston Road, in an affluent suburb of Dallas, with more than 60 million square feet of office in the Far North Dallas submarket. Management believes this hotel will benefit from its proximity to a growing market within the United States. The hotel is a midscale class, select-service hotel that was most recently renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Homewood Suites Addison

Located along the highly trafficked Belt Line Road in Dallas' "Platinum Office Corridor", the hotel benefits from the dense surrounding concentration of office, restaurant, and entertainment venues. Within a three mile radius of the hotel is approximately 31 million square feet of office and over 13 million square feet of retail. The hotel is an upper midscale class, select-service hotel that was most recently renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Homewood Suites Las Colinas

The hotel is centrally located within Las Colinas' urban center, providing access to more than 2,000 companies (including five fortune 500 headquarters) within the 12,000 acre master-planned submarket as well as one of the nation's busiest airports, DFW International Airport. The hotel is a midscale class, select-service hotel that was most recently renovated in 2018 to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Marriott St. Petersburg

The hotel is situated less than a mile from Raymond James Ltd., one of the larger employers in the greater Tampa Bay MSA as well as a variety of corporate and leisure demand generators including Tampa International Airport and the world class beaches of Clearwater. Management of the REIT believes this hotel presents a variety of value add opportunities related to institutionalizing management and completion of several capital improvement projects that will drive rates and improve the properties RevPAR penetration and further enhance operating margins due to the properties lean and efficient layout. The hotel is an upper upscale class, full-service hotel that was renovated in 2010.

Holiday Inn Express Nashville

The hotel is located within walking distance of several of Nashville's numerous tourist destinations and demand generators, including the Country Music Hall of Fame & Museum, Bridgestone Arena and Music City

Center. In addition, starting in 2019 Amazon will be opening a logistics hub adjacent to the hotel that is expected to create an estimated 5,000 new jobs in the city of Nashville. The hotel is currently undergoing a rehabilitation that management of the REIT believes will help to fully realize a materially improved competitive position that leverages its central location and strong in-place cash-flow. Management believes that this rehabilitation will make the hotel an attractive destination for visitors, residents, and businesses driven by the city's distinct culture, tourist attractions, highly desirable tax incentives, and employment opportunities. The hotel is an upper midscale class, select-service hotel that is currently undergoing renovations to upgrade décor, flooring, furniture, bathrooms and fixtures in all rooms and for general improvements to common areas.

Overview of Hilton Hotels

Hilton Hotels is an established and leading family of hotel brands in the U.S. lodging industry with over 5,500 hotels across 15 brands in 109 countries encompassing approximately 82 million loyalty customers. Hilton's brands are widely recognized and trusted by consumers across the globe. Hilton has strict franchisee requirements to ensure high quality, consistency and best-in-class service across its portfolio. Long-term franchise agreements allow owners and operators to leverage Hilton's advertising and marketing programs, reservation systems and the guest loyalty programs ensuring the ability to maximize operational and financial performance. Hotel customers trust that each hotel will provide the same first-rate experience, staff will be polite and well trained and the product offering will be consistent. Hilton has meticulously curated and consistently reviews and researches each of its brands to maximize the experience of existing customers and attract new customers looking for a dependable experience. As a result of these strong customer relationships, Hilton brands out penetrate their competitive hotel peers sets across the globe with a 14% global RevPAR premium compared to competitors.

Hilton Honors Guest Loyalty Program

Hilton Hotels maintains a powerful guest loyalty program under the brand name Hilton Honors. The Hilton Honors guest loyalty program generates significant repeat business and rewards guests with loyalty points for each night's stay at any of Hilton's 5,500+ hotels worldwide. Members can redeem these loyalty points with Hilton Hotels or with nearly 130 other corporate partners including airlines, car rental companies and credit card providers. Hilton Honors members represented approximately 60% of Hilton's system-wide occupancy and contributed over $40 billion of hotel-level revenues to Hilton franchised hotels in 2018.

Hilton Brands

Hilton Garden Inn

Hilton Garden Inn is the "laid-back sophisticated" brand offering heartfelt service and award winning amenities, by Hilton. The brand currently enjoys 805 hotels in 41 countries.

DoubleTree

DoubleTree by Hilton prides itself on caring about the little details that have a big impact, from welcoming guests with its signature, warm DoubleTree Cookie to serving the communities around them.

DoubleTree by Hilton continues to rapidly expand, with a footprint in enticing gateway cities — from New York City and Madrid to Boston and Turin. These properties offer unique, contemporary accommodations and full-service, upscale facilities, which includes restaurants and lounges, room service, health clubs, and meeting and banquet space. DoubleTree by Hilton is a fast growing global portfolio of 543 upscale hotels with more than 127,000 rooms and 43 countries.

Homewood Suites

Homewood Suites by Hilton offers a unique approach to longer stays allowing guests to stay in their routine while traveling for business or leisure. Every room is a spacious studio, one, and two bedroom suites featuring a full kitchen with a full-size refrigerator, microwave, and stove top, so guests can cook a meal without leaving their suite. A free, full hot breakfast is served daily, along with free drinks (for those of legal drinking age),

and bites Monday through Thursday. Additional amenities include free Wi-Fi, fitness center, business center, sport courts, swimming pools, and complimentary grocery shopping service – everything guests need while traveling, whether they stay a day, a month, or longer. The brand has 474 hotels in three countries and territories.

Overview of Marriott Brands

Marriott is a leading global lodging company with more than 6,500 properties in 127 countries and territories. In 2016, Marriott acquired Starwood Hotels & Resorts, making them the largest global lodging company in the world.

Marriott Guest Loyalty Program

Marriott maintains three guest loyalty programs under the names Marriott Rewards, The Ritz-Carlton Rewards and SPG. The three guest loyalty programs share a single, unified program with one set of benefits so that travelers have the ability to earn and redeem rewards across different hotel brands. Collectively, the guest loyalty programs cover 29 distinct hotel brands.

Marriott Brands

Marriott

Marriott provides sophisticated spaces and experiences. This flagship brand currently features over 567 open properties with 202,166 rooms worldwide. Marriott intends to open an additional 160 hotels representing approximately 46,088 anticipated new rooms.

Overview of InterContinental Hotels Group

InterContinental Hotels Group is a leading multinational hospitality company. Its diverse portfolio includes 13 differentiated brands. As one of the largest hospitality companies in the world, InterContinental Hotels Group has over 5,500 hotels with over 825,000 rooms. InterContinental Hotels Group intends to grow its portfolio, with plans to open over 1,800 additional hotels.

InterContinental Hotels Group Guest Loyalty Program

InterContinental Hotels Group maintains a guest loyalty program under the name IHG Rewards Club. The IHG Rewards Club has more than 100 million members enrolled worldwide and is an effective tool for driving customers to InterContinental Hotels Group brands and generating brand loyalty. Members are seven times more likely to book through low cost direct booking channels and in 2017 provided more than 21% more revenue per stay than non-members.

InterContinental Hotels Group Brands

Holiday Inn Express

Holiday Inn Express features simple and engaging amenities. The brand currently offers approximately 2,685 hotels, representing over 274,000 rooms. It is anticipated that InterContinental Hotels will open and additional 786 hotels under the Holiday Inn Express brand.

RENOVATION STATUS OF THE INITIAL PORTFOLIO

The following is a discussion of the renovations on the Initial Portfolio that have been performed, are currently under way or are scheduled to begin in the near term:

Hilton Garden Inn Dallas Market Center

The HGI Property was acquired by a subsidiary of NREO in December 2014. The plan upon acquisition was to do an extensive renovation on the property, which began in July 2015. NREO spent $5.6 million or $23,333 per room, completing the renovations in December 2015. During the renovation, the décor was upgraded, flooring, furniture and bathroom fixtures (other than guestroom showers) were replaced in all rooms to conform to the then required brand standards and general improvements were made to common areas. No major renovation is anticipated on the HGI Property until the next required property improvement plan ("**PIP**"), which is estimated to be in 3 – 5 years. The estimated cost will be $9,600 per room or $2.3 million. The year following completion of the renovation, RevPAR and occupancy each increased 14.9%, which exceeded underwritten projections.

DoubleTree Portfolio

The DoubleTree Portfolio was acquired by a subsidiary of NREO in May 2018 and included five DoubleTree properties located in the Pacific Northwest of the United States. The plan upon acquisition was to do an extensive renovation on each property, which began in October 2018. The REIT anticipates spending an additional $8.6 million or $16,667 per room to complete the renovation, which will be funded by the mezzanine debt secured at the acquisition and cash flow from operations. As of February 28, 2019, approximately $2.3 million has been funded under the mezzanine debt reserved for approved PIP expenses and approximately $3.4 million remains available to fund ongoing renovations at the DT Portfolio. It is estimated the renovations will be completed in May 2019. During the renovation the furniture and bathroom fixtures are being replaced in all rooms and a significant portion of the bathtubs are being converted to showers to conform to the currently required brand standards, changes in guest preferences. In addition general improvements are being made to common areas. Following completion of the current renovation, no major renovations are anticipated on the DoubleTree Portfolio until the next required PIP, which is estimated to be in 6 - 8 years. The estimated cost will be $10,000 – 15,000 per room or $7.7 million.

Homewood Suites Portfolio

The Homewood Suites Portfolio was acquired by HCBH 11611 Ferguson, LLC in May 2017. The plan upon acquisition was to do an extensive renovation on the Portfolio, which began in June 2017 and was completed in May 2018. The renovation cost $12.2 million or $34,542 per room. During the comprehensive renovation, the décor was upgraded, flooring, furniture and bathroom fixtures were replaced in all rooms to conform to the then required brand standards and changing consumer tastes, and general improvements were made to common areas. Following completion of the renovation, no major renovation is anticipated on the Homewood Suites Portfolio until the next required PIP, which is estimated to be in approximately 6 years. The estimated cost will be $10,000 - $15,000 per room or $5.3 million. In the period following completion of the renovation, RevPAR and occupancy have been trending upward and the properties are regaining a competitive position in their respective sub-markets.

Marriott St. Petersburg

The Marriott St. Petersburg was acquired by Meritage Residential Partners LLC in September 2018. The prior owner completed an extensive renovation in 2010 to bring the property into compliance with the then current brand standards. The plan upon acquisition was to do an extensive renovation on the portfolio, which is estimated to begin in 2019 and be completed in 2020. Capital expenditures of $7.0 million or $33,400 per room have been budgeted for the renovation, which will be funded by cash flow from operations and capital previously contributed by NREO. During the renovation, the décor will be upgraded, flooring, furniture and bathroom fixtures will be replaced in all rooms to conform to the currently required brand standards and general improvements will be made to common areas. Case goods are expected to be replaced in 2022 and should be the only major renovation is anticipated on the St. Petersburg Property until the next required PIP, which is estimated to be in 6 - 8 years. The estimated cost will be $6,000 - $10,000 per room or $1.3 million - $2.1 million.

Holiday Inn Express Nashville

The Holiday Inn Express Nashville was indirectly acquired by NHT Holdco, LLC in January 2019. At the time of acquisition, the prior owner was undertaking a PIP program in furtherance of a partially completed process commenced in the prior year to bring the hotel décor, furniture, fixtures and common areas up to the current brand standards. After acquisition, the prior owner is completing the PIP renovations as agreed to in the purchase

agreement. At closing of the acquisition, the prior owner paid $3 million to fund the remaining renovation costs and capped NHT Holdco, LLC's exposure to overruns per the purchase agreement. The renovations are expected to be completed in 2019. Subsequent to completion of the renovation, no major renovation is anticipated on the Nashville Property until the next required PIP, which is estimated to be in 8 years. The estimated cost will be $10,000 - $15,000 per room or $4.3 million.

Future Anticipated Renovations

Pursuant to the franchise agreements between the REIT and various hotel brands under which the REIT operates its properties, the REIT is required to undertake periodic PIP programs to conform the properties to the then current brand standards mandated by each brand. PIPs are not generally prescribed on a set timeline but rather are required when a property's current décor, furniture and fixture package falls materially outside of the current brand standards. The REIT estimates that PIPs will be required generally 6 - 8 years after completion of the prior PIP. Because each brand develops its own standards that continuously change, it is impossible to accurately estimate the cost of a future PIP. However, the REIT believes that for the brands the REIT operates, costs will be approximately $15,000 per room at the high end. Once a PIP is required, the REIT will generally have approximately 24 months to complete the required upgrades. Furthermore, because of the extensive renovations done recently, in progress, or to be completed in the next 12 months, the anticipated time frame for future PIPs are 4 years at the earliest and will be required to be completed in 6 years, based on the REIT's best estimate with currently available information.

The REIT employs several mechanisms to fund the required periodic PIPs. First, 4% of gross revenue is generally reserved annually for each property. Cash reserved for future PIP expenditures is reflected on the statement of financial position as restricted cash or as a receivable. In addition to funding reserves for future PIP expenditures, the REIT anticipates having additional free cash flow after payment of the dividend that may be used to fund PIPs. Additionally, depending on the state of debt markets at the time the PIP is required, it is possible the REIT may refinance certain mortgages and take out additional cash to fund the PIP.

In addition to periodically required PIPs, each property requires capital expenditures for ongoing repairs and maintenance. These costs are usually expensed as incurred, unless the repair is of a nature such that it is extending the life of a component of the property, in which case it is capitalized. Ongoing repair and maintenance expenses are budgeted annually and capital is reserved throughout the year to fund these expenditures.

ASSESSMENT AND VALUATION OF THE INITIAL PORTFOLIO

Independent Appraisal

The REIT retained JLL Valuation & Advisory Services, LLC (the "**Appraiser**") to provide an independent opinion as to the aggregate market value of the Initial Portfolio on a portfolio basis (the "**Appraisal**"). The Appraisal was prepared in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice, the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, Title XI of the *Financial Institution Reform, Recovery and Enforcement Act of 1989*, revised June 7, 1994, and applicable state appraisal regulations. The Appraisal defines "market value", in accordance with Code of Federal Regulations, Title 12, Chapter I, Part 34.42g, as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus". Implicit in the definition of market value is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (i) buyer and seller are typically motivated; (ii) both parties are well informed or well advised, and acting in what they consider their best interests; (iii) a reasonable time is allowed for exposure of each individual Initial Portfolio in the open market; (iv) payment is made in terms of cash in U.S. dollars or on terms of financial arrangements comparable thereto; and (v) the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Based on the Appraisal prepared by the Appraiser, prospective market value at stabilization of the Initial Portfolio, which takes into account the completed and ongoing renovation projects, is estimated to be approximately $383.7 million. The value conclusions made by the Appraiser reflect all known information about the Initial Portfolio, market conditions and available data. The estimated market value of the Initial Portfolio was determined

by the Appraiser using both the (i) income capitalization approach, which utilized the direct capitalization method, as investors in similar types of property typically rely solely on this method; and (ii) sales comparison approach, which utilized the sale price per key analyses, and which was used primarily as support for the income capitalization approach, as significant adjustments are required because of the differences in the various elements of comparison. The income capitalization approach was given the greatest weight in the conclusion of value in the Appraisal, as the value indication from the income capitalization approach is supported by market data regarding income, expenses and required rates of return and a typical investor would place greatest reliance on the income capitalization approach.

The Appraiser analyzed the Initial Portfolio and market data gathered through the use of appropriate, relevant and accepted market-derived methods and procedures. Further, the Appraiser employed the appropriate and relevant approaches to value, and correlated and reconciled the results into an estimate of market value for each of the Initial Portfolio. The Appraiser conducted an economic analysis, taking into account the area, surrounding area, and hospitality market, as well as a comparable property analysis, taking into account the land description, improvements, real estate taxes, the highest and best use for the property and the land valuation for each of the Initial Portfolio.

In determining the appropriate market value of the Initial Portfolio, under the sales comparison approach, the Appraiser gave appropriate consideration to adjustment factors, an analysis and adjustment of comparable sales and the effective gross income multipliers and operating expense ratios for comparable sales. Under the income capitalization approach, the Appraiser gave appropriate consideration to occupancy and ADRs, a market RevPAR analysis, a gross income estimate, operating expenses, net operating income and the appropriate capitalization rate.

In appraising the Initial Portfolio, the Appraiser assumed that title to the Initial Portfolio is good and marketable and free and clear of all liens and encumbrances and the improvements on the Initial Portfolio were structurally sound. The Appraiser did not take into account soil, engineering, structural or environmental matters. The Appraiser visited each of the Initial Portfolio, which were considered to be in good or good to fair condition.

Going forward, the REIT intends to obtain periodic appraisals of its real estate assets on an as-needed basis, at the discretion of the Independent Trustees. Specifically, the REIT anticipates that it will obtain an independent appraisal upon (each in respect of the applicable property): (i) the acquisition of any new property, (ii) a material adverse change to any property within the REIT's then existing portfolio, or (iii) the refinancing or leveraging of any property within the REIT's then existing portfolio. The summary findings of all future appraisals will be disclosed on the REIT's website or otherwise made available electronically on SEDAR at www.sedar.com.

Caution should be exercised in the evaluation and use of appraisal results. An appraisal is an estimate of market value. It is not a precise measure of value but is based on a subjective comparison of related activity taking place in the real estate market. The Appraisal is based on various assumptions of future expectations and while the Appraiser's internal forecasts of net operating income for the Initial Portfolio is considered to be reasonable at the current time, some of the assumptions may not materialize or may differ materially from actual experience in the future.

A publicly traded real estate investment trust will not necessarily trade at values determined solely by reference to the underlying value of its real estate assets. Accordingly, the Units may trade at a premium or a discount to values implied by the Appraisal. The Appraisal will be filed with the securities regulatory authorities in each of the provinces of Canada (other than Québec), and investors are advised to read the Appraisal for a full description of applicable assumptions and conditions.

Environmental Site Assessments

Each of the 11 properties in the Initial Portfolio has been the subject of a Phase I environmental site assessment report ("**Phase I ESA Report**") conducted by independent and experienced environmental consultants from September 2014 to October 2018. The Phase I ESA Reports were prepared in general accordance with the scope and limitations of ASTM Designation E 1527-2013, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process". The purpose of the Phase I ESA Reports was to identify any existing or potential recognized environmental conditions ("**RECs**") in connection with the Initial Portfolio, which means the presence or likely presence of any hazardous substances or petroleum products in, on, or at any property

within the Initial Portfolio (i) due to any release to the environment, (ii) under conditions indicative of a release to the environment, or (iii) under conditions that pose a material threat of a future release to the environment. The Phase I ESA Reports also identified any controlled recognized environmental conditions ("**CRECs**"), historical recognized environmental conditions ("**HRECs**") and non-ASTM environmental issues in connection with the Initial Portfolio.

Based on the Phase I ESA Reports prepared in respect of the Initial Portfolio, the independent environmental consultants did not identify any RECs, CRECs or HRECs in connection with any of the Initial Portfolio as of the date of the respective Phase I ESA Reports. In the case of the Phase I ESA Report for DoubleTree Olympia, it was recommended that the ongoing subsurface monitoring, indoor air monitoring, sub-slab soil vapor monitoring and certain other remediation efforts be continued on the property. The site of the DoubleTree Olympia was formerly used for an oil and fuel distribution operation. As a result, the property is currently enrolled in a voluntary cleanup program. In connection with the voluntary program, monitoring and remediation efforts are ongoing. Specifically, in April 2018 an independent environmental consultant completed a Vapor Intrusion Investigation Report and noted, among other things, that the human health risk assessment based on November 2017 indoor air naphthalene data demonstrate that there is no unacceptable short- or long-term health risk to hotel workers or guests based on a commercial exposure scenario. A separate Groundwater Monitoring Report completed in March 7, 2018 concluded, among other things, that risks to human health and the environment associated with residual soil and groundwater impacts at the property are not considered to be unacceptable based on the existing commercial land use exposure scenario at the property.

Any other non-ASTM environmental issues noted in the Phase I ESA Reports were issues that can be managed under an operations and maintenance program and did not warrant further environmental assessment investigation as of the date of the respective Phase I ESA Reports.

It is the REIT's operating policy to obtain a Phase I ESA Report conducted by an independent and experienced environmental consultant prior to acquiring a property. If a Phase I ESA Report recommends a Phase II environmental assessment be conducted, the REIT will ensure that a Phase II environmental assessment is conducted by an independent and experienced environmental consultant. Management is not aware of any non-compliance with environmental laws at any of the Initial Portfolio that management believes would have a material adverse effect on the REIT. Management is not aware of any pending or threatened investigations or actions by environmental regulatory authorities in connection with any of the Initial Portfolio that would materially adversely affect the REIT or the values of the Initial Portfolio, taken as a whole, as determined by the Appraiser.

Property Condition Assessments

Property condition assessment reports ("**PCA Reports**") were prepared for each of the 11 properties comprising the Initial Portfolio for the purpose of assessing and documenting the general condition of the buildings, site and other improvements at each of the Initial Portfolio. The PCA Reports were also prepared for the purpose of identifying those areas that will require remedial repair at each of the Initial Portfolio. The PCA Reports were prepared in general accordance with ASTM E2018-08, "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process".

The site observations for the PCA Reports were conducted between September 2014 to October 2018. Each of the PCA Reports assessed repairs required to be completed immediately, deferred routine maintenance repairs and capital replacement reserves expenditures to be performed during the subsequent 12 years in order to maintain appropriate building conditions. The cost estimates in the PCA Reports were for components of systems exhibiting significant deferred maintenance and existing deficiencies requiring major repairs or replacement. Repairs or improvements that could be classified as (i) cosmetic; (ii) decorative; (iii) part or parcel of a buildings renovation program or to reposition the asset in the marketplace; (iv) routine or normal preventative maintenance; or (v) that are the responsibility of the tenants were not included.

The PCA Reports provide that each of the properties comprising the Initial Portfolio was observed to be in fair to good overall condition, except for the PCA Report for Homewood Suites Las Colinas, which identified certain poor conditions requiring repairs on foundation & framing and plumbing. At the time of their preparation, the PCA Reports identified certain capital expenditures necessary to maintain the properties in good physical condition, which have since been addressed. Over the past 12 months approximately $12 million in renovations have

been completed at the 11 properties comprising the Initial Portfolio. Going forward, the REIT expects that furniture, fixtures and equipment reserves will be sufficient to satisfy any additional capital expenditures required.

It is the REIT's operating policy to obtain a PCA conducted by an independent and experienced environmental consultant prior to acquiring a property.

DEBT STRATEGY AND INDEBTEDNESS

The REIT plans to use leverage in the portfolio to help increase returns and yields to Unitholders. The REIT will seek to maintain a debt profile consisting of various sources of low cost capital, including debt from regional and national banks, insurance companies, and non-bank lenders. Each of the properties in the Initial Portfolio is encumbered. Immediately following Closing, management anticipates the REIT's Debt will consist of (i) $184.2 million of secured mortgage loans, implying a Mortgage Debt to Gross Real Estate Value Ratio of approximately 50% and (ii) $73.3 million of mezzanine debt, implying a total Debt to Gross Real Estate Value of approximately 70%. Longer-term, the REIT intends to target and maintain a Mortgage Debt to Gross Real Estate Value Ratio of between 40% to 50% in order to maximize returns while minimizing leverage risk. The ratio of Debt to the aggregate appraised value of the Initial Portfolio upon stabilization (being $383.7 million) is approximately 67%.

Lender	Interest Rate/Spread	Amortization Period (Years)	Maturity Date[3]	Number of Encumbered Properties	Principal Amount Outstanding as of February 28, 2019 ($)[9]
Societe Generale	5.12%	30	July 1, 2026	1[4]	69,842,343
Acore Capital Mortgage, LP[7]	3.45%[1]	30	March 1, 2022	5[5]	88,000,000
ACRC Lender LLC[8]	3.45%[2]	30	May 9, 2021	5[6]	64,653,944
Acore Capital Mortgage, LP	6.25%[2]	N/A	January 8, 2020	5[5]	35,000,000
Total Mortgage and Mezzanine Loans				**11**	**$257,496,287**

Notes:

(1) Variable based on one-month LIBOR plus the noted spread.

(2) Variable based on one-month LIBOR plus the noted spread. LIBOR floor of 2.25%.

(3) Does not include extension options which apply for a majority of the mortgage loans.

(4) Secured by Holiday Inn Express Nashville.

(5) Secured by Marriott St. Petersburg, Hilton Garden Inn Dallas Market Center, Homewood Suites Plano, Homewood Suites Addison and Homewood Suites Las Colinas.

(6) Secured by DoubleTree Beaverton, DoubleTree Bend, DoubleTree Olympia, DoubleTree Tigard and DoubleTree Vancouver.

(7) The loan with Acore Capital Mortgage is separated into two different loans: 1) $59,400,000 mortgage (Note A) and 2) $28,600,000 mezzanine (Note B).

(8) The loan with ARC Lender LLC is separated into three different loans: 1) $55,000,000 mortgage, 2) $7,365,000 mezzanine debt (Note A) and 3) $5,700,000 mezzanine debt (Note B) that is to be used for approved PIP expenses. As of February 28, 2019, $2,288,944 has been funded under the facility reserved for approved PIP expenses and $3,411,056 remains available to fund ongoing renovations at the DT Portfolio.

(9) The REIT has recorded gross deferred financings costs of $5,371,450 that is not reflected in this balance. If the deferred financing costs were netted against the principal balances of mortgages and mezzanine debt, as required by IFRS, the net balance would be $252,124,837.

As of the date of this prospectus: (i) the mortgage in favour of Societe Generale is guaranteed by the OP; (ii) the mortgage in favour of Acore Capital Mortgage, LP is guaranteed by NexPoint Real Estate Advisors, L.P. and NHT Holdco, LLC; (iii) the mortgage in favour of ACRC Lender LLC is guaranteed by NREO; and (iv) the preferred equity in favour of Acore Capital Mortgage, LP in the amount of is guaranteed by The Dugaboy Investment Trust. The mortgage loans are non-recourse debt and as a result, the corresponding guarantees are effective only upon the occurrence of certain non-recourse carve-outs and the preferred equity is guaranteed on a full-recourse basis. It is anticipated that following Listing, the REIT will replace NHT Holdco, LLC as the guarantor of the mortgage in favour of Acore Capital Mortgage, LP.

Following Closing, the REIT's mortgage debt will have a weighted average maturity of 3.60 years and a weighted average interest rate of 6.10% based on a one-month LIBOR rate of 2.49% (as of February 28, 2019).

THE CONTRIBUTION OF THE INITIAL PORTFOLIO

Overview

On or prior to Closing, NHT Holdco, LLC will contribute NHT Intermediary, LLC ("**US Holdco**") to the REIT. US Holdco, through its subsidiaries has aggregated a portfolio of 11 full-service and select-service hotel properties located across five states and six major MSA markets located in the United States. On January 8, 2019, through a series of transactions, the hotels were indirectly contributed by four different groups of parties (the "**Contributors**" and each a "**Contributor**") to the OP (the "**Contributions**" and each a "**Contribution**"). The four groups of Contributors were: (i) the shareholders of NexPoint Multifamily Capital Trust, Inc. ("**NMCT Shareholders**"), a Maryland corporation majority-owned by affiliates of the Advisor ("**NMCT**"); (ii) HCBH 11611 Ferguson, LLC ("**HCBH**"), a Delaware limited liability company majority-owned by affiliates of the Advisor; (iii) Meritage Residential Partners LLC ("**Meritage**"), a Delaware limited liability company majority-owned by affiliates of the Advisor; and (iv) NexPoint Real Estate Opportunities, LLC ("**NREO**"), a Delaware limited liability company, along with minority investors in the properties being contributed by NREO. The contributed assets and assumed liabilities are currently held by the OP through its subsidiaries. Each hotel property will be leased to the TRS Entities under a long-term lease arrangement in exchange for the payment of the agreed upon rent amount. In order to fund the Contribution, NHI and the OP, have assumed or entered into multiple mortgages collateralized by the properties. At Closing, the REIT will have a consolidated gross value of approximately $409.9 million, assuming the Offering is fully subscribed, with an equity value of approximately $144.4 million and Debt and other liabilities of approximately $263.5 million.

On January 8, 2019, NMCT Shareholders, indirectly through a series of transactions, contributed 100% of the shares of NMCT to the OP. NMCT indirectly acquired the Nashville Property on January 8, 2019.

On January 8, 2019, HCBH contributed 100% of its LLC interests in HCRE Plano, LLC ("**HCRE Plano**"), a Delaware limited liability company, 100% of its LLC interests in HCRE Addison, LLC ("**HCRE Addison**"), a Delaware limited liability company, and 100% of its LLC interests in HCRE Las Colinas, LLC ("**HCRE Las Colinas**"), a Delaware limited liability company, to NHT DFW Portfolio, LLC ("**NHTDFW**"). HCBH then, indirectly through a series of transactions, contributed 100% of its LLC interests in NHTDFW to the OP. HCBH has indirectly owned the HWS Portfolio since May 2017.

On January 8, 2019, Meritage contributed 100% of its LLC interests in NHT SP, LLC ("**NHT SP**"), a Delaware limited liability company, to NHT SP Parent, LLC ("**NHT SP Parent**"). Meritage then, indirectly through a series of transactions, contributed 100% of its LLC interests in NHT SP Parent to the OP. Meritage has indirectly owned the St. Pete Property since September 2018.

As a result of the above transactions, NMCT Shareholders, HCBH and Meritage wholly-own NHT Holdco, LLC by virtue of holding 100% of its issued and outstanding units.

On January 8, 2019, NREO and minority members contributed 100% of the LLC interests in NREO NW Hospitality, LLC ("**NREO NW**"), a Delaware limited liability company, and NHT 2325 Stemmons, LLC, a Delaware limited liability company, to the OP in exchange for Class B units of the OP (the "**Class B OP Units**"). NREO NW owns (i) 100% of the LLC interests in NHT Beaverton, LLC ("**NHT Beaverton**"), a Delaware limited liability company, which owns DT Beaverton, (ii) 100% of the LLC interests in NHT Bend, LLC ("**NHT Bend**"), a Delaware limited liability company, which owns DT Bend, (iii) 100% of the LLC interests in NHT Olympia, LLC ("**NHT Olympia**"), a Delaware limited liability company, which owns DT Olympia, (iv) 100% of the LLC interests in NHT Tigard, LLC ("**NHT Tigard**"), a Delaware limited liability company, which owns DT Tigard, and (v) 100% of the LLC interests in NHT Vancouver, LLC ("**NHT Vancouver**"), a Delaware limited liability company, which owns DT Vancouver. NREO and minority members have indirectly owned the DT Portfolio since May 2018. NREO and minority members have indirectly owned the HGI Property since December 2014.

For an illustration of the corporate structure of the REIT upon completion of the above steps, see "Legal Structure".

RETAINED INTEREST

Immediately following Closing, principals and affiliates of the Advisor will own or indirectly or directly exercise control or direction over approximately 71.1% of the REIT and 38.2% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units).

Investor Rights Agreement

The following is a summary of certain provisions of the Investor Rights Agreement, which is a material contract for the REIT and is qualified in its entirety by reference to all of the provisions of such agreement. The Investor Rights Agreement will be available following Closing on SEDAR at www.sedar.com.

On Closing, the REIT and the NexPoint Holders will enter into the Investor Rights Agreement which will govern the rights of the NexPoint Holders as Unitholders. The Investor Rights Agreement will contain the following provisions, a summary of which is not intended to be complete.

Nomination Rights

Pursuant to the Investor Rights Agreement, the NexPoint Holders will be granted the right to nominate two Trustees (such nominees will be subject to election together with the remaining Trustees at annual meetings of Unitholders) subject to the NexPoint Holders owning, in the aggregate, 20% or more of the then-outstanding Units, such number being reduced to one nominee if the NexPoint Holders own, in the aggregate, less than 20% but 10% or more of the then-outstanding Units (in each case, determined as if all Class B OP Units are redeemed for Units). Upon the NexPoint Holders' aggregate ownership falling below 10%, the NexPoint Holders will not have any Trustee nomination rights. For so long as the NexPoint Holders have nomination rights under the Investor Rights Agreement, the board of Trustees of the REIT (the "**Board**") will be restricted from nominating more than three Trustees. For clarity, this restriction will not affect the ability of a Unitholder to nominate Trustees in accordance with the terms of the Declaration of Trust or applicable law. Notwithstanding the foregoing, where the Board is comprised of four or less Trustees, the NexPoint Holders will be entitled to nominate a maximum of one Trustee pursuant to the Investor Rights Agreement. On Closing, the Board will be comprised of three Trustees and it is expected that NexPoint Holders will own, in the aggregate, 38.2% of the outstanding Units (determined as if all Class B OP Units are redeemed for Units). Therefore the NexPoint Holders will be entitled to nominate one Trustee so long as the total number of Trustees equals three and two Trustees if the total number of Trustees increases to five or more. In no event will NexPoint Holders be entitled to nominate Trustees where a majority of the Trustees are not deemed to be independent.

Consent Rights

Pursuant to the Investor Rights Agreement, the following transactions shall require the consent of the NexPoint Holders (the "**Consent Rights**"), provided that the NexPoint Holders own, in the aggregate, 33% or more of the Units (determined as if all Class B OP Units are redeemed for Units):

- the REIT and/or any of its subsidiaries entering into a merger, consolidation or business combination, not in the ordinary course of business;
- the REIT and/or any of its subsidiaries selling, assigning, conveying or otherwise disposing of all or substantially all of its assets;
- the REIT and/or any of its subsidiaries adopting any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization or recapitalization or commencement of any case, proceeding or action seeking relief under any existing or future laws relating to bankruptcy, insolvency, conservatorship or relief of debtors or the REIT and/or any of its subsidiaries;
- the REIT and/or any of its subsidiaries adding, changing or removing any restriction on the business or businesses that the REIT and/or any of its subsidiaries may carry on;

- the REIT and/or any of its subsidiaries effecting any subdivision, re-division, consolidation, exchange, reclassification, reorganization, recapitalization, split, combination or similar change in any units or other securities of the REIT and/or any of its subsidiaries;
- changing the size of the Board; and
- the REIT and/or any of its subsidiaries agreeing or committing to any of the preceding actions.

Registration Rights

The Investor Rights Agreement will provide the NexPoint Holders with the right (the "**Piggy-Back Registration Right**"), among others, to require the REIT to include Units (including Units issuable upon the redemption of Class B OP Units) held by NexPoint Holders in any future offering undertaken by the REIT by way of prospectus that it may file with applicable Canadian securities regulatory authorities (a "**Piggy-Back Distribution**"). The REIT will be required to use reasonable commercial efforts to cause to be included in the Piggy-Back Distribution all of the Units the NexPoint Holders request to be sold, provided that if the Piggy-Back Distribution involves an underwriting and the lead underwriter determines that the total number of Units to be included in such Piggy-Back Distribution should be limited for certain prescribed reasons, the Units to be included in the Piggy-Back Distribution will be first allocated to the REIT.

In addition, the Investor Rights Agreement will provide the NexPoint Holders with the right (the "**Demand Registration Right**") to require the REIT to use reasonable commercial efforts to file one or more prospectuses with applicable Canadian securities regulatory authorities, qualifying Units held (or issuable upon the redemption of Class B OP Units) by the NexPoint Holders for distribution (a "**Demand Distribution**"), provided that such Demand Registration Right may only be exercised by one designee on behalf the NexPoint Holders. The designee for the NexPoint Holders will be entitled to request not more than two Demand Distributions per calendar year and each request for a Demand Distribution must relate to such number of Units that would reasonably be expected to result in gross proceeds of at least $15 million. The REIT may also distribute Units in connection with a Demand Distribution provided that if the Demand Distribution involves an underwriting and the lead underwriter determines that the total number of Units to be included in such Demand Distribution should be limited for certain prescribed reasons, the Units to be included in the Demand Distribution will be first allocated to the NexPoint Holders.

Each of the Piggy-Back Registration Right and the Demand Registration Right will be exercisable at any following Closing, provided that the NexPoint Holder exercising such rights, together with its affiliates and joint actors, collectively own, in the aggregate, at least 10% of the Units (determined as if all Class B OP Units are redeemed for Units) at the time of exercise. The Piggy-Back Registration Right and the Demand Registration Right will be subject to various conditions and limitations, and the REIT will be entitled to defer any Demand Distribution in certain circumstances for a period not exceeding 90 days. The expenses in respect of a Piggy-Back Distribution, subject to certain exceptions, will be borne by the REIT, except that any underwriting fee on the sale of Units by the NexPoint Holders and the fees of the NexPoint Holders' external legal counsel will be borne by the NexPoint Holders. The expenses in respect of a Demand Distribution, subject to certain exceptions, will be borne by the REIT and the NexPoint Holders on a proportionate basis according to the number of Units distributed by each.

Pursuant to the Investor Rights Agreement, the REIT will indemnify the NexPoint Holders for any misrepresentation in a prospectus under which the NexPoint Holders' Units are distributed (other than in respect of any prospectus disclosure provided by the NexPoint Holders, in respect of the NexPoint Holders). The NexPoint Holders will indemnify the REIT for any prospectus disclosure provided by the NexPoint Holders in respect of the NexPoint Holders.

The REIT has not and will not, pursuant to the Investor Rights Agreement or otherwise, have any obligation to register, nor will it register, Units under the U.S. Securities Act.

Pre-Emptive Rights

In the event the REIT or any of its subsidiaries decides to issue equity securities of the REIT or securities convertible into or exchangeable or redeemable for equity securities of the REIT or an option or other right to

acquire such securities other than to an affiliate thereof, the Investor Rights Agreement will provide that the NexPoint Holders, for so long as they continue to own, in the aggregate, at least 10% of the outstanding REIT Units (determined as if all Class B OP Units are redeemed for Units), shall have pre-emptive rights to purchase Units, Class B OP Units or such other securities as are being contemplated for issuance by the REIT or one of its subsidiaries to maintain their *pro rata* ownership interest in the REIT. Notice of exercise of such rights is to be provided in advance of the commencement of any offering of securities of the REIT or such other securities as are being contemplated for issuance and otherwise in accordance with the terms and conditions to be set out in the amended and restated limited liability company agreement of the OP (the "**LLC Agreement**").

Pursuant to the Investor Rights Agreement, the pre-emptive rights will not apply to issuances in the following circumstances:

- to participants in a distribution reinvestment plan or similar plan;
- in respect of the exercise or issuance of options, warrants, rights or other securities issued under security based compensation arrangements of the REIT or the OP;
- in respect of the exercise of the Class B OP Unit redemption right for Units;
- to Unitholders in lieu of cash distributions;
- as full or partial consideration for the purchase of real property by the REIT or its subsidiaries;
- in respect of the exercise by a holder of a conversion, exchange or other similar right pursuant to the terms of a security in respect of which the NexPoint Holders were granted the right to exercise their pre-emptive rights or in respect of which the pre-emptive rights did not apply;
- pursuant to a unitholders' rights plan of the REIT;
- to the REIT, the OP or any subsidiary or affiliate; and
- pursuant to the Offering.

Drag-Along Rights

If the REIT enters into a transaction that will involve: (i) the transfer, directly or indirectly, of all or substantially all of its assets to a third party; and (ii) the winding up, dissolution or termination of the REIT, or exchange of Units for securities of a third party issuer or successor issuer, then the Investor Rights Agreement will provide that each of the NexPoint Holders (if at such time, the NexPoint Holders own, in the aggregate, directly or indirectly, 20% or less of the outstanding Units (determined as if all Class B OP Units are redeemed for Units)) will be obligated to, upon the written request of the REIT, exercise their respective redemption right in respect of the Class B OP Units then held by the NexPoint Holders.

Tag-Along Rights

For so long as the NexPoint Holders own, in the aggregate, directly or indirectly, at least 10% of the outstanding Units (determined as if all Class B Units are redeemed for Units) the NexPoint Holders will have tag-along rights that will apply in respect of any sale by the REIT of its interest in the OP.

GOVERNANCE AND MANAGEMENT OF THE REIT

Board of Trustees

The Declaration of Trust will provide that, subject to certain conditions, the Trustees will have absolute and exclusive power, control and authority over the REIT's assets and operations, as if the Trustees were the sole and absolute legal and beneficial owners of the REIT's assets. The governance practices, investment guidelines and

operating policies of the REIT will be overseen by the Board consisting of a minimum of one and a maximum of nine Trustees, a majority of whom will be Canadian residents. The REIT must, at all times, have a majority of Trustees who are independent within the meaning of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("**NI 58-101**"); provided, however, that if at any time a majority of the Trustees are not independent because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Trustees who qualify as "independent" to comply with this requirement.

The Board will initially be comprised of three Trustees, a majority of whom will be independent Canadian residents. The Board will also designate a Lead Trustee from among the independent Canadian resident Trustees to provide leadership for the independent Trustees in certain circumstances if the Chair is not independent. Pursuant to NI 58-101, an Independent Trustee is one who is free from any direct or indirect relationship which could, in the view of the Board, be reasonably expected to interfere with a Trustee's independent judgment. The REIT has determined that Neil Labatte and Graham D. Senst will be independent under these standards. James Dondero will not be independent under these standards. As James Dondero, Chair of the Board, is not determined to be independent, Neil Labatte will initially be appointed to act as Lead Trustee. The Lead Trustee will be responsible for acting as the effective leader of the Board in circumstances where it is inappropriate for the Chair to act in that role as a result of a conflict of interest.

The mandate of the REIT's Board will be one of stewardship and oversight of the REIT and its business. In fulfilling its mandate, the Board will adopt a written charter setting out its responsibility for, among other things, (i) participating in the development of and approving a strategic plan for the REIT; (ii) supervising the activities and managing the investments and affairs of the REIT; (iii) approving major decisions regarding the REIT; (iv) defining the roles and responsibilities of management; (v) reviewing and approving the business and investment objectives to be met by management; (vi) assessing the performance of and overseeing management and the Advisor; (vii) reviewing and approving the REIT's debt strategy; (viii) identifying and managing risk exposure; (ix) ensuring the integrity and adequacy of the REIT's internal controls and management information systems; (x) succession planning; (xi) establishing committees of the Board, where required or prudent, and defining their mandate; (xii) maintaining records and providing reports to Unitholders; (xiii) ensuring effective and adequate communication with Unitholders, other stakeholders and the public; (xiv) determining the amount and timing of distributions to Unitholders; and (xv) acting for, voting on behalf of and representing the REIT as a holder of shares of US Holdco and, indirectly, NHI and the Class A units of the OP ("**Class A OP Units**").

The Board will adopt a written position description for the Chair of the Board, which will set out the Chair's key responsibilities, including, as applicable, duties relating to setting Board meeting agendas, chairing Board and Unitholder meetings, Trustee development and communicating with Unitholders and regulators, as well as a position description for the Lead Trustee, which will set out the Lead Trustee's duties with respect to board leadership, relationship with management, information flow and meetings. The Board will also adopt a written position description for each of the committee chairs which will set out each of the committee chair's key responsibilities, including duties relating to setting committee meeting agendas, chairing committee meetings and working with the respective committee and management to ensure, to the greatest extent possible, the effective functioning of the committee.

The standard of care and duties of the Trustees provided in the Declaration of Trust will be similar to those imposed on directors of a corporation governed by the *Canada Business Corporations Act* (the "**CBCA**"). Accordingly, each Trustee will be required to exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the REIT, in connection therewith, to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Declaration of Trust will provide that each Trustee is entitled to indemnification from the REIT in respect of the exercise of the Trustee's powers and the discharge of the Trustee's duties, provided that the Trustee acted honestly and in good faith with a view to the best interests of the REIT or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where the Trustee had reasonable grounds for believing that his or her conduct was lawful.

Other than Trustees appointed prior to Closing, which Trustees will hold office for a term expiring at the close of the next annual meeting of Unitholders or until a successor is appointed, Trustees will be elected at each

annual meeting of Unitholders to hold office for a term expiring at the close of the next annual meeting, or until a successor is appointed, and will be eligible for re-election. The Board intends to adopt a majority voting policy consistent with TSXV requirements prior to the first uncontested meeting of Unitholders at which trustees are to be elected. Nominees will be nominated by the Compensation, Governance and Nominating Committee, in each case for election by Unitholders as Trustees in accordance with the provisions of the Declaration of Trust and will be included in the proxy-related materials to be sent to Unitholders prior to each annual meeting of Unitholders.

A quorum of the Trustees, being the majority of the Trustees then holding office (provided a majority of the Trustees comprising such quorum are residents of Canada), will be permitted to fill a vacancy in the Board, except a vacancy resulting from an increase in the number of Trustees, from a failure of the Unitholders to elect the required number of Trustees. In the absence of a quorum of Trustees, or if the vacancy has arisen from an increase in the number of Trustees other than in accordance with the provision regarding the appointment of trustees in the Declaration of Trust or from a failure of the Unitholders to elect the required number of Trustees, the Trustees will promptly call a special meeting of the Unitholders to fill the vacancy. If the Trustees fail to call that meeting or if there is no Trustee then in office, any Unitholder will be entitled to call such meeting. Except as otherwise provided in the Declaration of Trust, the Trustees may, between annual meetings of Unitholders, appoint one or more additional Trustees to serve until the next annual meeting of Unitholders, provided that the number of additional Trustees so appointed will not at any time exceed one-third of the number of Trustees who held such office at the conclusion of the immediately preceding annual meeting of Unitholders. Any Trustee may resign upon 30 days' written notice to the REIT, unless such resignation would cause the number of remaining Trustees to be less than a quorum, and may be removed by an ordinary resolution passed by a majority of the votes cast at a meeting of Unitholders.

As described above under "Investor Rights Agreement", the Investor Rights Agreement will grant the NexPoint Holders the exclusive right to nominate Trustees in certain circumstances. On Closing, it is anticipated that James Dondero will serve on the Board pursuant to the NexPoint Holders' nomination right. See "Investor Rights Agreement".

The following table sets forth the name, municipality of residence, positions held with the REIT and principal occupation of the Trustees of the REIT:

Name	Position with the REIT	Principal Occupation
NEIL LABATTE .... Toronto, Ontario, Canada	Lead Trustee and chair of the Compensation, Governance and Nominating Committee	President and CEO Global Dimension Capital, Inc.
JAMES DONDERO .... Dallas, Texas, U.S.A.	Trustee, Chair and Chief Executive Officer	Chief Executive Officer, NexPoint Hospitality Trust
GRAHAM D. SENST .... Toronto, Ontario, Canada	Trustee and chair of the Audit Committee	Trustee, BSR Real Estate Investment Trust

As a group, the Trustees and executive officers of the REIT will beneficially own, control or direct, directly or indirectly, 10,761,064 Units and 202,818 Class B OP Units on Closing, representing approximately 71.1% of the REIT and 38.2% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units).

Biographical Information Regarding the Trustees

Additional biographical information regarding the individuals who will be Trustees of the REIT as of Closing, for the past five years is set out below:

Neil Labatte. Mr. Labatte is the founder of Global Dimension Capital, Inc., a real estate and hotel investment advisory firm. He is currently the President and CEO Global Dimension Capital, Inc. and is the President and Chief Executive Officer of Talon International Development Inc., a real estate development company. Mr. Labatte is also a Director of Skyline Investments Inc., a Canadian company specializing in hospitality real estate

investment in Canada and the United States. Mr. Labatte currently serves on the boards of BSR REIT (where he serves as chair) and Triovest Inc. He was previously a Director of HealthLease Properties REIT, Alpha Peak and Holloway Lodging Corporation, all current or former TSX-listed entities. In addition, Mr. Labatte was a Director of Pomeroy Hotels. Mr. Labatte is also the former President and Chief Executive Officer of the Legacy Hotels REIT, positions he held since June 1999 and March 2003, respectively until September 2007. He also served as a trustee of the Legacy Hotels REIT from April 2003 until September 2007. Mr. Labatte joined Fairmont Hotels & Resorts in 1997 as Vice President, Acquisitions, and from October 2001 to December 31, 2004 served as Senior Vice President, Real Estate and was a member of the organization's Executive Committee. Mr. Labatte possesses over 35 years of experience within the real estate sector. For four years prior to joining Fairmont Hotels & Resorts, Mr. Labatte was a founder, principal and board member of AEW Mexico Company, a Dallas, Texas private equity real estate investment management company formed with one of the largest institutional real estate private equity companies in the United States. For the 12 years prior to the formation of AEW Mexico Company, he was involved in the hotel and real estate sectors in the capacity of investment banker and consultant. Mr. Labatte received his B.Sc. and M.Sc. in Finance from the University of Utah. Mr. Labatte played professional hockey with the St. Louis Blues and Salt Lake Golden Eagles from 1977-1982. He was previously Co-Chairman of the NHL Alumni Association.

James Dondero. Mr. Dondero serves as the Chief Executive Officer of the REIT. He is the President of Highland Capital Management, L.P. which he co-founded in 1993 and NexPoint Advisors, LP, which he founded in 2012. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes with portfolio management experience ranging in several asset classes, including real estate debt & equity. Mr. Dondero received a BS in Commerce (Accounting and Finance) from the University of Virginia, and is a Certified Managerial Accountant and a Chartered Financial Analyst.

Graham D. Senst. Mr. Senst currently serves as a trustee of BSR Real Estate Investment Trust. Mr. Senst served as President of the Institute of Canadian Real Estate Investment Managers until its sale in August 2012. Prior to this role, Mr. Senst served as Managing Director of KingSett Capital Real Estate Income Fund and as an Executive Vice President of Bentall Capital and Penreal Capital Management. Mr. Senst served as an Executive Vice President of Bentall Investment Management. Prior to joining Bentall in April 2003, Mr. Senst served as Vice President of Real Estate for the OMERS Administration Corp. (also known as Ontario Municipal Employees Retirement System). Mr. Senst has many years of senior real estate investment experience as a principal with a major Ontario pension fund and other Canadian financial institutions. Prior to joining OMERS, Mr. Senst served as Vice President of Real Estate at a Subsidiary of Mackenzie Financial Corporation, where he developed debt and equity investment products for various Mackenzie funds. Mr. Senst served as the Vice President of Corporate Real Estate at both Canada Trust and Truscan Realty. He served as a Member of Advisory Board at KingSett Capital Income Fund. He served as trustee of Residential Equities Real Estate Investment Trust (ResREIT). He served as a Director of Oxford Properties Group, Inc., Morgan Stanley Real Estate Fund IV and Soros Real Estate Investors, C.V. From 2013 to 2017, Mr. Senst served as a trustee of Milestone Apartments Real Estate Investment Trust and was the chair of the investment committee. Mr. Senst holds an Honours of Business Administration and a Masters of Business Administration from the Ivey School of Business at the University of Western Ontario in London, Ontario and is a graduate of the Institute of Corporate Directors 2011.

Penalties or Sanctions

None of the REIT's proposed Trustees or executive officers, and to the best of the REIT's knowledge, no Unitholder holding a sufficient number of securities to affect materially the control of the REIT, has been subject to any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a securities regulatory authority or has been subject to any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor making an investment decision.

Individual Bankruptcies

None of the REIT's existing or proposed Trustees or executive officers, and to the best of the REIT's knowledge, no Unitholder holding a sufficient number of securities to affect materially the control of the REIT, has, within the 10 years prior to the date of this prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or

compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of that individual.

Corporate Cease Trade Orders and Bankruptcies

Except as disclosed below, none of the REIT's existing or proposed Trustees or executive officers, and to the best of the REIT's knowledge, no Unitholder holding a sufficient number of securities to affect materially the control of the REIT is, as at the date of this prospectus, or has been within the 10 years before the date of this prospectus, (a) a director, chief executive officer or chief financial officer of any company that was subject to an order that was issued while the existing or proposed director or executive officer was acting in the capacity as director, chief executive officer or chief financial officer, or (b) was subject to an order that was issued after the existing or proposed director or executive officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer, or (c) a director or executive officer of any company that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceeding, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets. For the purposes of this paragraph, "order" means a cease trade order, an order similar to a cease trade order or an order that denied the relevant company access to any exemption under securities legislation, in each case, that was in effect for a period of more than 30 consecutive days.

Mr. Labatte is a director and/or officer of Talon International Inc. and several affiliated entities, including Talon International Development Inc., TFB Inc., 2263847 Ontario Limited and 2270039 Ontario Limited. On November 1, 2016, such corporations became parties to a receivership order from the Ontario Superior Court of Justice (Commercial List) appointing a court-appointed receiver of certain assets of such entities used in relation to the Trump International Hotel & Tower in Toronto, Ontario. The sale of such assets to various third parties was facilitated through the receivership process.

Interests of Trustees in Material Transactions

Other than as described in this prospectus, there are no material interests, direct or indirect, of any Trustee or executive officer of the REIT, any Unitholder that beneficially owns, or controls or directs (directly or indirectly), more than 10% of the aggregate votes attached to the Units, or any associate or affiliate of any of the foregoing persons, in any transaction within the three years before the date hereof that has materially affected or is reasonably expected to materially affect the REIT or any of its subsidiaries.

Committees of the Board of Trustees

The Board has established two committees: the Audit Committee and the Compensation, Governance and Nominating Committee. All members of the Audit Committee are persons determined by the Board to be Independent Trustees, except for temporary periods in limited circumstances in accordance with National Instrument 52-110 – *Audit Committees* ("**NI 52-110**"). A majority of the members of the Compensation, Governance and Nominating Committee are persons determined by the Board to be Independent Trustees.

Audit Committee

The Audit Committee consists of three Trustees, all of whom are persons determined by the REIT to be financially literate within the meaning of NI 52-110, and a majority of whom are persons determined by the REIT to be Independent Trustees within the meaning of NI 52-110. The Audit Committee is initially comprised of Graham D. Senst, who acts as chair of this committee, Neil Labatte and James Dondero, all of whom have extensive financial experience. Each of the Audit Committee members have an understanding of the accounting principles used to prepare financial statements and varied experience as to the general application of such accounting principles, as well as an understanding of the internal controls and procedures necessary for financial reporting. The REIT intends to rely on s. 3.2(2) of NI 52-110, which provides that the requirement that every Audit Committee member be independent will not apply for a period of up to one year following an initial public offering, provided that a majority of the audit committee members are independent.

The Board has adopted a written charter for the Audit Committee, substantially in the form set out under Appendix A to this prospectus, which sets out the Audit Committee's responsibilities. The Audit Committee's responsibilities include: (i) reviewing the REIT's procedures for internal control with the REIT's auditors and Chief Financial Officer; (ii) reviewing and approving the engagement of the auditors; (iii) reviewing annual and quarterly financial statements and all other material continuous disclosure documents, including the REIT's annual information form and management's discussion and analysis; (iv) assessing the REIT's financial and accounting personnel; (v) assessing the REIT's accounting policies; (vi) reviewing the REIT's risk management procedures; (vii) reviewing any significant transactions outside the REIT's ordinary course of business and any pending litigation involving the REIT; (viii) overseeing the work and reviewing of the independence of the external auditors; and (ix) reviewing, evaluating and approving the internal control procedures that are implemented and maintained by management.

The Audit Committee will have direct communication channels with the Chief Financial Officer and the external auditors of the REIT to discuss and review such issues as the Audit Committee may deem appropriate.

Compensation, Governance and Nominating Committee

The Compensation, Governance and Nominating Committee is comprised of three Trustees, a majority of whom are persons determined by the REIT to be Independent Trustees and a majority of whom are residents of Canada, and will be charged with reviewing, overseeing and evaluating the compensation, corporate governance and nominating policies of the REIT. The Compensation, Governance and Nominating Committee is initially comprised of Neil Labatte, who acts as chair of this committee, James Dondero and Graham D. Senst.

The Board will adopt a written charter for the Compensation, Governance and Nominating Committee setting out its responsibilities for: (i) assessing the effectiveness of the Board, each of its committees and individual Trustees; (ii) overseeing the recruitment and selection of candidates as Trustees of the REIT; (iii) organizing an orientation and education program for new Trustees; (iv) considering and approving proposals by the Trustees to engage outside advisors on behalf of the Board as a whole or on behalf of the Independent Trustees; (v) reviewing and making recommendations to the Board concerning any change in the number of Trustees composing the Board; (vi) considering questions of management succession; (vii) administering securities based compensation plans of the REIT including the Omnibus Plan (as defined below), any purchase plan of the REIT, and any other compensation incentive programs; (viii) assessing the performance of management of the REIT; (ix) reviewing and approving the compensation paid by the REIT, if any, to the officers of the REIT; and (x) reviewing and making recommendations to the Board concerning the level and nature of the compensation payable to Trustees and officers of the REIT.

It is expected that the Compensation, Governance and Nominating Committee will put in place an orientation program for new Trustees under which a new Trustee will meet with the Chair of the Board and members of the executive management team of the REIT. It is anticipated that a new Trustee will be provided with comprehensive orientation and education as to the nature and operation of the REIT and its business, the role of the Board and its committees, and the contribution that an individual Trustee is expected to make. The Compensation, Governance and Nominating Committee will be responsible for coordinating development programs for continuing Trustees to enable the Trustees to maintain or enhance their skills and abilities as Trustees as well as ensuring that their knowledge and understanding of the REIT and its business remains current.

The Board believes that the members of the Compensation, Governance and Nominating Committee individually and collectively possess the requisite knowledge, skill and experience in governance and compensation matters, including human resource management, executive compensation matters and general business leadership, to fulfill the committee's mandate. For additional details regarding the relevant education and experience of each member of the Compensation, Governance and Nominating Committee, see "Biographical Information Regarding the Trustees".

In determining total compensation for the REIT's Trustees and executive officers, the Compensation, Governance and Nominating Committee and the Board will consider a number of key factors, including (i) relative total Unitholder return, (ii) acquisitions, financings and refinancings, and (iii) financial performance. The Compensation, Governance and Nominating Committee and the Board will also assess the individual performance of each executive including a consideration of leadership, team development, asset management, investment and financing strategy development and execution, public company governance, and execution of specific objectives.

Nomination of Trustees

Other than pursuant to the Investor Rights Agreement, all board nominees are nominated by the Compensation, Governance and Nominating Committee, who make such nominations after considering the mix of skills and experience it believes are necessary to further the REIT's goals. Trustees elected at an annual meeting will be elected for a term expiring at the close of the subsequent annual meeting and will be eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders in accordance with the Declaration of Trust shall be appointed for a term expiring at the close of the next annual meeting and will be eligible for election or re-election, as the case may be. The Declaration of Trust includes certain advance notice provisions for the nomination of persons by Unitholders to stand for election as Trustees. See "Declaration of Trust – Advance Notice Provision".

Term Limits

The REIT does not impose term limits on its Trustees as it takes the view that term limits are an arbitrary mechanism for removing Trustees that can result in valuable, experienced Trustees being forced to leave the Board solely because of length of service. Instead, the REIT believes that Trustees should be assessed a minimum of annually based on their ability to continue to make a meaningful contribution to the REIT. The REIT is committed to ensuring that its Board is comprised of individuals with appropriate skill sets and annually asks its Trustees to evaluate the effectiveness of the Board and the individual Trustees. The results of these annual surveys are taken into account when determining the appropriate slate of individuals to stand for election as Trustees at each annual meeting.

Remuneration of Trustees

Each non-management Trustee will be paid an annual board retainer fee of $25,000 per year as well as a fee of $1,500 per meeting of the Board or any committee thereof. Each Trustee will be reimbursed for all reasonable travel and ancillary expenses incurred. The Lead Trustee will receive an additional annual retainer of $10,000. The chair of the Audit Committee will receive an additional annual retainer of $15,000. The chair of the Compensation, Governance and Nominating Committee will receive an additional annual retainer of $10,000. The Trustees will not receive any additional remuneration for acting as directors on the boards of any of the REIT's subsidiaries. Trustees who are also members of management will not receive any remuneration for their role as a Trustee. Trustees may also be issued equity based incentive compensation awards under the Omnibus Plan and may elect to receive their compensation in the form of deferred trust units.

Trustees will have the option to elect to receive up to 100% of all fees that are otherwise payable in cash (i.e. annual board retainer fee, meeting fees and additional retainers) in the form of deferred trust units. The REIT, on recommendation from the Compensation, Governance and Nominating Committee, will determine whether, and to what extent, the REIT will match up to 100% of the total value of the fees that a Trustee elects to receive in the form of deferred trust units. Accordingly, the number of deferred trust units to be awarded to a Trustee is equal to (i) the value of all fees that the Trustee elects to receive in the form of deferred trust units plus any additional deferred trust units pursuant to the REIT's obligation to match as contemplated by the Omnibus Plan, (ii) divided by the volume weighted average trading price of a Unit on the TSXV for the five trading days prior to the date of the award. Trustees must complete an election form to receive deferred trust units in lieu of the cash component of their fees (i) in the case of an existing Trustee, no later than December 31 of the year preceding the applicable grant year (other than in respect of the 2018 year); and (ii) in the case of a newly appointed or elected Trustee, within 30 days of such appointment or election with respect to compensation paid for services to be performed after such date. For the 2019 fiscal year, Trustees must complete an election form on or prior to the effective date of the Omnibus Plan to receive deferred trust units in respect of compensation for 2019. Elections are irrevocable for the year in respect of which they are made.

Orientation and Continuing Education

New Trustees

When new Trustees are elected to the Board, they can be expected to participate in a comprehensive orientation program. The orientation program will familiarize new Trustees with the REIT's business and operations, including structure, operations, and risks. They will be briefed on the role of the Board, its committees

and the contributions individual trustees are expected to make. New Trustees can also be expected to receive an orientation package containing all Trustees' committee mandates and charters, copies of the REIT's policies and other background information on the REIT's business, operations and risks.

Continuing Education

The REIT's continuing education program for its Trustees will involve the ongoing evaluation by the Compensation, Governance and Nominating Committee of the skills and competencies of existing Trustees. The Board is currently comprised of highly qualified and experienced Trustees with impressive levels of skill and knowledge. Many of the Trustees are seasoned business executives, directors or professionals with considerable experience, including as directors of other significant public companies. The Compensation, Governance and Nominating Committee will continually monitor the composition of the Board and will recommend the adoption of a formal continuing education program should it be determined to be necessary.

As part of the REIT's continuing education program, Trustees will:

- receive a comprehensive electronic package of information prior to each board and committee meeting;
- obtain a quarterly report on the REIT's operations and markets from management;
- receive updates from management and third parties (including advisors) on regulatory developments and trends and issues related to the REIT's business;
- receive reports on the work of board committees following committee meetings;
- complete an annual tour of certain REIT properties; and
- are encouraged to attend industry conferences and events, with the reasonable cost of such events being reimbursed by the REIT.

Board Assessments

The Compensation, Governance and Nominating Committee will conduct an annual assessment of the Board, its committees and of each individual Trustee. The results of the assessments will be communicated to the Board. This process will be used (i) as an assessment tool, (ii) as a component of the regular review process of Board members' participation, and (iii) to assist with the Board's succession planning.

Conflicts of Interest

The Declaration of Trust will contain "conflict of interest" provisions to protect Unitholders without creating undue limitations on the REIT. As the Trustees will be engaged in a wide range of real estate and other activities, the Declaration of Trust will contain provisions, similar to those contained in the CBCA, that will require each Trustee to disclose to the REIT, at the first meeting of Trustees at which a proposed contract or transaction is considered, any interest in a material contract or transaction or proposed material contract or transaction with the REIT or the fact that such person is a director or officer of or otherwise has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the REIT. If a material contract or transaction or proposed material contract or transaction is one that in the ordinary course would not require approval by the Trustees, a Trustee will be required to disclose in writing to the REIT, or request to have entered into the minutes of meetings of Trustees, the nature and extent of his or her interest forthwith after the Trustee becomes aware of the contract or transaction or proposed contract or transaction. In any case, a Trustee who has made disclosure to the foregoing effect will not be entitled to vote on any resolution to approve the contract or transaction unless the contract or transaction primarily relates to his or her remuneration or is for an indemnity under the provisions of the Declaration of Trust or the purchase or maintenance of liability insurance.

All decisions of the Board will require the approval of a majority of the Trustees present in person or by phone at a meeting of the Board, except for each of the following matters which will also require the approval of a majority of the Independent Trustees:

(a) an acquisition of a property or an investment in a property, whether by co-investment or otherwise, in which any related party of the REIT has any direct or indirect interest, whether as owner, operator or manager;

(b) a material change to any agreement with a related party of the REIT or any renewal, extension or termination thereof or any increase in any fees (including any transaction fees) or distributions payable thereunder;

(c) the entering into of, or the waiver, exercise or enforcement of any rights or remedies under, any agreement entered into by the REIT, or the making, directly or indirectly, of any co-investment, in each case with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or other similar capacity;

(d) the refinancing, increase or renewal of any indebtedness owed by or to (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee act as a director or other similar capacity;

(e) decisions relating to any claims by or against one or more parties to any agreement with any related party to the REIT; and

(f) the election or appointment of members of the board of directors of US Holdco.

In connection with any transaction involving the REIT, including any transaction which requires the approval of a majority of the Independent Trustees, the Board shall have the authority to retain external legal counsel, consultants or other advisors to assist it in negotiating and completing such transaction without consulting or obtaining the approval of any officer of the REIT.

It is anticipated that the Independent Trustees will hold in-camera meetings, with members of management not in attendance, as part of regulatory scheduled Board meetings. The Chair will conduct the in-camera meetings without the presence of management or the other non-independent Trustees, and in circumstances where the Independent Trustees have determined that the Chair is subject to a potential conflict of interest in connection with his non-independence designation pursuant to NI 58-101 or otherwise, the Lead Trustee shall conduct such in-camera sessions both without the presence of management and without the presence of management or the non-independent Trustees (including the Chair).

Executive Officers

The responsibilities of the management of the REIT will include: (i) providing the Board with information and advice relating to the operation of the REIT's properties, acquisitions and financings; (ii) establishing, at least on an annual basis, investment and operating plans for the ensuing period; (iii) conducting and supervising the due diligence required in connection with proposed acquisitions and completing any acquisitions or dispositions; (iv) maintaining the books and financial records of the REIT; (v) determining and preparing designations, elections and determinations to be made in connection with the income and capital gains of the REIT for tax and accounting purposes; (vi) preparing reports and other information required to be sent to Unitholders and other disclosure documents; (vii) calculating all distributions; (viii) communicating with Unitholders and other persons, including investment dealers, lenders and professionals; and (ix) administering or supervising the administration, on behalf of the Board, of the payment of distributions by the REIT.

The Board will adopt a written position description and mandate for the Chief Executive Officer which will set out the key responsibilities of the Chief Executive Officer. The primary functions of the Chief Executive Officer will be to lead management of the business and affairs of the REIT, to lead the implementation of the resolutions

and the policies of the Board, to supervise day to day management and to communicate with Unitholders and regulators. The Chief Executive Officer mandate will be considered by the Board for approval annually.

The following table sets forth the name, municipality of residence and positions held with the REIT of each named executive officer of the REIT on Closing:

Name and Municipality of Residence	Office with the REIT
JAMES DONDERO .... Dallas, Texas, USA	Chief Executive Officer
BRIAN MITTS.. Dallas, Texas, USA	Chief Financial Officer, Executive Vice President-Finance, Treasurer and Corporate Secretary
MATTHEW MCGRANER.. Dallas, Texas, USA	Chief Investment Officer
JESSE BLAIR III... Dallas, Texas, USA	Executive Vice President, Head of Lodging
PAUL RICHARDS.. Dallas, Texas, USA	Vice President, Asset Management

Additional biographical information regarding the named executive officers of the REIT, including a description of each individual's principal occupation within the past five years, is provided below.

James Dondero. Mr. Dondero serves as the Chief Executive Officer of the REIT. He is the President of Highland Capital Management, L.P. which he co-founded in 1993 and NexPoint Advisors, LP, which he founded in 2012. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes with portfolio management experience ranging in several asset classes, including real estate debt & equity. Mr. Dondero received a BS in Commerce (Accounting and Finance) from the University of Virginia, and is a Certified Managerial Accountant and a Chartered Financial Analyst.

Brian Mitts. Mr. Mitts serves as the Chief Financial Officer, Executive Vice President-Finance, Treasurer and Corporate Secretary of the REIT. Mr. Mitts has over 25 years of accounting, finance and real estate experience and also currently serves as the CFO and member of the investment committee for NexPoint Residential Trust Inc. and other entities managed by affiliates of the Advisor. Mr. Mitts received an MPA and a BBA from the University of Texas at Austin. Mr. Mitts is a licensed Certified Public Accountant.

Matthew McGraner. Mr. McGraner serves as Chief Investment Officer and Executive Vice President of the REIT and is a Managing Director at Highland Capital Management, L.P., and has led $5.3 billion of real estate investments for NexPoint since 2013. With over 12 years of real estate, private equity and legal experience, his primary responsibilities are to lead the strategic direction and operations of the real estate platform at Highland Capital Management, L.P., as well as source and execute investments, manage risk and develop potential business opportunities. Mr. McGraner received a BS from Vanderbilt University and a JD from Washington University School of Law.

Jesse Blair III. Mr. Blair has led, arranged, and been directly involved in over $2.5 billion of capital markets and hospitality specific acquisitions and development. Mr. Blair led the strategic expansion and diversification of an operating platform acquired from Goldman Sachs, which oversaw more than 200 hospitality assets, and annually oversaw $100 million of renovation capital. The platform was successfully merged to help to create what is today the largest independent operating platform in North America. Mr. Blair received a BBA and an MBA from University of Louisiana Monroe.

Paul Richards. Mr. Richards is a Director at NexPoint Real Estate Advisors, L.P. His primary responsibilities are to research and conduct due diligence on new investment ideas, perform valuation and benchmark analysis, monitor and manage investments in the existing real estate portfolio, and provide industry support for Highland's Real Estate Team. He was previously a Product Strategy Associate at Highland Capital Management, L.P., an affiliate of NexPoint Real Estate Advisors, L.P., where he was responsible for evaluating and

optimizing the registered product lineup. He also held positions at Highland Capital as Senior Fund Analyst and Financial Analyst. Prior to joining Highland Capital in January 2014, Mr. Richards was employed with Deloitte, LLP's state and local tax practice where he served as a Tax Consultant specializing in state strategic tax reviews, voluntary disclosure agreements, state tax exposure research, and overall state tax compliance. Mr. Richards received an MS in Finance and a BS in Accounting, *magna cum laude*, from Texas A&M University. He is a licensed Certified Public Accountant in the state of Texas.

Messrs. Dondero, Mitts and McGraner will provide general oversight for the REIT. The Manager will manage the day-to-day operations of the hotels and asset management functions with general oversight by Messrs. Blair and Richards. As executives of the REIT, Messrs. Dondero, Mitts and McGraner will have little involvement in day-to-day activities of the REIT. Their role will primarily be to oversee the acquisition, disposition and renovation processes, develop strategic initiatives in conjunction with the Board and the Advisor and monitor progress toward the REIT's strategic goals.

Trustees' and Officers' Liability Insurance

The REIT intends to obtain trustees' and officers' liability insurance policies, which cover indemnification of Trustees and officers of the REIT in certain circumstances, including coverage for the REIT and its Trustees and officers in relation to the prospectus. In addition, the REIT will enter into indemnification agreements with each of its Trustees and officers for liabilities and costs in respect of any action or suit against them in connection with the execution of their duties, subject to customary limitations prescribed by applicable law.

Ethical Business Conduct

The REIT will adopt a written code of conduct (the "**Code of Conduct**") that applies to all Trustees, officers, and management of the REIT and its subsidiaries. The objective of the Code of Conduct is to provide guidelines for maintaining the integrity, reputation, honesty, objectivity and impartiality of the REIT and its subsidiaries. The Code of Conduct will address conflicts of interest, protecting the REIT's assets, confidentiality, fair dealing with security holders, competitors and employees, insider trading, compliance with laws and reporting any illegal or unethical behaviour. As part of the Code of Conduct, any person subject to the Code of Conduct will be required to avoid or fully disclose interests or relationships that are harmful or detrimental to the REIT's best interests or that may give rise to real, potential or the appearance of conflicts of interest. The Board will have the ultimate responsibility for the stewardship of the Code of Conduct. The Code of Conduct will also be filed with the Canadian securities regulatory authorities on the SEDAR website at www.sedar.com.

Diversity

The REIT is committed to fostering an open and inclusive workplace culture. The REIT's Code of Conduct will underscore a commitment to diversity and recognizes it as an important asset. The Code of Conduct explicitly states that the REIT and its affiliates are firmly committed to providing equal opportunity in all aspects of employment.

The Compensation, Governance and Nominating Committee values and considers diversity as part of its overall annual evaluation of Trustee nominees for election or re-election, as well as candidates for management positions. Gender and geography (subject to the limitations set forth in the Declaration of Trust) are of particular importance to the REIT in ensuring diversity within the Board and management. Recommendations concerning Trustee nominees are, foremost, based on merit and performance, but diversity is taken into consideration, as it is beneficial that a diversity of backgrounds, views and experiences be present at the Board and management levels.

As of Closing, there will be no female Trustees on the Board and no female executive officers of the REIT or any of its major subsidiaries. The REIT does not currently have a diversity policy in place, but will consider implementing one following Closing. When seeking and considering new Trustees and executive officers, the Compensation, Governance and Nominating Committee will consider a number of factors, including gender, ethnic and geographic diversity, as well as age, business experience, professional expertise, personal skills and perspectives. The REIT has not specified a numerical target for women Trustees on the Board, nor will the REIT maintain a specific numerical target in making executive officer appoints. However, the level of representation of

women will be considered by the REIT, the Board and the Compensation, Governance and Nominating Committee in the identification of prospective Trustees and executive officers.

MANAGEMENT AND FRANCHISE AGREEMENTS

Advisory Agreement

Pursuant to an amended and restated advisory agreement (the "**Advisory Agreement**"), subject to the overall supervision of the Board and the board of managers of NHI, as applicable, the Advisor will manage the day-to-day operations of, and provide investment management services to, the REIT and NHI. Under the terms of the Advisory Agreement, the Advisor will:

- find, present and recommend to the Board investment opportunities consistent with the REIT's investment policies and objectives;
- execute investments on behalf of the REIT and NHI, provided that the Advisor shall obtain the prior approval of (i) the Board and (ii) any particular committee of the Board or the board of managers of NHI specified by the Board, in connection with any investment for which the cash and/or equity consideration paid by the REIT or any subsidiary of the REIT is equal to or exceeds the lesser of (a) 10% of the aggregate of the book value of the equity of the REIT plus the value of the Class B OP Units, each as reflected on the most recent statement of financial position of the REIT or (b) $25,000,000;
- identify, evaluate, negotiate and recommend to the Board the structure of the REIT's investments (including performing due diligence);
- evaluate and negotiate the terms of dispositions within the discretionary limits and authority granted by the Board;
- review and analyze financial information for each underlying property of the REIT's portfolio;
- within the discretionary limits and authority as granted by the Board, identify, evaluate, negotiate and recommend to the Board financing and funding opportunities with banks or other lenders;
- subject to the overall supervision of the Board, manage the REIT's capital improvement program including determining when to execute the program at each property;
- close, monitor and administer the investments made by the REIT;
- maintain the accounting and financial records of the REIT and its subsidiaries (including NHI) and file required information with the Ontario Securities Commission upon approval of the Board;
- perform investor-relations functions; and
- manage Canadian and U.S. regulatory compliance, including making all required filings and preparing all documents, data and analysis required for regulatory filings, including all documents necessary for continuous disclosure requirements pursuant to applicable stock exchange rules and securities laws.

As consideration for the Advisor's services, the REIT will pay to the Advisor an advisory fee at an annualized rate of 1.00% of REIT Asset Value, less certain fee waivers and adjustments, resulting in an advisory fee on the Initial Portfolio of approximately 0.58% of REIT Asset Value at the time of Listing, paid monthly (the "**Advisory Fee**"), together with reimbursement of certain general and administrative expenses. Additionally, an omnibus equity incentive plan (the "**Omnibus Plan**") will be put in place pursuant to which restricted equity units, performance-based awards, deferred trust units, units of the OP designated as "Profits LTIP Units" and other awards convertible, exercisable or exchangeable into or otherwise based on the Units may be granted to Trustees, officers of the REIT and employees of the Advisor. The Omnibus Plan implemented and effective on the date of the listing of

the Units on the TSXV (the "**Listing**") will reserve a maximum of 3,026,155 Units for issuance, representing 20% of the issued and outstanding Units of the REIT following completion of the Listing. Grants under the Omnibus Plan may be awarded by Independent Trustees of the Board at their discretion.

Pursuant to the Advisory Agreement, and subject to certain exceptions including expenses associated with a future debt or equity raise or unusual expenses related to litigation or other unusual activity, the REIT shall not incur annual general and administrative expenses (inclusive of the Advisory Fee and other compensation expenses paid to the Advisor and including compensation from Omnibus Plan grants) in excess of 1.5% of REIT Asset Value for any calendar year or portion thereof, provided that this cap will not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with a future debt or equity raise, extraordinary litigation, mergers and acquisitions and other events outside the REIT's or NHI's ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets (the "**Total G&A Cap**") and the Advisor shall backstop and shall be liable for any general and administrative expenses in excess of such Total G&A Cap.

The Advisory Agreement will have an initial term of two years. Following the initial term, the Advisory Agreement will continue in full force and effect, subject to early termination, so long as such continuance is approved at least annually by (i) the board of managers of NHI, and (ii) either (a) the Board or (b) a vote of the Unitholders. The REIT will have the right to terminate the Advisory Agreement on 60 days' written notice without payment of a termination fee in the case of a breach of the Advisory Agreement by the Advisor; provided that no such notice shall be required in the event of fraud, misappropriation of funds, gross negligence, general assignment for the benefit of creditors or bankruptcy of the Advisor. The REIT will be permitted to terminate the Advisory Agreement without cause or due to a change in control of the REIT with 180 days' written notice to the Advisor. In the event of termination (other than termination for cause) or non-renewal of the Advisory Agreement (including if the services provided pursuant to the Advisory Agreement are internalized), the Advisor will be entitled to compensation equal to three times the Advisory Fee paid to the Advisor over the last 12 months subject to a cap at 7.5% of the combined equity value of the REIT and the OP on a consolidated basis, as of the date the Advisory Agreement is terminated, calculated by multiplying the aggregate number of outstanding Units and Class B OP Units by the volume weighted average price of Units over the prior 30 day period of the Units on the TSXV, provided, however, if the Advisory Agreement is terminated prior to the one year anniversary of the date of the Advisory Agreement, the Advisory Fee will be annualized for such 12-month period based on such Advisory Fee earned by the Advisor during such period.

The Advisor will have the right to terminate the Advisory Agreement upon default or the general assignment for the benefit of creditors or bankruptcy by the REIT. Principals of the Advisor and its affiliates and subsidiaries, (collectively, "**NexPoint**"), as applicable, shall grant to the REIT and its subsidiaries the right to continue the use of the "NexPoint" name and logo and related marks and designs under a non-exclusive, royalty-free license agreement entered into on or prior to Closing. NexPoint will be permitted to terminate the license at any time on 180 days' written notice following any date on which the Advisor ceases to be the Advisor for the REIT.

Hotel Management Agreements

Because the REIT and NHI are prohibited from operating the hotel properties pursuant to certain U.S. tax laws relating to its qualification as a real estate investment trust, the OP and its subsidiaries will lease the hotel properties to the TRS Entities. Moreover, such U.S. tax laws require all of the REIT's hotel properties to be operated pursuant to hotel management agreements (the "**Hotel Management Agreements**") between the Manager, a professional third-party hotel management company, and the TRS Entities that lease the property from the OP and its subsidiaries. The Hotel Management Agreement will require the TRS Entities to pay a base fee to the Manager calculated as a percentage of hotel revenues generated by the hotel operations. In addition, the Hotel Management Agreements will on occasion provide that the Manager can earn an incentive fee for EBITDA, gross operating profit or an owner's priority return over certain thresholds.

The terms of the REIT's Hotel Management Agreements initially range from one to five years with various extension and termination provisions. The Hotel Management Agreements for the DoubleTree hotels in the Initial Portfolio were entered into in May 2018 and may be terminated on 60 days' notice by the hotel owner without payment of a termination fee. The Hotel Management Agreements for the Homewood Suites hotels in the Initial Portfolio were entered into in May 2017 and may be terminated without cause upon 60 days' notice after June 1,

2019 by the hotel owner without payment of a termination fee. The Hotel Management Agreement for Hilton Garden Inn Dallas Market Center was entered into in December 2014 and may be terminated on 90 days' notice by the hotel owner without payment of a termination fee. The Hotel Management Agreement for Marriott St. Petersburg was entered into in September 2018 and may be terminated on 60 days' notice by the hotel owner after April 30th, 2019 without payment of a termination fee. The Hotel Management Agreement for Holiday Inn Express Nashville was entered into in January 2019 and may be terminated on 60 days' notice by the hotel owner after January 2020 without payment of a termination fee. Termination fees under the Hotel Management Agreements are generally equal to 2.5% of annual gross revenue generated by the applicable hotel.

The TRS Entities may employ hotel managers in the future other than the Manager. Neither the REIT nor any of its affiliates has any ownership or economic interest in the Manager engaged by the TRS Entities. If in the future, the REIT or any of its affiliates have an ownership stake in a hotel manager engaged by the TRS Entities, the ownership will be limited such that the hotel manager still qualifies as an eligible independent contractor as defined by the Code, allowing the REIT (and NHI) to maintain its ability to qualify as a real estate investment trust for federal U.S. tax purposes.

Franchise Agreements

All of the REIT's hotel properties will operate under franchise agreements with Marriott, Hilton or InterContinental Hotels Group brands. The REIT believes that the public's perception of the quality associated with a branded hotel is an important feature in its attractiveness to guests. Franchisors provide a variety of benefits to franchisees, including centralized reservation systems, national advertising, marketing programs and publicity designed to increase brand awareness, loyalty programs, training of personnel and maintenance of operational quality at hotels across the brand system.

The terms of the REIT's franchise agreements initially range from 10 to 20 years with various extension provisions. The expiry dates of the franchise agreements range from December 2029 to December 2039, subject to earlier extension. The Each franchisor receives franchise fees ranging from 2% to 6% of each hotel property's room revenue, and some agreements require that the REIT pay marketing fees of up to 4.5% of room revenue. In addition, some of these franchise agreements require that the REIT deposit into a reserve fund for capital expenditures up to 4% of the hotel property's gross or room revenues depending on the franchisor to ensure the REIT complies with the franchisors' standards and requirements. The REIT also pays fees to its franchisors for services such as reservation and information systems.

The previous owner of the Marriott St. Petersburg property was in default of certain covenants in the franchise agreement in respect of such property. Upon the acquisition of Marriott St. Petersburg, the current owner of the property executed a new franchise agreement with the franchisor. The previous franchise agreement is no longer in force or effect and the REIT does not have any exposure to liability under the previous franchise agreement. Each of the franchisees is in material compliance with its respective franchise agreement.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

The following discussion describes the significant elements of the REIT's expected executive compensation program. The REIT's senior management team will consist of individuals employed by the Advisor. The Advisor will provide advisory services to the REIT pursuant to the Advisory Agreement, for which the REIT will pay the Advisor certain fees. See "Management of the REIT – Advisory Agreement". Any variability in cash compensation to be paid by the Advisor to the named executive officers employed by the Advisor will not impact the REIT's financial obligations.

The Chief Executive Officer, Chief Financial Officer and Chief Investment Officer are referred to herein as the "named executive officers" in accordance with applicable Canadian securities laws. The officers named in the "Summary Compensation Table" below are employees of the Advisor (or an affiliate thereof) and the Advisor will have sole responsibility for determining the compensation of the named executive officers, other than with respect to the granting of Unit-based compensation under the initial Omnibus Plan and subsequent long term incentive plans, which will be the responsibility of the Independent Trustees of the Board. The REIT will not have any employment

agreements with members of senior management and will not pay any cash compensation to any individuals serving as officers. Rather, as employees of the Advisor (or an affiliate thereof), those individuals will be compensated by the Advisor (through its relevant affiliates). A portion of the compensation paid to those employees of the Advisor will be attributable to time spent on the activities of the REIT. The REIT will pay the Advisor certain fees in connection with the Advisory Agreement but the REIT will not bear the cost of any direct compensation paid to any employees of the Advisor.

Principal Elements of Compensation

The following discussion supplements the more detailed information concerning executive compensation that appears in the "Summary Compensation Table" and the accompanying narrative that follows:

The compensation of the named executive officers will include three principal elements: (a) base salary which will be paid by the Advisor; (b) discretionary cash bonuses which will be paid by the Advisor; and (c) long-term incentives, which may consist of restricted equity units, performance-based awards, deferred trust units, options, Profits LTIP Units or other equity-based incentive compensation awards granted under the Omnibus Plan, all as described and defined below.

Base Salaries

Base salaries are intended to provide an appropriate level of fixed compensation that will assist in employee retention and recruitment. Base salaries will be determined on an individual basis, taking into consideration the past, current and potential contribution to the REIT's success, the position and responsibilities of the named executive officers and competitive industry pay practices for other real estate investment trusts and companies of comparable size. Base salaries will be paid by the Advisor or its affiliates, not the REIT.

Annual Cash Bonuses

Annual cash bonuses are discretionary and are not awarded pursuant to a formal incentive plan. Annual cash bonuses will be awarded based on qualitative and quantitative performance standards and reward the performance of the named executive officer individually. The determination of the REIT's performance may vary from year to year depending on economic conditions and conditions in the real estate industry, and may be based on measures such as Unit price performance, the meeting of financial targets against budget (such as Core FFO), the meeting of acquisition objectives and balance sheet performance. Individual performance factors vary, and may include completion of specific projects or transactions and the execution of day-to-day management responsibilities. Annual cash bonuses will be paid by the Advisor or its affiliates, not the REIT.

Long-Term Compensation Plans

Grants of equity-based incentive awards under the Omnibus Plan (which may include restricted equity units, performance-based awards, deferred trust units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on Units) may be used to align the interests of the named executive officers more closely with the interests of the Unitholders, since they are tied to the REIT's financial and Unit trading performance and vest or accrue over a number of years. The Board, acting on the recommendation of the Compensation, Governance and Nominating Committee, may designate individuals eligible to receive grants of equity-based incentive awards. In determining grants of such awards, an individual's performance and contributions to the REIT's success, relative position, tenure and past grants will be taken into consideration. No awards or grants will be made in connection with Closing. It is anticipated that the Compensation, Governance and Nominating Committee and the Board will meet following Closing to consider the award of equity-based incentive grants under the Omnibus Plan to the named executive officers. No discussions or determinations have taken place regarding the potential quantum or terms of any such grants or awards as of the date of this prospectus.

Incentive Compensation Plans

Omnibus Equity Incentive Plan

On Listing, the REIT will adopt the Omnibus Plan. All equity and equity-based awards to be made or granted, including future grants to be made to named executive officers of the REIT, will be made under the Omnibus Plan.

Administration

The Omnibus Plan will be administered by the Compensation, Governance and Nominating Committee. The Compensation, Governance and Nominating Committee will have the authority to, among other things, determine eligibility for awards to be granted, determine, modify or waive the type or types of, form of settlement (whether in cash, Units or otherwise) of, and terms and conditions of, awards, to accelerate the vesting or exercisability of awards, to adopt rules, guidelines and practices governing the operation of the Omnibus Plan as the Compensation, Governance and Nominating Committee deems advisable, to interpret the terms and provisions of the Omnibus Plan and any award agreement, and to otherwise do all things necessary or appropriate to carry out the purposes of the Omnibus Plan. The Compensation, Governance and Nominating Committee's decisions with respect to the Omnibus Plan and any award under the Omnibus Plan are binding upon all persons.

Eligibility

Key officers and any employees of the REIT, independent Trustees and key employees of the Advisor and its respective affiliates who, in the opinion of the Compensation, Governance and Nominating Committee, have dedicated significant time and attention to the affairs and business of the REIT will be eligible to participate in the Omnibus Plan. It is the current expectation of the REIT that Trustees will be issued deferred trust units (see "— Remuneration of Trustees") and other eligible persons will be issued restricted equity units, performance-based awards or other awards convertible, exercisable or exchangeable into or otherwise based on Units (see "— Principal Elements of Compensation – Long-Term Compensation Plans").

Authorized Units

Subject to adjustment, as described below, the maximum number of Units that will be available for issuance under the Omnibus Plan is 3,026,155, representing 20% of the issued and outstanding Units of the REIT, or such greater number as may be determined by the Board and approved by the Unitholders and, if required, by any relevant stock exchange or other regulatory authority; all of which may be delivered in satisfaction of restricted equity units, performance-based awards, deferred trust units, Profits LTIP Units or any other applicable award, awarded under the Omnibus Plan. Units issued under the Omnibus Plan may be Units held in treasury or authorized but unissued Units of the REIT not reserved for any other purpose. Units subject to an award that for any reason expires without having been exercised, is cancelled, forfeited or terminated or otherwise is settled without the issuance of Units, will again be available for grant under the Omnibus Plan.

Types of Awards

The Omnibus Plan provides for awards of restricted equity units, performance-based awards, deferred trust units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on the Units. Eligibility distribution equivalents may also be provided in certain circumstances in connection with an award under the Omnibus Plan.

- ***Restricted Equity Units***. A restricted equity unit award is an award denominated in notional units that entitles the participant to receive Units or cash measured by the value of the Units in the future. The delivery of Units or cash under a restricted equity unit award may be subject to the satisfaction of performance conditions or other vesting conditions.

- ***Performance Awards***. A performance award is an award the vesting, settlement or exercisability of which is subject to specified performance criteria.

- ***Deferred Trust Units***. A deferred trust unit is an award of a notional investment in the Units reflected on an unfunded, book-entry account maintained by the REIT. Deferred trust units may be subject to performance conditions or other vesting conditions. Deferred trust units may be settled in Units, cash measured by the value of a Unit, or a combination thereof.

- ***Profits LTIP Units***. A Profits LTIP Unit is an award of a membership unit of the OP which qualifies as a profits interest for U.S. federal income tax purposes. Subject to certain exceptions set forth in the LLC Agreement, Profits LTIP Units are treated as Class B OP Units, with all of the rights, privileges and obligations attendant thereto, except the right to vote in respect of matters put before members of the OP.

- ***Other Awards***. Other awards are awards that are convertible into, exercisable or exchangeable for, or otherwise based on Units.

Vesting; Termination of Employment or Service

The Compensation, Governance and Nominating Committee will have the authority to determine the vesting schedule applicable to each award, and accelerate the vesting or exercisability of any award.

Change in Control

In the event of certain consolidations, mergers or similar transactions of the REIT, certain sales or other disposition of the REIT's Units, certain liquidation events or sales or dispositions of all or substantially all of the REIT's assets, the Compensation, Governance and Nominating Committee may provide for the conversion, exercise or exchange of outstanding awards for new awards, or, if no equivalent awards are available, for the accelerated vesting or delivery of Units under awards, or for a cash-out of outstanding awards.

Adjustments

In the event of an extraordinary distribution, securities based distribution, stock split or combination (including a reverse stock split) or any recapitalization, business combination, merger, consolidation, spin-off, exchange of Units, liquidation or dissolution of the REIT or other similar transaction affecting the Units, the Board will make adjustments as it determines in its sole discretion to the number and kind of Units available for issuance under the Omnibus Plan, the annual per-participant Unit limits, the number, class, exercise price (or base value), performance objectives applicable to outstanding awards and any other terms of outstanding awards affected by such transaction. The Compensation, Governance and Nominating Committee may also make adjustments of the type described in the preceding sentence to take into account distributions and events other than those listed above if it determines that adjustments are appropriate to avoid distortion in the operation of the Omnibus Plan.

Restrictions on Grants of Awards

The following restrictions will be placed on grants of awards under the Omnibus Plan:

(a) the aggregate number of Units issuable to insiders shall not exceed 10% of the REIT's total issued and outstanding Units;

(b) the aggregate number of Units issuable to insiders within any 12-month period shall not exceed 10% of the REIT's total issued and outstanding Units;

(c) the aggregate number of Units reserved for issuance pursuant to awards granted to any one person (and any companies wholly owned by that person) in a 12-month period shall not exceed 5% of the REIT's total issued and outstanding Units calculated on the date an award is granted to the person (unless the approval of disinterested unitholders is obtained);

(d) the aggregate number of Units reserved for issuance pursuant to awards granted to any one consultant within any 12-month period shall not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the Person;

(e) the aggregate number of Units reserved for issuance pursuant to awards granted within any 12-month period to all persons retained to provide investor relations activities must not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the Person, provided that no awards other than options shall be issuable to any person retained to provide investor relations activities;

(f) the aggregate fair value on the date of grant of all options granted to any one non-employee Trustee shall not exceed $200,000 per annum; and

(g) the aggregate fair market value on the date of grant of all awards granted to any one non-employee Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to (A) awards taken in lieu of any Trustee fees, and (B) a one-time initial grant to a Trustee upon such Trustee joining the Board.

Termination and Amendments

The Compensation, Governance and Nominating Committee may amend the Omnibus Plan or outstanding awards, or terminate the Omnibus Plan as to future grants of awards, except that the Compensation, Governance and Nominating Committee will not be able to alter the terms of an award if it would affect materially and adversely a participant's rights under the award without the participant's consent. Unitholder approval will be required for any amendment to the Omnibus Plan that increases the number of Units available for issuance under the Omnibus Plan or the individual award limitations specified therein (except with respect to certain adjustments as described above), modifies the class of persons eligible for participation in the Omnibus Plan, extends the term of any award granted beyond its original expiration date, permits an award to be exercisable beyond 10 years from its grant date (except where an expiration date would have fallen within a blackout period of the REIT), permits awards to be transferred other than for normal estate settlement purposes, or deletes or reduces the range of amendments which require approval of the Unitholders, or to the extent required by law.

Compensation Risk

The Compensation, Governance and Nominating Committee will consider the implications of the risks associated with the REIT's compensation policies and practices as part of its responsibility to ensure that the compensation for the Trustees and the Chief Executive Officer, Chief Financial Officer and Chief Investment Officer of the REIT align the interests of the Trustees and officers with Unitholders and the REIT as a whole. The REIT's insider trading policy will prohibit all officers and Trustees of the REIT from selling "short" or selling "call options" on any of the REIT's securities and from purchasing financial instruments, such as prepaid variable forward contracts, equity swaps, collars or units of exchange funds that are designed to hedge or offset a decrease in the market value of equity securities granted to such executive officers and Trustees as compensation or held directly or indirectly by such person.

Summary Compensation Table Expected for Fiscal 2019

The following table sets out information concerning the expected compensation to be paid by the Advisor to the named executive officers in fiscal 2018 in respect of the services provided by such officers to the REIT:

Name and principal position	Year	Salary[(1)]	Bonus[(2)]	Unit-based awards (options or deferred trust units)[(3)]	All other compensation	Total compensation
James Dondero, CEO.............	2019	$100,000	$100,000	$0	$0	$200,000
Brian Mitts, CFO	2019	$75,000	$75,000	$0	$0	$150,000
Matthew McGraner, CIO........	2019	$150,000	$150,000	$0	$0	$300,000
Jesse Blair III, Executive Vice President, Head of Lodging....................	2019	$150,000	$200,000	$0	$0	$350,000
Paul Richards, Vice President, Asset Management	2019	$50,000	$75,000	$0	$0	$125,000

Notes:

(1) All compensation for James Dondero (Chief Executive Officer), Brian Mitts (Chief Financial Officer), Matthew McGraner (Chief Investment Officer), Jesse Blair III (Executive Vice President, Head of Lodging) and Paul Richards (Vice President, Asset Management) will be paid by the Advisor or its respective affiliates, and there is no reimbursement by the REIT for such compensation. Messrs. Dondero, Mitts, McGraner, Blair and Richards will act in a variety of capacities for the Advisor and their respective affiliates, and the REIT, and accordingly, the total compensation that each such individual is expected to receive from the Advisor is not disclosed in this table, since total compensation will not be solely attributable to the services that he will provide to the REIT. The allocation of the total compensation disclosed in this table was determined by the Advisor solely for the purposes of this table, based on the time expected to be spent by each such individual in connection with REIT-related services from the time the REIT was formed to the end of fiscal 2018. The portion of total compensation expected to be attributable to the REIT in respect of other employees or senior management of the Advisor, Manager and their respective affiliates, does not meet the definition of named executive officer under applicable Canadian securities laws.

(2) Bonuses are awarded by the Advisor under the bonus program then in effect. The bonus program is discretionary and may vary materially from the estimated amount shown in this table.

(3) Determination of any grants of performance-based awards, restricted equity units, deferred trust units or other Unit-based incentive compensation pursuant to the Omnibus Plan will be made at the discretion of the Trustees following Closing and has not been determined as of the date of this prospectus.

INDEBTEDNESS OF TRUSTEES AND EXECUTIVE OFFICERS

None of the Trustees, executive officers, employees, former executive officers or former employees of the REIT or any of its subsidiaries, and none of their respective associates, is or has within 30 days before the date of this prospectus or at any time since the beginning of the most recently completed financial year been indebted to the REIT or any of its subsidiaries or another entity whose indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar agreement or understanding provided by the REIT or any of its subsidiaries.

CAPITALIZATION OF THE REIT

The following table sets forth the pro forma consolidated capitalization of the REIT as at February 28, 2019, (net of costs relating to the Contributions), giving effect to the Closing including the completion of the transactions described under “The Contribution of the Initial Portfolio” and “Debt Strategy and Indebtedness”. The table should be read in conjunction with the *pro forma* financial statements and notes of the REIT thereto contained in this prospectus. See “Index to the Financial Statements”.

	As at December 31, 2018[1][2]	As at December 31, 2019 after giving effect to the Offering and the transactions contemplated under "The Contribution of the Initial Portfolio" (net of costs relating to the Offering)[2]
Indebtedness		
Notes payable and other borrowings, net	-	$180,550
Mezzanine debt, net	-	71,574
Class B redeemable units of OP	-	67,881
Unitholders' Equity		
Units *(Authorized – unlimited; Issued - 15,130,777)*	-	$40,145
Total Capitalization	-	$360,150

Notes:

(1) The REIT was initially settled on December 12, 2018 with $15.00 in cash.

(2) Amounts expressed in thousands of US dollars.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Presentation

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("**MD&A**") discusses the financial condition and results of operations and changes thereto of the eleven hospitality properties located throughout the United States (the "**Initial Portfolio**") and owned by NexPoint Hospitality Trust (the "**REIT**") after completion of the series of contributions and acquisition contemplated in this prospectus, including the listing of Units on the TSX Venture Exchange (the "**Listing**"). The MD&A should be read in conjunction with the financial statements included in this prospectus. All amounts are stated in thousands of U.S. dollars except per unit amounts, unless otherwise noted. Financial data has been prepared in accordance with IFRS and its interpretations adopted by the International Accounting Standards Board (the "**IASB**"). This MD&A is dated as of, and has been prepared based on information available to management as of, the date of this prospectus. After Listing, the REIT will indirectly own all of the properties in the Initial Portfolio. This prospectus includes separate historical financial statements of each component entity comprising the Initial Portfolio.

The objective of this discussion is to provide Unitholders of the REIT with an analysis of the historical assets, liabilities, revenues and expenses of the Initial Portfolio for the periods referenced. Less emphasis has been placed on analyzing the impact of income taxes and the historical capital structure of the Initial Portfolio, as the historical financial statements contained in this prospectus do not reflect the REIT's proposed capital structure and income tax status, which will be significantly different. The unaudited "pro forma" condensed consolidated financial statements of the REIT contained in this prospectus reflect the impact of financial leverage, real estate investment trust tax status and proposed capital structure on a going forward basis.

Cautionary Note Regarding Forward-Looking Information

Some of the information contained in this MD&A contains forward-looking information. See "Forward-Looking Statements".

Non-IFRS Measures

This MD&A contains certain non-IFRS financial measures, including Funds from Operations ("**FFO**"), Core Funds from Operations ("**CFFO**"), Net Operating Income ("**NOI**") and Net Operating Income Margin ("**NOI Margin**"). See "Non-IFRS Measures".

The Initial Portfolio for the Years Ended December 31, 2017, 2016 and 2015 or for the Years Ended December 31, 2017 and 2016

Overview

The following discusses the financial condition and results of operations and changes thereto of the historical information relating to each component of the Initial Portfolio and should be read in conjunction with the financial statements (collectively, the "**Financials**") of each component entity comprising the Initial Portfolio contained in this prospectus.

This prospectus contains separate financial statements for each component of the Initial Portfolio. Accordingly, this MD&A for the Initial Portfolio has been presented on a separate basis by component. The MD&A is comprised of the following properties and entities: Hilton Garden Inn Dallas Market Center property (the "**HGI Property**"), presented on a consolidated basis as 2325 Stemmons Hotel Partners, LLC; the Doubletree Beaverton property, the Doubletree Bend property, the Doubletree Olympia property, the Doubletree Tigard property, and the Doubletree Vancouver property (collectively, the "**DT Portfolio**"), presented on a consolidated basis as the DT Portfolio; NREO NW Hospitality, LLC, which acquired the DT Portfolio from BRE GM Hotel JV Holdings, LLC on May 3, 2018; the Homewood Suites Addison property, the Homewood Suites Las Colinas property and the Homewood Suites Plano property (the "**HWS Portfolio**"), presented on a consolidated basis as HCBH 11611

Ferguson, LLC; the Marriott St. Petersburg property (the "**St. Pete Property**"), presented as Pallas, LLC; and the Holiday Inn Express Nashville (the "**Nashville Property**"), presented on a consolidated basis as Birchmont H.I. Nashville Partners, LLC.

The REIT is a newly-created, unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario. The REIT has applied to have the Units traded on the TSX Venture Exchange under the symbol "NHT". NexPoint Real Estate Advisors VI, L.P. (the "**Advisor**") will manage the REIT. The REIT, indirectly through NHT Holdings, LLC ("**NHI**"), will own its properties through NHI's subsidiary, NHT Operating Partnership, LLC (the "**OP**"). In order for NHI, and thus the REIT, to be eligible to elect to be taxed as a real estate investment trust under the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), the properties will be leased to taxable subsidiaries of the REIT (the "**TRS Entities**"), which will in turn contract with eligible independent contractors (as defined in the Code) to manage the day-to-day business operations of the hotels. The property managers for the properties in the Initial Portfolio are affiliates of AimBridge Hospitality Holdings, LLC (collectively, the "**Manager**").

Through various subsidiary entities, the REIT will directly and indirectly own eleven asset-specific limited liability entities, each owning a single hospitality property that comprises the Initial Portfolio. The Initial Portfolio consists of eleven hospitality properties containing 1,607 rooms. The Initial Portfolio will generate income primarily from rental payments received in connection with hospitality properties and related income. The Initial Portfolio contains 1,012 rooms that have been renovated recently or are currently undergoing renovation, which management believes will improve the condition of the individual properties and increase rental revenue and related hospitality income over the next three years.

The following sections present information and analysis from the financial statements from each component of the Initial Portfolio for the periods referenced, which include: the Financials of 2325 Stemmons Hotel Partners, LLC and Birchmont H.I. Nashville Partners LLC consist of the statements of financial position as of December 31, 2017, 2016 and 2015 and January 1, 2015, along with the statements of net income (loss) and comprehensive income (loss), statements of members' equity deficit and statements of cash flows for the years ended December 31, 2017, 2016 and 2015, respectively.

The Financials of the DT Portfolio and Pallas, LLC consist of the statements of financial position as of December 31, 2017, 2016 and January 1, 2016, along with the statements of comprehensive income, statements of members' equity and statements of cash flows for the years ended December 31, 2017 and 2016, respectively.

The HWS portfolio was purchased by HCBH 11611 Ferguson,, LLC ("**HCBH**") on May 4, 2017 (the "**HWS Acquisition Date**"). As such, financial information for HCBH and the HWS Portfolio is presented from May 4, 2017 through, and as of, December 31, 2017. Historical financial statements for the years ended December 31, 2016 and 2015 are not included for the HWS Portfolio.

2325 Stemmons Hotel Partners, LLC
Hilton Garden Inn Dallas Market Center
*(the "**HGI Property**")*

Review of Selected Financial and Operating Information of the HGI Property as of and for the Years Ended December 31, 2017 and 2016

The following tables highlight selected financial information of the HGI Property as of and for the years ended December 31, 2017 and 2016. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of 2325 Stemmons Hotel Partners, LLC, which includes its wholly-owned subsidiary, 2325 Stemmons TRS Inc., and the notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	Year Ended December 31	
	2017	**2016**
Total revenues	$ 9,216	$ 9,448
Operating expenses	(4,703)	(4,630)
General and administrative expenses	(1,846)	(1,965)
Depreciation	(1,423)	(1,378)
Interest expense, net	(1,158)	(1,059)
Income tax expense	(30)	(41)
Net income and comprehensive income	**$ 56**	**$ 375**

	Year Ended December 31	
	2017	**2016**
Funds from Operations	$ 1,479	$ 1,753
Core Funds from Operations	1,581	1,866
Net Operating Income	2,667	2,853

	December 31	
	2017	**2016**
Total assets	$ 31,165	$ 31,610
Total liabilities	23,070	23,571
Members' equity	8,095	8,039

Review and Comparison of Operational Results of the HGI Property for the Years Ended December 31, 2017 and 2016

Total Revenues

	Year Ended December 31			
	2017	2016	Variance	%
Rooms	$ 7,796	$ 8,020	$ (224)	–2.8%
Food and beverage	1,276	1,272	4	0.3%
Other	144	156	(12)	–7.7%
Total revenues	**$ 9,216**	**$ 9,448**	**$ (232)**	**–2.5%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the HGI Property. Total revenue decreased $232, or 2.5%, to $9,216 for the year ended December 31, 2017 compared to $9,448 for the year ended December 31, 2016. The decrease in revenue is primarily attributable to a decrease from the prior period in transient and group business. The competitive environment in the market center sub-market has increased since the Company bought the HGI Property in late 2014. The Company completed a large renovation in 2015 which resulted in a significant increase in RevPAR, ADR and occupancy in 2016 as compared to 2015. Because of increased competition around the HGI Property, occupancy was slightly lower in 2017, resulting in a decrease in revenue. Additionally, the role of director of sales was vacant for six months during 2017, creating further challenges to growing revenue during the year. Throughout 2016 and 2017, occupancy remained fairly stable at approximately 74%, as did ADR at approximately $125. RevPAR increased approximately 14% in 2017.

Operating Expenses

	Year Ended December 31			
	2017	2016	Variance	%
Payroll	$ 2,085	$ 1,978	$ 107	5.4%
Repairs and maintenance	384	499	(115)	–23.0%
Utilities	270	274	(4)	–1.5%
Property taxes and insurance	545	489	56	11.5%
Cost of goods sold	588	548	40	7.3%
Franchise fees	431	449	(18)	–4.0%
Other operating expenses	400	393	7	1.8%
Operating expenses	**$ 4,703**	**$ 4,630**	**$ 73**	**1.6%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $73, or 1.6%, to $4,703 for the year ended December 31, 2017 compared to $4,630 for the year ended December 31, 2016. The increase in expenses was primarily driven by increases over the prior period in: payroll expenses related to housekeeping and kitchen staff, and property taxes, and was partially offset by lower repairs and maintenance costs.

General and Administrative Expenses

	Year Ended December 31			
	2017	2016	Variance	%
Property management fees	$ 329	$ 337	$ (8)	–2.4%
Office operations	425	420	5	1.2%
Marketing	943	1,098	(155)	–14.1%
Other administrative expenses	149	110	39	35.5%
General and administrative expenses	**$ 1,846**	**$ 1,965**	**$ (119)**	**–6.1%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses decreased by $119, or 6.1%, to $1,846 for the year ended December 31, 2017 compared to $1,965 for the year ended December 31, 2016. The decrease was primarily attributable to a decrease in marketing costs from the prior period related to lower commissions on group sales.

Interest Expense, Net

	Year Ended December 31			
	2017	2016	Variance	%
Interest on debt	$ 1,086	$ 987	$ 99	10.0%
Amortization of deferred financing costs	72	72	–	0.0%
Interest expense, net	**$ 1,158**	**$ 1,059**	**$ 99**	**9.3%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense increased by $99, or 9.3%, to $1,158 for the year ended December 31, 2017 compared to $1,059 for the year ended December 31, 2016. The increase was primarily attributable to an increase in interest expense on the note payable driven by increases in one-month LIBOR during 2017.

Income Tax Expense

	Year Ended December 31			
	2017	2016	Variance	%
Income tax expense	$ 30	$ 41	$ (11)	–26.8%

Income tax expense consists of the income tax recorded for 2325 Stemmons TRS, Inc., which is a taxable REIT subsidiary. Income tax expense decreased by $11, or 26.8%, to $30 for the year ended December 31, 2017 compared to $41 for the year ended December 31, 2016. The decrease was attributable to lower taxable income driven by lower revenue and higher expenses as compared to the prior period.

Net Income and Comprehensive Income

	Year Ended December 31			
	2017	2016	Variance	%
Net Income and comprehensive income	$ 56	$ 375	$ (319)	–85.1%

Net income and comprehensive income decreased by $319, or 85.1%, to $56 for the year ended December 31, 2017 as compared to $375 for the year ended December 31, 2016. As discussed above, this decrease was primarily due to a net change in the following components of net income and comprehensive income:

- a decrease in total revenue of $232, primarily driven by decreases in transient and group business as a result of increased competition in the HGI Property's sub-market;
- an increase in operating expenses of $73, primarily driven by increases in payroll expenses related to housekeeping and kitchen staff and property taxes, partially offset by a decrease in repairs and maintenance costs;
- a decrease in general and administrative expenses of $119, primarily driven by lower commissions on group sales;
- an increase in net interest expense of $99, primarily driven by increases in one-month LIBOR during 2017; and
- a decrease in income tax expense of $11 as a result of lower taxable income due to lower revenue and higher expenses.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the HGI Property for the Years Ended December 31, 2017 and 2016

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016:

	Year Ended December 31	
	2017	**2016**
Net income	$ 56	$ 375
Depreciation	1,423	1,378
Funds from Operations	**1,479**	**1,753**
Deferred financing costs	72	72
Income tax expense	30	41
Core Funds from Operations	**$ 1,581**	**$ 1,866**

	Year Ended December 31	
	2017	**2016**
Total revenues	$ 9,216	$ 9,448
Total operating expenses	(6,549)	(6,595)
Net Operating Income	**$ 2,667**	**$ 2,853**
Net Operating Income margin	28.9%	30.2%

Financial Statement Analysis of the HGI Property as of and for the Years Ended December 31, 2017 and 2016

The following table highlights selected financial information for the HGI Property as of December 31, 2017 and 2016. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of the HGI Property and the notes thereto included elsewhere in this prospectus.

	December 31	
	2017	**2016**
Total current assets	$ 3,140	$ 2,506
Property and equipment, net	28,025	29,104
Total assets	**31,165**	**31,610**
Total current liabilities	2,148	2,427
Note payable, net	20,922	21,144
Total liabilities	**23,070**	**23,571**
Members' equity	**$ 8,095**	**$ 8,039**

Total Current Assets

	December 31			
	2017	**2016**	**Variance**	**%**
Cash and cash equivalents	$ 2,969	$ 1,957	$ 1,012	51.7%
Trade and other receivables	113	456	(343)	–75.2%
Prepaid and other assets	58	93	(35)	–37.6%
Total current assets	**$ 3,140**	**$ 2,506**	**$ 634**	**25.3%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expense and other assets. Total current assets increased by $634, or 25.3%, to $3,140 as of December 31, 2017 compared to $2,506 as of December 31, 2016. The increase was primarily due to an increase in cash related to positive cash flow from operating activities partially offset by investing and financing activities and a reduction in accounts receivable.

Property and Equipment, Net

	December 31			
	2017	**2016**	**Variance**	**%**
Land	$ 2,555	$ 2,555	$ –	0.0%
Buildings and improvements	25,922	25,600	322	1.3%
Furniture, fixtures and equipment	3,101	3,079	22	0.7%
Total property and equipment	31,578	31,234	344	1.1%
Accumulated depreciation	(3,553)	(2,130)	(1,423)	66.8%
Total property and equipment, net	**$ 28,025**	**$ 29,104**	**$ (1,079)**	**–3.7%**

Property and equipment, net includes land, buildings, improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net decreased by $1,079, or 3.7%, to $28,025 as of December 31, 2017 compared to $29,104 as of December 31, 2016. The decrease was attributable primarily to increased accumulated depreciation, offset slightly by additions to buildings and improvements.

Note payable, Net

Note payable, net includes the outstanding balance of the note payable on the HGI Property reduced by the unamortized deferred financing costs and the current portion of note payable and totaled $20,922 as of December 31, 2017, compared to $21,144 as of December 31, 2016, representing a decrease of $222, or 1.0%. The decrease was primarily attributable to lower unamortized deferred financing costs and a higher current portion of the note payable. As of December 31, 2017, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ 294
2019	310
2020	20,755
2021	–
2022	–
Thereafter	–
Note payable	**21,359**
Current maturities	(294)
Net unamortized deferred financing costs	(143)
Note payable, net	**$ 20,922**

Cash Flows of the HGI Property for the Years Ended December 31, 2017 and 2016

The HGI Property reported a cash balance of $2,969 as of December 31, 2017 as compared to a cash balance of $1,957 as of December 31, 2016. The changes in cash flow for the years ended December 31, 2017 and 2016 are as follows:

	Year Ended December 31	
	2017	2016
Cash flow provided by (used in):		
Operating activities	$ 2,715	$ 3,989
Investing activities	(344)	(477)
Financing activities	(1,359)	(2,292)
Increase (decrease) in cash and cash equivalents	1,012	1,220
Cash and cash equivalents, beginning of period	1,957	737
Cash and cash equivalents, end of period	**$ 2,969**	**$ 1,957**

Operating activities for the years ended December 31, 2017 and 2016

Cash flows from operating activities for the year ended December 31, 2017 generated a net cash inflow of $2,715 compared to a net cash inflow of $3,989 for the year ended December 31, 2016. The decrease in cash flows from operating activities was largely driven by lower net income and higher payments of payables.

Investing activities for the year ended December 31, 2017 and 2016

Cash flows used in investing activities for the year ended December 31, 2017 resulted in a net cash outflow of $344 compared to a net cash outflow of $477 for the year ended December 31, 2016. The decrease in net cash outflows from investing activities was primarily due to less additions to property and equipment compared to the prior period offset by a decrease in inflows into restricted cash.

Financing activities for the year ended December 31, 2017 and 2016

Cash flows used in financing activities for the year ended December 31, 2017 resulted in a net cash outflow of $1,359 compared to a net cash outflow of $2,292 for the year ended December 31, 2016. The decrease in net cash outflows from financing activities was driven by lower distributions paid to members, higher principal pay down on the note payable and slightly offset by higher interest paid on the note.

Transactions with Related Parties

Stemmons Hospitality, LLC ("**Stemmons**") is a minority member of 2325 Stemmons Hotel Partners, LLC and was an affiliate of the property manager of the HGI Property from acquisition on December 30, 2014 through January 7, 2016. During this period, property management fees paid to the property manager of the HGI Property were considered related party transactions. For the period ended January 7, 2016, the property manager of the HGI Property was paid $5.

Subsequent Events

The company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT 2325 Stemmons, LLC, which was immediately contributed to the OP in exchange for 3,944,221 Class B Units of the OP.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is carried at historical cost or fair value if the property is impaired, whichever is lower. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of December 31, 2017 are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 21,359	$ 21,359	$ 294	$ 21,065
Interest payable on note	–	2,327	1,172	1,155
Total	**$ 21,359**	**$ 23,686**	**$ 1,466**	**$ 22,220**

Additionally, the REIT's strategy entails performing renovations on most newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The Company completed an extensive renovation in 2015. Other than normal maintenance no additional capital expenditures will be required for the HGI Property until the Franchisor's brand standard or quality control changes require the Company to implement a PIP. Although the costs and timing of the next PIP are not specified, we estimate the costs will approximate $9,600 per room and will be required in the next 3-5 years. The Company reserves annually 4% of gross revenue for future PIP renovations, and we believe these reserves with free cash flow generated are sufficient to fund any future PIP programs.

Acquisitions

For the years ended December 31, 2017, 2016 and 2015, the Company had no acquisitions.

Dispositions

For the years ended December 31, 2017, 2016 and 2015, the Company had no dispositions.

2325 Stemmons Hotel Partners, LLC
Hilton Garden Inn Dallas Market Center
*(the "**HGI Property**")*

Review of Selected Financial and Operating Information of the HGI Property as of and for the Years Ended December 31, 2016 and 2015

The following tables highlight selected financial information of the HGI Property as of and for the years ended December 31, 2016 and 2015. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of 2325 Stemmons Hotel Partners, LLC, (the "Company") which includes its wholly-owned subsidiary, 2325 Stemmons TRS Inc., and the notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2016 and 2015, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and NOI Margin Results".

	Year Ended December 31	
	2016	**2015**
Total revenues	$ 9,448	$ 8,209
Operating expenses	(4,630)	(4,356)
General and administrative expenses	(1,965)	(1,397)
Depreciation	(1,378)	(752)
Interest expense, net	(1,059)	(962)
Income tax expense	(41)	(120)
Net income and comprehensive income	**$ 375**	**$ 622**

	Year Ended December 31	
	2016	**2015**
Funds from Operations	$ 1,753	$ 1,374
Core Funds from Operations	1,866	1,566
Net Operating Income	2,853	2,456

	December 31	
	2016	**2015**
Total assets	$ 31,610	$ 30,916
Total liabilities	23,571	21,947
Members' equity	8,039	8,969

Review and Comparison of Operational Results of the HGI Property for the Years Ended December 31, 2016 and 2015

Total Revenues

	Year Ended December 31			
	2016	2015	Variance	%
Rooms	$ 8,020	$ 6,817	$ 1,203	17.6%
Food and beverage	1,272	1,198	74	6.2%
Other	156	194	(38)	–19.6%
Total revenues	**$ 9,448**	**$ 8,209**	**$ 1,239**	**15.1%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the HGI Property. Total revenue increased $1,239, or 15.1%, to $9,448 for the year ended December 31, 2016 compared to $8,209 for the year ended December 31, 2015. The increase in revenue as compared to the prior period is primarily attributable to higher revenue as a result of realizing the full year impact of the renovations in 2016 that were completed in 2015. The renovation drove increases in RevPAR, ADR and occupancy in 2016 as compared to 2015. For 2016, RevPAR was $92.81, ADR was $125.94 and occupancy was 73.7%, respectively, as compared to 64.2%, $125.94 and $80.79.

Operating Expenses

	Year Ended December 31			
	2016	2015	Variance	%
Payroll	$ 1,978	$ 1,748	$ 230	13.2%
Repairs and maintenance	499	326	173	53.1%
Utilities	274	262	12	4.6%
Property taxes and insurance	489	526	(37)	–7.0%
Cost of goods sold	548	468	80	17.1%
Franchise fees	449	390	59	15.1%
Other operating expenses	393	636	(243)	–38.2%
Operating expenses	**$ 4,630**	**$ 4,356**	**$ 274**	**6.3%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $274, or 6.3%, to $4,630 for the year ended December 31, 2016 compared to $4,356 for the year ended December 31, 2015. The increase in expenses was primarily driven by an increase in payroll expenses in all departments, repairs and maintenance and costs of goods sold and partially offset by other operating expenses.

General and Administrative Expenses

	Year Ended December 31			
	2016	2015	Variance	%
Property management fees	$ 337	$ 245	$ 92	37.6%
Office operations	420	417	3	0.7%
Marketing	1,098	625	473	75.7%
Other administrative expenses	110	110	–	0.0%
General and administrative expenses	**$ 1,965**	**$ 1,397**	**$ 568**	**40.7%**

General and administrative expenses increased by $568, or 40.7%, to $1,965 for the year ended December 31, 2016 compared to $1,397 for the year ended December 31, 2015. The increase was primarily attributable to the increase in marketing expenses, which was part of the initial business plan upon acquisition of the HGI Property, to drive revenue higher after completion of the renovation.

Interest Expense, Net

	Year Ended December 31			
	2016	2015	Variance	%
Interest on debt	$ 987	$ 890	$ 97	10.9%
Amortization of deferred financing costs	72	72	–	0.0%
Interest expense, net	**$ 1,059**	**$ 962**	**$ 97**	**10.1%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense increased by $97, or 10.1%, to $1,059 for the year ended December 31, 2016 compared to $962 for the year ended December 31, 2015. The increase was attributable to an increase in interest expense on the note payable in the comparative period driven by increases in one-month LIBOR during 2016.

Income Tax Expense

	Year Ended December 31			
	2016	2015	Variance	%
Income tax expense	$ 41	$ 120	$ (79)	–65.8%

Income tax expense consists of the income tax recorded for 2325 Stemmons TRS, Inc., which is a taxable REIT subsidiary. Income tax expense decreased by $79, or 65.8%, to $41 for the year ended December 31, 2016 compared to $120 for the year ended December 31, 2015. The decrease was attributable to lower taxable income in 2016 as a result of higher expenses as compared to the prior period.

Net Income and Comprehensive Income

	Year Ended December 31			
	2016	2015	Variance	%
Net income and comprehensive income	$ 375	$ 622	$ (247)	–39.7%

Net income and comprehensive income decreased by $247, or 39.7%, to $375 for the year ended December 31, 2016 as compared to $622 for the year ended December 31, 2015. As discussed above, this decrease was primarily due to a net increase in the following components of net income and comprehensive income:

- an increase in total revenue of $1,239 resulting from an increase in revenues as a result of higher spending on marketing and completion of the renovation program completed in 2015;
- an increase in operating expenses of $274 resulting from increases in payroll expenses and repairs and maintenance costs, partially offset by a decrease in other expenses;
- an increase in general and administrative expenses of $568 as a result of higher marketing costs;
- an increase in depreciation expense of $626 as a result of realizing the full effect of $5,129 of additions to property in 2015;
- an increase in net interest expense of $97, primarily driven by increases in one-month LIBOR during 2016; and
- a decrease in income tax expense of $79 as a result of lower taxable income in 2016.

Funds from Operations, Core Funds from Operations, Adjusted Funds from Operations, Net Operating Income and Net Operating Income Margin

Results of the HGI Property for the Years Ended December 31, 2016 and 2015

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2016 and 2015:

	Year Ended December 31	
	2016	**2015**
Net income	$ 375	$ 622
Depreciation	1,378	752
Funds from Operations	**1,753**	**1,374**
Deferred financing costs	72	72
Income tax expense	41	120
Core Funds from Operations	**$ 1,866**	**$ 1,566**

	Year Ended December 31	
	2016	**2015**
Total revenues	$ 9,448	$ 8,209
Operating expenses	(6,595)	(5,753)
Net Operating Income	**$ 2,853**	**$ 2,456**
Net Operating Income margin	30.2%	29.9%

Financial Statement Analysis of the HGI Property as of and for the Years Ended December 31, 2016 and 2015

The following table highlights selected financial information for the HGI Property as of December 31, 2016 and 2015. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of the HGI Property and the notes thereto included elsewhere in this prospectus.

	December 31	
	2016	2015
Total current assets	$ 2,506	$ 1,059
Property and equipment, net	29,104	29,857
Total assets	**31,610**	**30,916**
Total current liabilities	2,427	602
Note payable, net	21,144	21,345
Total liabilities	**23,571**	**21,947**
Members' equity	**$ 8,039**	**$ 8,969**

Total Current Assets

	December 31			
	2016	2015	Variance	%
Cash and cash equivalents	$ 1,957	$ 737	$ 1,220	165.5%
Restricted cash	–	148	(148)	0.0%
Trade and other receivables	456	36	420	1166.7%
Prepaid and other assets	93	138	(45)	–32.6%
Total current assets	**$ 2,506**	**$ 1,059**	**$ 1,447**	**136.6%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expense and other assets. Total current assets increased by $1,447, or 136.6%, to $2,506 as of December 31, 2016 compared to $1,059 as of December 31, 2015. The increase was primarily due to an increase in cash related to positive cash flow from operating activities driven by increased net operating income.

Property and Equipment, Net

	December 31			
	2016	2015	Variance	%
Land	$ 2,555	$ 2,555	$ –	0.0%
Buildings and improvements	25,600	25,168	432	1.7%
Furniture, fixtures and equipment	3,079	2,886	193	6.7%
Total property and equipment	31,234	30,609	625	2.0%
Accumulated depreciation	(2,130)	(752)	(1,378)	183.2%
Total property and equipment, net	**$ 29,104**	**$ 29,857**	**$ (753)**	**–2.5%**

Property and equipment, net includes land, building and building improvement, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net decreased by $753, or 2.5%, to $29,104 as of December 31, 2016 compared to $29,857 as of December 31, 2015. The decrease was attributable primarily to increased accumulated depreciation, offset partially by additions to buildings and improvements and furniture, fixtures and equipment.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the HGI Property reduced by the unamortized deferred financing cost and the current portion of note payable and totaled $21,144 as of December 31, 2016, compared to $21,345 as of December 31, 2015, representing a decrease of $201, or 0.9%. The decrease was primarily attributable to principal payments on the note and amortization of deferred financing costs resulting in lower unamortized deferred financing costs.

Cash Flows of the HGI Property for the Years Ended December 31, 2016 and 2015

The HGI Property reported a cash balance of $1,957 as of December 31, 2016 as compared to a cash balance of $737 as of December 31, 2015. The changes in cash flow for the years ended December 31, 2016 and 2015 are as follows:

	Year Ended December 31	
	2016	**2015**
Cash flow provided by (used in):		
Operating activities	$ 3,989	$ 2,752
Investing activities	(477)	(5,277)
Financing activities	(2,292)	2,853
Increase (decrease) in cash and cash equivalents	1,220	328
Cash and cash equivalents, beginning of period	737	409
Cash and cash equivalents, end of period	**$ 1,957**	**$ 737**

Operating activities for the year ended December 31, 2016 and 2015

Cash flows from operating activities for the year ended December 31, 2017 generated a net cash inflow of $3,989 compared to a net cash inflow of $2,752 for the year ended December 31, 2016. The increase in cash flows from operating activities was largely driven by higher cash flow from operations as a result of higher net operating income as compared to the prior period.

Investing activities for the year ended December 31, 2016 and 2015

Cash flows used in investing activities for the year ended December 31, 2016 resulted in a net cash outflow of $477 compared to a net cash outflow of $5,277 for the year ended December 31, 2015. The decrease in net cash outflows from investing activities was primarily due to less additions to property and equipment as compared to the prior period as a result of the renovation program being completed in 2015.

Financing activities for the year ended December 31, 2016 and 2015

Cash flows used in financing activities for the year ended December 31, 2016 resulted in a net cash outflow of $2,292 compared to a net cash inflow of $2,853 for the year ended December 31, 2015. The increase in net cash outflows from financing activities was driven by higher distributions to members and lower contributions from members as compared to the prior period.

Transactions with Related Parties

Stemmons Hospitality, LLC ("**Stemmons**") is a minority member of 2325 Stemmons Hotel Partners, LLC and was an affiliate of the property manager of the HGI Property from acquisition on December 30, 2014 through January 7, 2016. During this period, property management fees paid to the property manager of the HGI Property were considered related party transactions. For the periods ended January 7, 2016 and December 31, 2015, the property manager of the HGI Property was paid $5 and $245, respectively.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

DoubleTree Portfolio

DoubleTree Beaverton, DoubleTree Bend, Double Tree Olympia, DoubleTree Tigard and DoubleTree Vancouver

Review of Selected Financial and Operating Information of the DT Portfolio as of and for the Years Ended December 31, 2017 and 2016

The following tables highlight selected financial information of the DT Portfolio as of and for the years ended December 31, 2017 and 2016. This information has been compiled from, and should be read in conjunction with the combined financial statements of the DT Portfolio (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	For the Year Ended December 31	
	2017	**2016**
Total revenues	$ 21,878	$ 22,704
Operating expenses	(10,181)	(10,116)
General and administrative expenses	(4,361)	(3,845)
Depreciation and amortization	(3,235)	(3,230)
Interest expense, net	(2,058)	(3,863)
Loss on derivatives	–	(8)
Net income and comprehensive income	**$ 2,043**	**$ 1,642**

	For the Year Ended December 31	
	2017	**2016**
Funds from Operations	$ 5,278	$ 4,872
Core Funds from Operations	5,278	5,270
Net Operating Income	7,336	8.743

	December 31	
	2017	**2016**
Total assets	$ 42,382	$ 42,016
Total liabilities	70,391	70,522
Members' equity	(28,009)	(28,506)

Review and Comparison of Operational Results of the DT Portfolio for the Years Ended December 31, 2017 and 2016

	For the Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Rooms	$ 20,450	$ 21,242	$ (792)	–3.7%
Food and beverage	1,428	1,462	(34)	–2.3%
Total revenues	**$ 21,878**	**$ 22,704**	**$ (826)**	**–3.6%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests. Total revenue decreased $826, or 3.6%, to $21,878 for the year ended December 31, 2017 compared to $22,704 for the year ended December 31, 2016. The decrease in revenue is primarily attributable to transient factors that include the addition of new competitive supply in the Olympia hotel market, a temporary travel hold for the two largest demand generators in Beaverton, OR, and substantial roof damage sustained at the Bend, OR hotel as a result of record snowfall. Each of these factors are considered to be short-term in nature and it is estimated the properties impacted will recover these decreases in 2018. Across the DT Portfolio for 2017, occupancy, ADR and RevPAR were 76.6%, $141.98 and $108.48, respectively, as compared to 78.8%, $142.37 and $112.47 in 2016.

Operating Expenses

	For the Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Payroll	$ 5,223	$ 5,007	$ 216	4.3%
Repairs and maintenance	293	301	(8)	–2.7%
Utilities	588	565	23	4.1%
Property taxes and insurance	735	739	(4)	–0.5%
Cost of goods sold	350	456	(106)	–23.2%
Franchise fees	1,033	1,000	33	3.3%
Other operating expenses	1,959	2,048	(89)	–4.3%
Operating expenses	**$ 10,181**	**$ 10,116**	**$ 65**	**0.6%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $65, or 0.6%, to $10,181 for the year ended December 31, 2017 compared to $10,116 for the year ended December 31, 2016. The increase in expenses was primarily driven by an increase payroll expenses as compared to the comparative period which was partially offset by a decrease in cost of goods sold.

General and Administrative Expenses

	For the Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Property management fees	$ 656	$ 681	$ (25)	–3.7%
Office operations	827	448	379	84.6%
Marketing	1,590	1,626	(36)	–2.2%
Other administrative expenses	1,288	1,090	198	18.2%
General and administrative expenses	**$ 4,361**	**$ 3,845**	**$ 516**	**13.4%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses increased by $516, or 13.4%, to $4,361 for the year ended December 31, 2017 compared to $3,845 for the year ended December 31, 2016. The increase was primarily attributable to an increase in office operations and administrative costs.

Interest Expense, Net

	For the Year Ended December 31			
	2017	2016	Variance	%
Interest on debt	$ 2,058	$ 3,473	$ (1,415)	–40.7%
Amortization of deferred financing costs	–	390	(390)	–100.0%
Interest expense, net	**$ 2,058**	**$ 3,863**	**$ (1,805)**	**–46.7%**

Interest expense, net consists of interest expense on the note payable and amortization of deferred financing costs. Interest expense, net decreased by $1,805, or 46.7%, to $2,058 for the year ended December 31, 2017 compared to $3,863 for the year ended December 31, 2016. The decrease was attributable to lower cost debt utilized in 2017 as compared to the prior period.

Net Income and Comprehensive Income

	For the Year Ended December 31			
	2017	2016	Variance	%
Net income and comprehensive income	$ 2,043	$ 1,642	$ 401	24.4%

Net income and comprehensive income increased by $401, or 24.4%, to $2,043 for the year ended December 31, 2017 as compared to $1,642 for the year ended December 31, 2016. As discussed above, this increase was primarily due to a net increase in the following components of net income and comprehensive income:

- a decrease in total revenue of $826 resulting from a decrease in occupancy and RevPAR due to the increased competition in the Olympia market, a change in buying patterns of the two largest groups in Beaverton market and a temporary reduction in occupancy as a result of damage caused by record snowfall at the DT Bend property;
- an increase in operating expenses of $65 resulting from increases in payroll that was partially offset by a decrease in cost of goods sold;
- an increase in general and administrative expenses of $516 as a result of higher office operations and administrative expenses; and
- a decrease in interest expense of $1,805 as a result of lower cost debt in 2017 as compared to the prior period in the comparative period.

Funds from Operations, Core Funds from Operations, Net Operating Income and Same Community

Results of the DT Portfolio for the Years Ended December 31, 2017 and December 31, 2016

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016:

	For the Year Ended December 31	
	2017	**2016**
Net income	$ 2,043	$ 1,642
Depreciation and amortization	3,235	3,230
Funds from Operations	**5,278**	**4,872**
Deferred financing costs	–	390
Loss on derivatives	–	8
Core Funds from Operations	**$ 5,278**	**$ 5,270**

	For the Year Ended December 31	
	2017	**2016**
Total revenues	$ 21,878	$ 22,704
Total operating expenses	(14,542)	(13,961)
Net Operating Income	**$ 7,336**	**$ 8,743**
Net Operating Income margin	33.5%	38.5%

Financial Statement Analysis of the DT Portfolio as of and for the Years Ended December 31, 2017 and December 31, 2016

The following table highlights selected financial information for the DT Portfolio as of December 31, 2017 and December 31, 2016. This information has been compiled from, and should be read in conjunction with, the combined financial statements of the DT Portfolio and the notes thereto included elsewhere in this prospectus.

	December 31	
	2017	**2016**
Total current assets	$ 3,122	$ 1,093
Property and equipment, net	39,260	40,923
Total assets	**42,382**	**42,016**
Total current liabilities	1,178	1,309
Note payable, net	49,031	49,031
Mezzanine loan payable, net	20,182	16,588
Related party mezzanine loan payable, net	0	3,594
Total liabilities	**70,391**	**70,522**
Members' equity	**$ (28,009)**	**$ (28,506)**

	December 31			
	2017	2016	Variance	%
Cash and cash equivalents	$ 580	$ 100	$ 480	480.0%
Restricted cash	–	215	(215)	-100.0%
Trade and other receivables	2,087	242	1,845	762.4%
Prepaid and other assets	455	536	(81)	-15.1%
Total current assets	**$ 3,122**	**$ 1,093**	**$ 2,029**	**186.6%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expense and other assets. Total current assets increased by $2,029, or 186.6%, to $3,122 as of December 31, 2017 compared to $1,093 as of December 31, 2016. The increase was primarily due to an increase in accounts receivable related to slower collections on large group business.

Property and Equipment, Net

	December 31			
	2017	2016	Variance	%
Land	$ 5,024	$ 5,010	$ 14	0.3%
Buildings and improvements	43,374	42,284	1,090	2.6%
Furniture, fixtures and equipment	17,615	17,185	430	2.5%
Total property and equipment	66,013	64,479	1,534	2.4%
Accumulated depreciation	(26,753)	(23,556)	(3,197)	13.6%
Total property and equipment, net	**$ 39,260**	**$ 40,923**	**$ (1,663)**	**-4.1%**

Property and equipment net includes land, building and building improvements, as well as furniture and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net decreased by $1,663, or 4.1%, to $39,260 as of December 31, 2017 compared to $40,923 as of December 31, 2016. The decrease was attributable primarily to increased accumulated depreciation, offset slightly by additions to buildings and improvements and furniture, fixtures and equipment.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the DT Portfolio reduced by the unamortized deferred financing cost and totaled $49,031 as of December 31, 2017, compared to $49,031 as of December 31, 2016. Mezzanine loan, net includes the outstanding balance of the mezzanine loan on the DT Portfolio reduced by the unamortized deferred financing cost and totaled $20,182 as of December 31, 2017, compared to $16,588 as of December 31, 2016. The increase was the result of the related party loan being combined with the mezzanine loan in 2017. As of December 31, 2017, the aggregate principal repayments on the note payable and mezzanine loan in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note payable	Mezzanine loan
2018	$ –	$ –
2019	49,031	20,182
2020	–	–
2021	–	–
2022	–	–

	Note payable		Mezzanine loan
Thereafter		–		–
Note payable		49,031		20,182
Current maturities		–		–
Net unamortized deferred financing costs		–		–
Note payable, net	$	49,031	$	20,182

Cash Flows of the DT Portfolio for the Years Ended December 31, 2017 and December 31, 2016

The DT Portfolio reported a cash balance of $580 as of December 31, 2017 as compared to a cash balance of $100 as of December 31, 2016. The changes in cash flow for the years ended December 31, 2017 and 2016 are as follows:

	For the Year Ended December 31			
	2017		2016	
Cash flow provided by (used in):				
Operating activities	$	3,345	$	5,366
Investing activities		(1,534)		(475)
Financing activities		(1,546)		(5,032)
Increase in cash and cash equivalents		265		(141)
Cash and cash equivalents, beginning of period		315		241
Cash and cash equivalents, end of period	**$**	**580**	**$**	**100**

Operating activities for the year ended December 31, 2017 and 2016

Cash flows from operating activities for the year ended December 31, 2017 generated a net cash inflow of $3,345 compared to a net cash inflow of $5,366 for the year ended December 31, 2016. The decrease in cash flows from operating activities was largely driven by lower collections of receivables as compared to the prior year.

Investing activities for the year ended December 31, 2017 and 2016

Cash flows used in investing activities for the year ended December 31, 2017 resulted in a net cash outflow of $1,534 compared to a net cash outflow of $475 for the year ended December 31, 2016. The increase in net cash outflows from investing activities was due to more additions to property and equipment in the current year.

Financing activities for the year ended December 31, 2017 and 2016

Cash flows used in financing activities for the year ended December 31, 2017 resulted in a net cash outflow of $1,546 compared to a net cash outflow of $5,032 for the year ended December 31, 2016. The decrease in net cash outflows from financing activities was driven by lower distributions paid to members in the current year.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of December 31, 2017 are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 49,031	$ 49,031	$ –	$ 49,031
Mezzanine loan	20,182	20,182	–	20,182
Interest payable on note	–	4,252	2,126	2,126
Total	**$ 69,213**	**$ 73,465**	**$ 2,162**	**$ 71,339**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). As of the date of this Prospectus, an extensive renovation program is in process at the DT Portfolio and is estimated to be completed in May 2019. The estimated cost of completion from October 1, 2018 through completion is budgeted to be $8,607. Other than normal recurring maintenance no additional capital expenditures are anticipated for the DT Portfolio until the next PIP is required. We believe the reserves and free cash flow generated are sufficient to fund any future PIP programs.

Acquisitions

For the years ended December 31, 2017 and 2016, the Company had no acquisitions.

Dispositions

For the years ended December 31, 2017 and 2016, the Company had no dispositions.

Transactions with Related Parties

The Company entered into a joint financing arrangement with affiliates referred to as the Collective Loan. The Collective Loan was outstanding as of December 31, 2016 and January 1, 2016. The Company paid affiliates $183 in interest in 2017 under the Collective Loan. Additionally, the Company was jointly and severally liable on $862.5 million of debt with affiliates.

On July 7, 2017, the Collective Loan was refinanced with the Refinanced Loan, which was issued by an affiliate. The Company paid affiliated $1,063 in 2017 under the Refinanced Loan.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these combined financial statements. On May 3, 2018, the DT Portfolio was purchased by NREO NW Hospitality, LLC from BRE GM Hotel JV, LLC. On January 8, 2019, the owner of NREO NW Hospitality, LLC, contributed its interests in NREO NW Hospitality, LLC to the OP in exchange for 9,629,170 Class B Units of the OP.

HCBH 11611 Ferguson, LLC

Homewood Suites Addison, Homewood Suites Las Colinas and Homewood Suites Plano
*(collectively, the "**HWS Portfolio**")*

Review of Selected Financial and Operating Information of the HWS Portfolio as of and for the Period Ended December 31, 2017

The following tables highlight selected financial information of the HWS Portfolio as of and for the period ended December 31, 2017. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of HCBH 11611 Ferguson, LLC (the "Company") and the notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the period ended December 31, 2017, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin". Because 2017 was the Company's first year of operations, comparative financial information is not presented.

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Total revenues	$ 7,653
Operating expenses	(3,755)
General and administrative expenses	(1,701)
Depreciation	(520)
Interest expense, net	(1,106)
Income tax expense	–
Net income and comprehensive income	**$ 571**

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Funds from Operations	$ 1,091
Core Funds from Operations	1,221
Net Operating Income	2,197

	December 31
	2017
Total assets	$ 37,522
Total liabilities	28,066
Members' equity	9,456

Review and Comparison of Operational Results of the HWS Portfolio for the Year Ended December 31, 2017

Total Revenues

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Rooms	$ 7,538
Food and beverage	14
Other	101
Total revenues	**$ 7,653**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the HWS Portfolio. Total revenue for the period ended December 31, 2017 was $7,653 and was driven primarily by room revenue which was $7,538. Across the HWS Portfolio for 2017, occupancy, ADR and RevPAR were 78.0%, $113.80 and $88.84, respectively.

Operating Expenses

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Payroll	$ 1,624
Repairs and maintenance	394
Utilities	298
Property taxes and insurance	526
Cost of goods sold	150
Franchise fees	417
Other operating expenses	346
Operating expenses	**$ 3,755**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses totaled $3,755 for the period ended December 31, 2017 and consisted primarily of payroll expenses and property taxes and insurance, which were $1,624 and $526, respectively.

General and Administrative Expenses

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Property management fees	$ 191
Office operations	420

		For the Period from May 4, 2017 (date of formation) to December 31, 2017
		2017
Marketing		808
Other administrative expenses		282
General and administrative expenses	**$**	**1,701**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses totaled $1,701 for the period ended December 31, 2017 and was comprised primarily of marketing expenses and office operations, which were $808 and $420, respectively.

Interest Expense, Net

		For the Period from May 4, 2017 (date of formation) to December 31, 2017
		2017
Interest on debt	$	976
Amortization of deferred financing costs		130
Interest expense, net	**$**	**1,106**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense for the period ended December 31, 2017 was $1,106 and was driven primarily by interest on the note payable of $976.

Net Income and Comprehensive Income

		For the Period from May 4, 2017 (date of formation) to December 31, 2017
		2017
Net income and comprehensive income	$	571

Net income and comprehensive income for the period ended December 31, 2017 was $571 was driven primarily by the following components of net income and comprehensive income:

- revenue of $7,653;
- operating expenses of $3,755;
- general and administrative expenses of $1,701; and
- net interest expense of $1,106.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin

Results of the HWS Portfolio for the Period Ended December 31, 2017

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the period ended December 31, 2017:

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Net income	$ 571
Depreciation	520
Funds from Operations	**1,091**
Deferred financing costs	130
Income tax expense	–
Core Funds from Operations	**$ 1,221**

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2015
Total revenues	$ 7,653
Total operating expenses	(5,456)
Net Operating Income	**$ 2,197**
Net Operating Income margin	28.7%

Financial Statement Analysis of the HWS Portfolio as of and for the Period Ended December 31, 2017

The following table highlights selected financial information for the HWS Portfolio as of December 31, 2017. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of the HWS Portfolio and the notes thereto included elsewhere in this prospectus.

	December 31
	2017
Total current assets	$ 2,130
Property and equipment, net	35,392
Total assets	**37,522**
Total current liabilities	1,762
Note payable, net	26,304
Total liabilities	**28,066**
Members' equity	**$ 9,456**

Total Current Assets

	December 31
	2017
Cash and cash equivalents	$ 697
Restricted cash	1,008
Trade and other receivables	245
Prepaid and other assets	180
Total current assets	**$ 2,130**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expense and other assets. Total current assets were $2,130 as of December 31, 2017 and consisted primarily of cash and cash equivalents and restricted cash, which were $697 and $1,008, respectively.

Property and Equipment, Net

	December 31
	2017
Land	$ 6,715
Buildings and improvements	20,998
Furniture, fixtures and equipment	2,094
Construction in progress	6,105
Total property and equipment	35,912
Accumulated depreciation	(520)
Total property and equipment, net	**$ 35,392**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net as of December 31, 2017 was $35,392 and consisted primarily of buildings and improvements of $20,998, construction in progress of $6,105 and land of $6,715 and was partially offset by accumulated depreciation of $520.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the HWS Portfolio reduced by the unamortized deferred financing cost and totaled $26,304 as of December 31, 2017. As of December 31, 2017, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ –
2019	277
2020	26,481
2021	–
2022	–
Thereafter	–
Note payable	**26,758**

	Note Payable
Current maturities	–
Net unamortized deferred financing costs	(454)
Note payable, net	$ 26,304

Cash Flows of the HWS Portfolio for the Period Ended December 31, 2017

The HWS Portfolio reported a cash balance of $697 as of December 31, 2017. The cash flows for the period ended December 31, 2017 are as follows:

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
	2017
Cash flow provided by (used in):	
Operating activities	$ 3,386
Investing activities	(36,920)
Financing activities	34,231
Increase in cash and cash equivalents	697
Cash and cash equivalents, beginning of period	–
Cash and cash equivalents, end of period	**$ 697**

Operating, investing and financing activities for the period ended December 31, 2017

For the period ended December 31, 2017, net cash inflows from operating activities were $3,386, net cash outflows from investing activities were $36,920, and net cash inflows from financing activities were $34,231, resulting in an increase in cash and cash equivalents for the period.

Transactions with Related Parties

For the period ended December 31, 2017, there were no transactions with related parties.

Subsequent Events

HCBH 11611 Ferguson, LLC evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT DFW Portfolio, LLC, which was immediately contributed to NHT Holdco, LLC in exchange for 3,843,184 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost or fair value less accumulated depreciation if the property is impaired, whichever is lower. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and

equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of December 31, 2017 are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 26,758	$ 26,758	$ –	$ 26,758
Interest payable on note	148	4,256	1,767	2,489
Total	$ 26,906	$ 31,014	$ 1,767	$ 29,247

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The HWS Portfolio completed an extensive renovation in 2017 and 2018. Other than normal maintenance no additional capital expenditures will be required for the HWS Portfolio until the next PIP is required. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $15,000 per room and will be required in the next 6 years. The Company reserves annually 4% of gross revenue for future PIP renovations. We believe these reserves are sufficient to fund any future PIP programs.

Acquisitions

Detailed below are the asset acquisitions completed by the Company for the period ended December 31, 2017:

Brand	Location	Acquisition Date	Rooms	Purchase price[1]	Note payable
Homewood Suites	Plano, Texas	May 4, 2017	99	$ 8,574	$ 8,624
Homewood Suites	Addison, Texas	May 4, 2017	120	8,773	6,573
Homewood Suites	Las Colinas, Texas	May 4, 2017	136	12,362	6,983
			355	$ 29,709	$ 22,180

Includes transaction costs of $67, $69 and $73, respectively.

Dispositions

For the period ended December 31, 2017, the Company had no dispositions.

Pallas, LLC
Marriott St. Petersburg
*(the **"St. Pete Property"**)*

Review of Selected Financial and Operating Information of the St. Pete Property as of and for the Years Ended December 31, 2017 and 2016

The following tables highlight selected financial information of the St. Pete Property as of and for the years ended December 31, 2017 and 2016. This information has been compiled from, and should be read in conjunction with, the financial statements of Pallas, LLC (the "Company") and the notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the period ended December 31, 2017 and 2016, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	Year Ended December 31	
	2017	**2016**
Total revenues	$ 10,988	$ 10,786
Operating expenses	(5,968)	(5,829)
General and administrative expenses	(1,948)	(1,876)
Depreciation and amortization	(441)	(639)
Interest expense, net	(880)	(918)
Other income (expense)	73	106
Net income and comprehensive income	**$ 1,824**	**$ 1,630**

	Year Ended December 31	
	2017	**2016**
Funds from Operations	$ 2,265	$ 2,269
Core Funds from Operations	2,301	2,318
Net Operating Income	3,072	3,080

	December 31	
	2017	**2016**
Total assets	$ 17,827	$ 14,498
Total liabilities	23,342	20,436
Members' equity	(5,515)	(5,938)

Review and Comparison of Operational Results of the St. Pete Property for the Years Ended December 31, 2017 and 2016

Total Revenues

	Year Ended December 31			
	2017	2016	Variance	%
Rooms	$ 7,772	$ 7,517	$ 255	3.4%
Food and beverage	1,007	1,037	(30)	–2.9%
Other	2,209	2,232	(23)	–1.0%
Total revenues	**$ 10,988**	**$ 10,786**	**$ 202**	**1.9%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the St. Pete Property. Total revenue increased $202, or 1.9%, to $10,988 for the year ended December 31, 2017 compared to $10,786 for the year ended December 31, 2016. The increase in revenue is primarily attributable to an increase in transient business as compared to the prior period. The hotel market in the St. Pete Property's sub-market is fairly stable with no new competition and a steady and consistent level of business. As a result, revenue has grown slowly over the past few years. In 2017, occupancy, ADR and RevPAR for the St. Pete Property was 71.0%, $154.33 and $109.50, respectively, as compared to 69.9%, $152.76 and $106.85, respectively, for 2016.

Operating Expenses

	Year Ended December 31			
	2017	2016	Variance	%
Payroll	$ 2,004	$ 1,940	$ 64	3.3%
Repairs and maintenance	495	528	(33)	–6.3%
Utilities	437	420	17	4.0%
Property taxes and insurance	731	632	99	15.7%
Cost of goods sold	1,309	1,311	(2)	–0.2%
Franchise fees	876	897	(21)	–2.3%
Other operating expenses	116	101	15	14.9%
Operating expenses	**$ 5,968**	**$ 5,829**	**$ 139**	**2.4%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $139, or 2.4%, to $5,968 for the year ended December 31, 2017 compared to $5,829 for the year ended December 31, 2016. The increase in expenses as compared to the prior period was primarily driven by increases in payroll expenses related to housekeeping and banquet personnel and property taxes and was partially offset by a decrease in repairs and maintenance.

General and Administrative Expenses

	Year Ended December 31			
	2017	2016	Variance	%
Property management fees	$ 535	$ 540	$ (5)	–0.9%
Office operations	173	154	19	12.3%

	Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Marketing	1,234	1,176	58	4.9%
Other administrative expenses	6	6	–	0.0%
General and administrative expenses	**$ 1,948**	**$ 1,876**	**$ 72**	**3.8%**

General and administrative expenses increased by $72, or 3.8%, to $1,948 for the year ended December 31, 2017 compared to $1,876 for the year ended December 31, 2016. The increase was primarily attributable to the increase in marketing and office expenses.

Interest Expense, Net

	Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Interest on debt	$ 844	$ 869	$ (25)	–2.9%
Amortization of deferred financing costs	36	49	(13)	–26.5%
Interest expense, net	**$ 880**	**$ 918**	**$ (38)**	**–4.1%**

Interest expense, net consists of interest expense on loans and borrowings, amortization of deferred financing costs, amortization of issuance (premium) discounts and interest paid on hedging instruments which are recognized in profit or loss. Interest expense, net decreased by $38, or 4.1%, to $880 for the year ended December 31, 2017 compared to $918 for the year ended December 31, 2016. The decrease as compared to the prior period was attributable to the repayment of the related party note in 2017.

Net Income and Comprehensive Income

	Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Net income and comprehensive income	$ 1,824	$ 1,630	$ 194	11.9%

Net income and comprehensive income increased by $194, or 11.9%, to $1,824 for the year ended December 31, 2017 as compared to $1,630 for the year ended December 31, 2016. As discussed above, this decrease was primarily due to the following components of net income and comprehensive income:

- an increase in total revenue of $202 resulting from a slight increase in transient business;
- an increase in property operating expenses of $139 resulting from higher payroll expenses and property taxes;
- an increase in general and administrative expenses of $72 as a result of higher marketing costs;
- a decrease in depreciation of $198; and
- a decrease in interest expense, net of $38 due to the repayment of the related party note in 2017.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the St. Pete Property for the Years Ended December 31, 2017 and December 31, 2016

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016:

	Year Ended December 31	
	2017	2016
Net income	$ 1,824	$ 1,630
Depreciation and amortization	441	639
Funds from Operations	**2,265**	**2,269**
Deferred financing costs	36	49
Income tax expense	–	–
Core Funds from Operations	**$ 2,301**	**$ 2,318**

	Year Ended December 31	
	2017	2016
Total revenues	$ 10,988	$ 10,786
Total operating expenses	(7,916)	(7,705)
Net Operating Income	**$ 3,072**	**$ 3,081**
Net Operating Income margin	28.0%	28.6%

Financial Statement Analysis of the St. Pete Property as of and for the Years Ended December 31, 2017 and December 31, 2016

The following table highlights selected financial information for the St. Pete Property as of December 31, 2017 and December 31, 2016. This information has been compiled from, and should be read in conjunction with, the financial statements of the St. Pete Property and the notes thereto included elsewhere in this prospectus.

	December 31	
	2017	2016
Total current assets	$ 4,540	$ 1,647
Property and equipment, net	13,287	12,851
Total assets	**17,827**	**14,498**
Total current liabilities	1,089	18,130
Note payable, net	22,253	–
Related party note payable	–	2,306
Total liabilities	**23,342**	**20,436**
Members' deficit	$ (5,515)	$ (5,938)

Total Current Assets

	December 31			
	2017	2016	Variance	%
Cash and cash equivalents	$ 4,271	$ 1,339	$ 2,932	219.0%
Restricted cash	2	2	–	0.0%
Trade and other receivables	23	86	(63)	–73.3%
Prepaid and other assets	244	220	24	10.9%
Total current assets	**$ 4,540**	**$ 1,647**	**$ 2,893**	**175.7%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets increased by $2,893, or 175.7%, to $4,540 as of December 31, 2017 compared to $1,647 as of December 31, 2016. The increase was primarily due to an increase in cash of $2,932 due to an increase in cash from operations and financing activities.

Property and Equipment, Net

	December 31			
	2017	**2016**	**Variance**	**%**
Land	$ 1,777	$ 1,777	$ –	0.0%
Buildings and improvements	18,128	18,128	–	0.0%
Furniture, fixtures and equipment	4,325	3,452	873	25.3%
Total property and equipment	24,230	23,357	873	3.7%
Accumulated depreciation	(10,943)	(10,506)	(437)	4.2%
Total property and equipment, net	**$ 13,287**	**$ 12,851**	**$ 436**	**3.4%**

Property and equipment, net includes land, buildings, improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $436, or 3.4%, to $13,287 as of December 31, 2017 compared to $12,851 as of December 31, 2016. The increase was attributable primarily to additions to furniture, fixtures and equipment, partially offset by an increase in accumulated depreciation.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the St. Pete Property reduced by the unamortized deferred financing costs and the current portion of note payable and totaled $22,253 as of December 31, 2017, compared to $0 as of December 31, 2016, representing an increase of $22,253. The increase was the result of the note outstanding at December 31, 2016 maturing in 2017 and therefore the entire balance was classified as the current portion payable. As of December 31, 2017, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ 564
2019	586
2020	608
2021	632
2022	20,563
Thereafter	–
Note payable	**22,953**
Current maturities	(564)
Net unamortized deferred financing costs	(136)
Note payable, net	**$ 22,253**

Cash Flows of the St. Pete Property for the Years Ended December 31, 2017 and December 31, 2016

The St. Pete Property reported a cash balance of $4,271 as of December 31, 2017 as compared to a cash balance of $1,339 as of December 31, 2016. The changes in cash flow for the years ended December 31, 2017 and 2016 are as follows:

	Year Ended December 31	
	2017	**2016**
Cash flow provided by (used in):		
Operating activities	$ 3,076	$ 2,947
Investing activities	(873)	(16)
Financing activities	729	(2,451)
Increase in cash and cash equivalents	2,932	480
Cash and cash equivalents, beginning of period	1,339	859
Cash and cash equivalents, end of period	**$ 4,271**	**$ 1,339**

Operating activities for the year ended December 31, 2017 and 2016

Cash flows from operating activities for the year ended December 31, 2017 generated a net cash inflow of $3,076 compared to a net cash inflow of $2,947 for the year ended December 31, 2016. The increase as compared to the prior period of $129 in cash flows from operating activities was largely driven by an increase in net income of $194, adjusted for a decrease in non-cash items of $65.

Investing activities for the year ended December 31, 2017 and 2016

Cash flows used in investing activities for the year ended December 31, 2017 resulted in a net cash outflow of $873 compared to a net cash outflow of $16 for the year ended December 31, 2016. The increase in net cash outflows from investing activities was due to an increase in the additions to property and equipment as compared to the prior period.

Financing activities for the year ended December 31, 2017 and 2016

Cash flows used in financing activities for the year ended December 31, 2017 resulted in a net cash inflow of $729 compared to a net cash outflow of $2,451 for the year ended December 31, 2016. The decrease in net cash outflows from financing activities as compared to the prior period was driven primarily by cash proceeds received in the financing of the note payable, partially offset by higher payments on the related party note.

Transactions with Related Parties

For the years ended December 31, 2017 and 2016, Pallas, LLC paid interest on a related party note payable to MDM. The note was repaid as part of the refinancing of the mortgage on November 25, 2017. Pallas, LLC borrowed more than the balance of the old mortgage, using the additional proceeds to repay the related party note. As of December 31, 2016 the related party note payable outstanding with MDM was $2,306 and $0 as of December 31, 2017. Additionally, the Company paid MDM property management fees of $535 and $540, respectively, for the years ended December 31, 2017 and 2016.

Subsequent Events

Pallas, LLC evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these financial statements. On September 24, 2018, the Company sold the Property to NHT SP, LLC. On January 8, 2019, the parent of NHT SP, LLC (NHT SP Parent, LLC), was contributed to NHT Holdco, LLC in exchange for 3,613,498 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of December 31, 2017 are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 22,953	$ 22,953	$ 564	$ 22,389
Interest payable on note	–	–	–	–
Total	**$ 22,953**	**$ 22,953**	**$ 564**	**$ 22,389**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). It is anticipated the St. Pete Property will begin an extensive renovation on the property. It is estimated the renovation will be completed in 2020 for an estimated cost of $7 million. Other than normal recurring maintenance only the replacement of case goods are anticipated for the St. Pete Property until the next full PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 6 years. The Company was required to reserve annually 4% of gross revenue for future PIP renovations, but as discussed in Note15 of the financial statements, the Company failed to reserve the required amount under the Franchise Agreement. Upon contribution of the Property to the REIT, additional cash was contributed to fund the initial budgeted renovations. After the initial renovations are complete, the REIT believes the reserves required by the lender together with free cash flow generated by the REIT are sufficient to fund any future PIP programs.

Acquisitions

For the years ended December 31, 2017 and 2016, the Company made no acquisitions.

Dispositions

For the years ended December 31, 2017 and 2016, the Company made no dispositions.

Birchmont H.I. Nashville Partners, LLC
Holiday Inn Express Nashville
*(the **"Nashville Property"**)*

Review of Selected Financial and Operating Information of the Nashville Property as of and for the Years Ended December 31, 2017 and 2016

The following tables highlight selected financial information of the Nashville Property as of and for the years ended December 31, 2017 and 2016. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of Birchmont H.I. Nashville Partners, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the years ended December 31, 2017 and 2016, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results".

	Year Ended December 31	
	2017	**2016**
Total revenues	$ 20,137	$ 18,743
Operating expenses	(9,138)	(8,689)
General and administrative expenses	(1,080)	(894)
Depreciation and amortization	(1,242)	(1,284)
Interest expense, net	(3,781)	(4,152)
Net income and comprehensive income	**$ 4,896**	**$ 3,724**

	Year Ended December 31	
	2017	**2016**
Funds from Operations	$ 6,138	$ 5,008
Core Funds from Operations	6,208	5,055
Net Operating Income	9,919	9,160

	December 31	
	2017	**2016**
Total assets	$ 38,214	$ 36,053
Total liabilities	72,458	72,693
Members' deficit	(34,244)	(36,640)

Review and Comparison of Operational Results of the Nashville Property for the Years Ended December 31, 2017 and 2016

Total Revenues

	Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Rooms	$ 18,171	$ 17,323	$ 848	4.9%
Food and beverage	187	96	91	94.8%
Other	1,779	1,324	455	34.4%
Total revenues	**$ 20,137**	**$ 18,743**	**$ 1,394**	**7.4%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the Nashville Property. Total revenue increased $1,394, or 7.4%, to $20,137 for the year ended December 31, 2017 compared to $18,743 for the year ended December 31, 2016. The increase in revenue as compared to the prior period is primarily attributable to an increase in transient revenue and resort fees, offset by a decrease in corporate group revenue. The Nashville Property is located in a desirable part of downtown Nashville where a number of companies are moving increasing the level of potential revenue from business travelers. It is anticipated revenue will continue to increase at a higher pace relative to other properties in the Initial Portfolio as a result of the continued development in the sub-market. For 2017, occupancy, ADR and RevPAR at the Nashville Property was 76.9%, $226.75 and $174.34, respectively, as compared to 76.8%, $215.57 and $165.65, respectively. Slightly higher occupancy combined with a 5.2% increase in ADR and a 5.3% increase in RevPAR in 2017 was a key component of the 7.4% increase in total revenue.

Operating Expenses

	Year Ended December 31			
	2017	**2016**	**Variance**	**%**
Payroll and employee related costs	$ 2,594	$ 2,394	$ 200	8.4%
Property management fees	1,007	937	70	7.5%
Repairs and maintenance	178	183	(5)	-2.7%
Utilities	396	435	(39)	-9.0%
Property taxes and insurance	851	422	429	101.7%
Cost of goods sold	2,388	2,285	103	4.5%
Franchise fees	1,461	1,484	(23)	-1.5%
Franchise and excise taxes	135	423	(288)	-68.1%
Other operating expenses	128	126	2	1.6%
Operating expenses	**$ 9,138**	**$ 8,689**	**$ 449**	**5.2%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $449, or 5.2%, to $9,138 for the year ended December 31, 2017 compared to $8,689 for the year ended December 31, 2016. The increase in expenses as compared to the prior period was primarily driven by increases in property taxes, payroll expenses and cost of goods sold and was offset by lower franchise and excise taxes.

General and Administrative Expenses

	Year Ended December 31			
	2017	2016	Variance	%
Marketing	$ 584	$ 534	$ 50	9.4%
Asset management fees	208	208	–	0.0%
Other administrative expenses	288	152	136	89.5%
General and administrative expenses	**$ 1,080**	**$ 894**	**$ 186**	**20.8%**

General and administrative expenses increased by $186, or 20.8%, to $1,080 for the year ended December 31, 2017 compared to $894 for the year ended December 31, 2016. The increase as compared to the prior period was primarily attributable to a reclassification of business and occupational taxes, which were previously included with property taxes, and an expensing of an annual letter of credit fee.

Interest Expense, Net

	Year Ended December 31			
	2017	2016	Variance	%
Interest on debt	$ 3,711	$ 4,105	$ (394)	-9.6%
Amortization of deferred financing costs	70	47	23	48.9%
Interest expense, net	**$ 3,781**	**$ 4,152**	**$ (371)**	**-8.9%**

Interest expense, net consists of interest expense on loans and borrowings, amortization of deferred financing costs, amortization of issuance (premium) discounts and interest paid on hedging instruments which are recognized in profit or loss. Interest expense, net decreased by $371, or 8.9%, to $3,781 for the year ended December 31, 2017 compared to $4,152 for the year ended December 31, 2016. The decrease was attributable to a decrease of $1,180 for defeasance costs related to the refinancing of the notes payable in 2016, offset by an increase in debt service related to the 2016 refinancing.

Net Income and Comprehensive Income

	Year Ended December 31			
	2017	2016	Variance	%
Net income and comprehensive income	$ 4,896	$ 3,724	$ 1,172	31.5%

Net income and comprehensive income increased by $1,172, or 31.5%, to $4,896 for the year ended December 31, 2017 as compared to $3,724 for the year ended December 31, 2016. As discussed above, this decrease was primarily due to the following components of net income and comprehensive income:

- an increase in total revenue of $1,394 resulting from an increase in transient business and resort fees, offset by a decline in corporate group business;
- an increase in property operating expenses of $449 resulting from an increase in property taxes and insurance and payroll expenses and offset by a decrease in complimentary breakfast expenses;
- an increase in general and administrative expenses of $186 as a result of a reclassification of business and occupational taxes and a fee for a letter of credit; and

- a decrease in interest expense, net of $371 related to a decrease in defeasance costs.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin

Results of the Nashville Property for the Years Ended December 31, 2017 and December 31, 2016

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the year ended December 31, 2017 and 2016:

	Year Ended December 31	
	2017	**2016**
Net income	$ 4,896	$ 3,724
Depreciation and amortization	1,242	1,284
Funds from Operations	**6,138**	**5,008**
Deferred financing costs	70	47
Core Funds from Operations	**$ 6,208**	**$ 5,055**

	Year Ended December 31	
	2017	**2016**
Total revenues	$ 20,137	$ 18,743
Total operating expenses	(10,218)	(9,583)
Net Operating Income	**$ 9,919**	**$ 9,160**
Net Operating Income margin	49.3%	48.9%

Financial Statement Analysis of the Nashville Property as of and for the Years Ended December 31, 2017 and December 31, 2016

The following table highlights selected financial information for the Nashville Property as of December 31, 2017 and December 31, 2016. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of the Nashville Property and the notes thereto included elsewhere in this prospectus.

	December 31	
	2017	**2016**
Total current assets	$ 3,606	$ 2,299
Property and equipment, net	34,608	33,754
Total assets	**38,214**	**36,053**
Total current liabilities	3,029	2,273
Note payable, net	69,429	70,420
Total liabilities	**72,458**	**72,693**
Members' deficit	**$ (34,244)**	**$ (36,640)**

Total Current Assets

	December 31		Variance	%
	2017	2016		
Cash and cash equivalents	$ 1,310	$ 894	$ 416	46.5%
Restricted cash	871	845	26	3.1%
Trade and other receivables	801	192	609	317.2%
Prepaid and other assets	624	368	256	69.6%
Total current assets	**$ 3,606**	**$ 2,299**	**$ 1,307**	**56.9%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expense and other assets. Total current assets increased by $1,307, or 56.9%, to $3,606 as of December 31, 2017 compared to $2,299 as of December 31, 2016. The increase was primarily due to an increase in cash flow from operating activities, and an increase in receivables and prepaid expenses.

Property and Equipment, Net

	December 31		Variance	%
	2017	2016		
Land	$ 5,440	$ 5,440	$ –	0.0%
Buildings and improvements	34,118	34,118	–	0.0%
Furniture, fixtures and equipment	8,590	4,902	3,688	75.2%
Construction in progress	573	2,173	(1,600)	–73.6%
Total property and equipment	48,721	46,633	2,088	4.5%
Accumulated depreciation	(14,113)	(12,879)	(1,234)	9.6%
Total property and equipment, net	**$ 34,608**	**$ 33,754**	**$ 854**	**2.5%**

Property and equipment, net includes land, buildings, improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $854, or 2.5%, to $34,608 as of December 31, 2017 compared to $33,754 as of December 31, 2016. The increase was attributable primarily to additions to furniture, fixtures and equipment, which includes $1,600 of construction in progress at December 31, 2016 that was placed in service during 2017, net of an increase in accumulated depreciation.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the Nashville Property reduced by the unamortized deferred financing costs and the current portion of note payable and totaled $69,429 as of December 31, 2017, compared to $70,420 as of December 31, 2016, representing a decrease of $991, or 1.4%. The decrease was primarily attributable to amortization of the note. As of December 31, 2017, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

		Note Payable
2018	$	1,062
2019		1,118
2020		1,168
2021		1,240
2022		1,306
Thereafter		65,190
Note payable		**71,084**
Current maturities		(1,062)
Net unamortized deferred financing costs		(593)
Note payable, net	**$**	**69,429**

Cash Flows of the Nashville Property for the Years Ended December 31, 2017 and December 31, 2016

The Nashville Property reported a cash balance of $1,310 as of December 31, 2017 as compared to a cash balance of $894 as of December 31, 2016. The changes in cash flow for the years ended December 31, 2017 and 2016 are as follows:

	Year Ended December 31			
	2017		2016	
Cash flow provided by (used in):				
Operating activities	$	9,762	$	9,004
Investing activities		(2,114)		(2,226)
Financing activities		(7,232)		(7,218)
Increase (decrease) in cash and cash equivalents		416		(440)
Cash and cash equivalents, beginning of period		894		1,334
Cash and cash equivalents, end of period	**$**	**1,310**	**$**	**894**

Operating activities for the year ended December 31, 2017 and 2016

Cash flows from operating activities for the year ended December 31, 2017 generated a net cash inflow of $9,762 compared to a net cash inflow of $9,004 for the year ended December 31, 2016. The increase in cash flows from operating activities as compared to the prior period was largely driven by an increase in operating income, offset by an increase in cash outflows to settle liabilities.

Investing activities for the year ended December 31, 2017 and 2016

Cash flows used in investing activities for the year ended December 31, 2017 resulted in a net cash outflow of $2,114 compared to a net cash outflow of $2,226 for the year ended December 31, 2016. The decrease in net cash outflows from investing activities as compared to the prior period was primarily due to a decrease in the additions to property and equipment, offset by a decrease in restricted cash.

Financing activities for the year ended December 31, 2017 and 2016

Cash flows used in financing activities for the year ended December 31, 2017 resulted in a net cash outflow of $7,232 compared to a net cash outflow of $7,218 for the year ended December 31, 2016. The increase in net cash

outflows from financing activities as compared to the prior period was driven by lower distributions paid to members and lower principal payments made on the note, offset by lower mortgage proceeds received.

Transactions with Related Parties

For the year ended December 31, 2017 the Company had the following transactions with related parties:

An affiliate of the member provided management and advisory services to the Company for a fee. For the year ended December 31, 2017, asset management fees were $208 and are included in general and administrative expenses in the consolidated statements of comprehensive income.

The Company has an asset management agreement with an affiliate of the member. For the year ended December 31, 2017, property management fees and oversight management fees totaled $1,007 and are included in operating expenses in the consolidated statements of comprehensive income.

Certain labor costs are reimbursed to entities affiliated with the member. The labor costs are mainly for on-site maintenance and other labor costs related to property management and hotel services. For the year ended December 31, 2017, labor costs incurred totaled to $2,594 and are included in operating expenses in the consolidated statements of comprehensive income.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements.

On January 8, 2019, the Company sold the Property to NHT Nashville, LLC, a subsidiary of NexPoint Multifamily Capital Trust, Inc. (“NMCT”) for $121,760, inclusive of closing costs. Immediately after the purchase of the Property was complete, the shareholders of NMCT contributed 100% of the units of NMCT to NHT Holdco, LLC in exchange for 6,756,364 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information,

external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of December 31, 2017 are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 71,084	$ 71,084	$ 1,062	$ 70,022
Interest payable on note	313	313	313	–
Total	**$ 71,397**	**$ 71,397**	**$ 1,375**	**$ 70,022**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The Nashville Property is undergoing an extensive renovation, which is estimated to be completed in 2019. The costs to completion from September 30, 2018 are estimated to be $3 million. Other than normal maintenance no additional capital expenditures will be required for the Nashville Property until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 4-6 years. The Company reserves annually 4% of gross revenue for future PIP renovations. We believe these reserves together with free cash flow are sufficient to fund any future PIP programs.

Acquisitions

For the years ended December 31, 2017, 2016 and 2015, the Company had no acquisitions.

Dispositions

For the years ended December 31, 2017, 2016 and 2015, the Company had no dispositions.

Birchmont H.I. Nashville Partners, LLC
Holiday Inn Express Nashville
(the ***"Nashville Property"****)*

Review of Selected Financial and Operating Information of the Nashville Property as of and for the Years Ended December 31, 2016 and 2015

The following tables highlight selected financial information of the Nashville Property as of and for the years ended December 31, 2016 and 2015. This information has been compiled from, and should be read in conjunction with, the consolidate financial statements of Birchmont H.I. Nashville Partners, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, AFFO and NOI for the years ended December 31, 2017 and 2016, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income, and Net Operating Income Margin Results".

	Year Ended December 31	
	2016	**2015**
Total revenues	$ 18,743	$ 18,715
Operating expenses	(8,689)	(8,421)
General and administrative expenses	(894)	(763)
Depreciation and amortization	(1,284)	(1,222)
Interest expense, net	(4,152)	(1,867)
Net income and comprehensive income	**$ 3,724**	**$ 6,442**

	Year Ended December 31	
	2016	**2015**
Funds from Operations	$ 5,008	$ 7,664
Core Funds from Operations	5,055	7,670
Net Operating Income	9,160	9,531

	December 31	
	2016	**2015**
Total assets	$ 36,053	$ 35,558
Total liabilities	72,693	32,573
Members' equity/(deficit)	(36,640)	2,985

Review and Comparison of Operational Results of the Nashville Property for the Years Ended December 31, 2016 and 2015

Total Revenues

	Year Ended December 31			
	2016	**2015**	**Variance**	**%**
Rooms	$ 17,323	$ 17,460	$ (137)	-0.8%
Food and beverage	96	136	(40)	-29.4%

	Year Ended December 31			
	2016	2015	Variance	%
Other	1,324	1,119	205	18.3%
Total revenues	**$ 18,743**	**$ 18,715**	**$ 28**	**0.1%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the Nashville Property. Total revenue increased $28, or 0.1%, to $18,743 for the year ended December 31, 2016 compared to $18,715 for the year ended December 31, 2015. The increase in revenue is immaterial however the planned development within the sub-market may lead to higher revenue in future years. For 2016, occupancy, ADR and RevPAR for the Nashville Property was 76.8%, $215.57 and $165.65, respectively, as compared to 82%, $203.38 and $166.84, respectively, for 2015.

Operating Expenses

	Year Ended December 31			
	2016	2015	Variance	%
Payroll and employee related costs	$ 2,394	$ 2,001	$ 393	19.6%
Property management fees	937	936	1	0.1%
Repairs and maintenance	183	165	18	10.9%
Utilities	435	424	11	2.6%
Property taxes and insurance	422	405	17	4.2%
Cost of goods sold	2,285	2,269	16	0.7%
Franchise fees	1,484	1,573	(89)	-5.7%
Franchise and excise taxes	423	528	(105)	-19.9%
Other operating expenses	126	120	6	5.0%
Operating expenses	**$ 8,689**	**$ 8,421**	**$ 268**	**3.2%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $268, or 3.2%, to $8,689 for the year ended December 31, 2017 compared to $8,421 for the year ended December 31, 2016. The increase in expenses as compared to the prior period was primarily driven by increases in payroll expenses, specifically housekeeping and sales, and was slightly offset by lower franchise and excise taxes and franchise fee in the comparative period.

General and Administrative Expenses

	Year Ended December 31			
	2016	2015	Variance	%
Marketing	$ 534	$ 440	$ 94	21.4%
Asset management fees	208	208	–	0.0%
Other administrative expenses	152	115	37	32.2%
General and administrative expenses	**$ 894**	**$ 763**	**$ 131**	**17.2%**

General and administrative expenses increased by $131, or 17.2%, to $894 for the year ended December 31, 2016 compared to $763 for the year ended December 31, 2015. The increase as compared to the prior period was primarily attributable to an increase advertising and trade show expenses.

Interest Expense, Net

	Year Ended December 31			
	2016	2015	Variance	%
Interest on debt	$ 4,105	$ 1,861	$ 2,244	120.6%
Amortization of deferred financing costs	47	6	41	683.3%
Interest expense, net	**$ 4,152**	**$ 1,867**	**$ 2,285**	**122.4%**

Interest expense, net consists of interest expense on loans and borrowings, amortization of deferred financing costs, amortization of issuance (premium) discounts and interest paid on hedging instruments which are recognized in profit or loss. Interest expense, net increased by $2,285, or 122.4%, to $4,152 for the year ended December 31, 2016 compared to $1,867 for the year ended December 31, 2015. The increase as compared to the prior period was attributable to the higher note balance as a result of the refinancing in 2016, which included the payment of $1,180 of defeasance costs in connection with the early repayment of the prior loan on June 10, 2016.

Net Income and Comprehensive Income

	Year Ended December 31			
	2016	2015	Variance	%
Net Income and comprehensive income	$ 3,724	$ 6,442	$ (2,718)	-42.2%

Net income and comprehensive income decreased by $2,718, or 42.2%, to $3,724 for the year ended December 31, 2016 as compared to $6,442 for the year ended December 31, 2015. As discussed above, this decrease was primarily due to the following components of net income and comprehensive income:

- an increase of $268 in operating expenses due to higher payroll expenses for housekeeping and sales personnel; and

- an increase in interest expense, net of $2,285 related to the higher note balance as a result of the refinancing on June 10, 2016, which included defeasance costs due to the early repayment of the loan;

Funds from Operations, Core Funds from Operations, Adjusted Funds from Operations, Net Operating Income and Net Operating Income Margin

Results of the Nashville Property for the Years Ended December 31, 2016 and December 31, 2015

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the year ended December 31, 2016 and 2015:

	Year Ended December 31	
	2016	2015
Net income	$ 3,724	$ 6,442
Depreciation and amortization	1,284	1,222
Funds from Operations	**5,008**	**7,664**

	Year Ended December 31	
	2016	2015
Deferred financing costs	47	6
Core Funds from Operations	**$ 5,055**	**$ 7,670**

	Year Ended December 31	
	2016	2015
Total revenues	$ 18,743	$ 18,715
Total operating expenses	(9,583)	(9,184)
Net Operating Income	**$ 9,160**	**$ 9,531**
Net Operating Income margin	48.9%	50.9%

Financial Statement Analysis of the Nashville Property as of and for the Years Ended December 31, 2016 and December 31, 2015

The following table highlights selected financial information for the Nashville Property as of December 31, 2016 and December 31, 2015. This information has been compiled from, and should be read in conjunction with, the consolidated financial statements of the Nashville Property and the notes thereto included elsewhere in this prospectus.

	December 31	
	2016	2015
Total current assets	$ 2,299	$ 3,044
Property and equipment, net	33,754	32,514
Total assets	**36,053**	**35,558**
Total current liabilities	2,273	1,202
Note payable, net	70,420	31,371
Total liabilities	**72,693**	**32,573**
Members' equity/deficit	**$ (36,640)**	**$ 2,985**

Total Current Assets

	December 31			
	2016	2015	Variance	%
Cash and cash equivalents	$ 894	$ 1,334	$ (440)	-33.0%
Restricted cash	845	1,082	(237)	-21.9%
Trade and other receivables	192	430	(238)	-55.3%
Prepaid and other assets	368	198	170	85.9%
Total current assets	**$ 2,299**	**$ 3,044**	**$ (745)**	**-24.5%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets decreased by $745, or 24.5%, to $2,299 as of December 31, 2016 compared to $3,044 as of December 31, 2015. The decrease as compared to the prior period was primarily due to a

decrease in cash, restricted cash and receivables, offset by an increase in prepaid and other assets related to prepaid taxes and insurance.

Property and Equipment, Net

	December 31			
	2016	2015	Variance	%
Land	$ 5,440	$ 5,440	$ –	0.0%
Buildings and improvements	34,118	34,118	–	0.0%
Furniture, fixtures and equipment	4,902	4,612	290	6.3%
Construction in progress	2,173	–	2,173	0.0%
Total property and equipment	46,633	44,170	2,463	5.6%
Accumulated depreciation	(12,879)	(11,656)	(1,223)	10.5%
Total property and equipment, net	**$ 33,754**	**$ 32,514**	**$ 1,240**	**3.8%**

Property and equipment, net includes land, buildings, improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $1,240, or 3.8%, to $33,754 as of December 31, 2017 compared to $32,514 as of December 31, 2016. The increase as compared to the prior period was attributable primarily to increased construction in progress related to the renovations to the property, offset by increased accumulated depreciation.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the Nashville Property reduced by the unamortized deferred financing cost and the current portion of note payable and totaled $70,420 as of December 31, 2016, compared to $31,371 as of December 31, 2015, representing an increase of $39,049, or 124.5%. The increase was attributable to higher note balance of the new note as compared to the refinanced note.

Cash Flows of the Nashville Property for the Years Ended December 31, 2016 and December 31, 2015

The Nashville Property reported a cash balance of $894 as of December 31, 2016 as compared to a cash balance of $1,333 as of December 31, 2015. The changes in cash flow for the years ended December 31, 2017 and 2016 are as follows:

	Year Ended December 31	
	2016	2015
Cash flow provided by (used in):		
Operating activities	$ 9,004	$ 9,369
Investing activities	(2,226)	(133)
Financing activities	(7,218)	(8,951)
Increase (decrease) in cash and cash equivalents	(440)	285
Cash and cash equivalents, beginning of period	1,334	1,049
Cash and cash equivalents, end of period	**$ 894**	**$ 1,334**

Operating activities for the year ended December 31, 2016 and 2015

Cash flows from operating activities for the year ended December 31, 2016 generated a net cash inflow of $9,004 compared to a net cash inflow of $9,369 for the year ended December 31, 2015. The decrease in cash flows from operating activities as compared to the prior period was largely driven by a decrease in operating income, which was attributable to higher interest expenses in 2016 as compared to the prior period.

Investing activities for the year ended December 31, 2016 and 2015

Cash flows used in investing activities for the year ended December 31, 2016 resulted in a net cash outflow of $2,226 compared to a net cash outflow of $133 for the year ended December 31, 2015. The increase in net cash outflows from investing activities as compared to the prior period was primarily due to an increase in the additions to property and equipment, offset by an increase in restricted cash related to lender required replacement reserves.

Financing activities for the year ended December 31, 2016 and 2015

Cash flows used in financing activities for the year ended December 31, 2016 resulted in a net cash outflow of $7,218 compared to a net cash outflow of $8,951 for the year ended December 31, 2015. The decrease in net cash outflows from financing activities as compared to the prior period was driven by higher distributions to members, higher principal payments on the note and higher mortgage proceeds received as a result of the refinancing. The additional proceeds were used to pay a larger dividend to the members than the prior period.

Transactions with Related Parties

For the year ended December 31, 2016 the Company had the following transactions with related parties:

An affiliate of the member provided management and advisory services to the Company for a fee. For the year ended December 31, 2016, asset management fees were $208 and are included in general and administrative expenses in the consolidated statements of comprehensive income.

The Company has an asset management agreement with an affiliate of the member. For the year ended December 31, 2016, property management fees and oversight management fees totaled $937 and are included in operating expenses in the consolidated statements of comprehensive income.

Certain labor costs are reimbursed to entities affiliated with the member. The labor costs are mainly for on-site maintenance and other labor costs related to property management and hotel services. For the year ended December 31, 2016, labor costs incurred totaled to $2,394 and are included in operating expenses in the consolidated statements of comprehensive income.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resulting accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 4 of the consolidated financial statements.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the combined and carve-out financial statements.

INTERIM MD&A – QUARTERLY HIGHLIGHTS

The Initial Portfolio for the Nine Months and Three Months Ended September 30, 2018 and 2017 Overview (or other applicable periods as noted below)

The following discusses the financial condition and results of operations and changes thereto of the historical information relating to each component of the Initial Portfolio and should be read in conjunction with the financial statements (collectively, the "**Financials**") of the Initial Portfolio contained in this prospectus. The Financials for 2325 Stemmons Hotel Partners, LLC and Birchmont H.I. Nashville Partners LLC consist of the statements of financial position as of September 30, 2018 and December 31, 2017, respectively, along with the statements of net income (loss) and comprehensive income (loss), statements of members' equity/deficit and statements of cash flows for the nine months and three months ended September 30, 2018 and 2017, respectively.

NREO NW Hospitality, LLC purchased the DT Portfolio on May 3, 2018 from BRE GM Hotel JV, LLC. As such, 2018 financials are shown from January 1, 2018 through May 3, 2018 and from January 1 through December 31, 2017 for the DT Portfolio and a separate set of financials presents the results for NREO NW Hospitality, LLC from May 3, 2018 through September 30, 2018.

The HWS portfolio was purchased by HCBH 11611 Ferguson, LLC on May 4, 2017. As such, financial information for HCBH 11611 Ferguson, LLC and the HWS Portfolio is only presented below for the periods from May 4, 2018 to September 30, 2018 and from May 4, 2017 to September 30, 2017.

Pallas, LLC sold the St. Pete Property to NHT SP Parent, LLC on September 24, 2018. The Financials for Pallas, LLC consist of the statements of financial position as of September 24, 2018 and December 31, 2017, respectively, along with the statements of net income (loss) and comprehensive income (loss), statements of members' equity/deficit and statements of cash flows for the period ended September 24, 2018 and September 30, 2017, respectively.

2325 Stemmons Hotel Partners, LLC
Hilton Garden Inn Dallas Market Center
*(the "**HGI Property**")*

Review of Selected Financial and Operating Information of the HGI Property for the Nine Months and Three Months Ended September 30, 2018 and 2017 and as of September 30, 2018 and December 31, 2017

The following tables highlight selected financial information of the HGI Property for the nine months ended September 30, 2018 and 2017 and for the three months ended September 30, 2018 and 2017 and as of September 30, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of 2325 Stemmons Hotel Partners, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the nine months ended September 30, 2018 and 2017 and for the three months ended September 30, 2018 and 2017, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2018	**2017**	**2018**	**2017**
Total revenues	$ 7,024	$ 7,069	$2,239	$2,211
Operating expenses	(3,597)	(3,498)	(1,183)	(1,172)
General and administrative expenses	(1,504)	(1,495)	(525)	(492)
Depreciation	(1,094)	(1,063)	(365)	(356)
Interest expense, net	(1,001)	(858)	(345)	(295)
Income tax expense	(2)	(22)	-	(22)
Net income (loss) and comprehensive income (loss)	**$ (174)**	**$ 133**	**$(179)**	**$(126)**

	Nine Months Ended September 30,		Three Months Ended September 30	
	2018	**2017**	**2018**	**2017**
Funds from Operations	$ 920	$ 1,196	$186	$230
Core Funds from Operations	976	1,272	204	270
Net Operating Income	1,923	2,076	531	547

	September 30,	December 31,
	2018	**2017**
Total assets	$ 28,646	$ 31,165
Total liabilities	22,755	23,070
Members' equity	5,891	8,095

Review and Comparison of Operational Results of the HGI Property for the Nine Months Ended September 30, 2018 and 2017

Total Revenues

	Nine Months Ended September 30			
	2018	2017	Variance	%
Rooms	$ 6,019	$ 5,970	$ 49	0.8%
Food and beverage	891	991	(100)	–10.1%
Other	114	108	6	5.6%
Total revenues	**$ 7,024**	**$ 7,069**	**$ (45)**	**–0.6%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the HGI Property. Total revenue decreased $45, or 0.6%, to $7,024 for the nine months ended September 30, 2018 compared to $7,069 for the nine months ended September 30, 2017. The decrease in revenue as compared to the prior period is primarily attributable to lower food and beverage revenue. Specifically, compared to the nine months ended September 30, 2017, total food and beverage revenue decreased by 10.1% during the nine months ended September 30, 2018. The increased competition in the sub-market continued to weigh on the growth in revenue at the HGI Property. An additional reason for a decrease in total revenue was the sharp decline in food and beverage revenue. This was the result of a change made to the menu and pricing of food and beverage items in an attempt to attract more business for top line room rental growth, which was up slightly in the current period. For the nine months ended September 30, 2018, occupancy, ADR and RevPAR for the HGI Property was 74.5%, $121.71 and $90.67, respectively, as compared to 72.5%, $122.93 and $89.17, respectively, for full year 2017.

Operating Expenses

	Nine Months Ended September 30			
	2018	2017	Variance	%
Payroll	$ 1,614	$ 1,573	$ 41	2.6%
Repairs and maintenance	293	293	–	0.0%
Utilities	211	205	6	2.9%
Property taxes and insurance	420	358	62	17.3%
Cost of goods sold	396	444	(48)	–10.8%
Franchise fees	332	330	2	0.6%
Other operating expenses	331	295	36	12.2%
Operating expenses	**$ 3,597**	**$ 3,498**	**$ 99**	**2.8%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $99, or 2.8%, to $3,597 for the nine months ended September 30, 2018 compared to $3,498 for the nine months ended September 30, 2017. The increase in expenses as compared to the prior period was primarily driven by an increase in payroll expenses and in property taxes and was partially offset by a decrease in costs of goods sold as a result of lower food and beverage sales.

General and Administrative Expenses

	Nine Months Ended September 30			
	2018	2017	Variance	%
Property management fees	$ 210	$ 326	$ (116)	–35.6%
Office operations	291	327	(36)	–11.0%
Marketing	817	726	91	12.5%
Other administrative expenses	186	116	70	60.3%
General and administrative expenses	**$ 1,504**	**$ 1,495**	**$ 9**	**0.6%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses increased by $9, or 0.6%, to $1,504 for the nine months ended September 30, 2018 compared to $1,495 for the nine months ended September 30, 2017. The increase as compared to the prior period was primarily attributable to an increase in marketing and other expenses, partially offset by a decrease in property management fees and office operations.

Interest Expense, Net

	Nine Months Ended September 30			
	2018	2017	Variance	%
Interest on debt	$ 947	$ 804	$ 143	17.8%
Amortization of deferred financing costs	54	54	–	0.0%
Interest expense, net	**$ 1,001**	**$ 858**	**$ 143**	**16.7%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense increased by $143, or 16.7%, to $1,001 for the nine months ended September 30, 2018 compared to $858 for the nine months ended September 30, 2017. The increase was attributable to increases in one-month LIBOR during 2018 as compared to the same period in 2017.

Income Tax Expense

	Nine Months Ended September 30			
	2018	2017	Variance	%
Income tax expense	$ 2	$ 22	$ (20)	-90.9%

Income tax expense consists of the income tax recorded for 2325 Stemmons TRS, Inc., which is a taxable REIT subsidiary. Income tax expense decreased by $20, or 90.9%, to $2 for the nine months ended September 30, 2018 compared to $22 for the nine months ended September 30, 2017. The decrease between periods was attributable to lower taxable income in 2018.

Net Income and Comprehensive Income

	Nine Months Ended September 30			
	2018	2017	Variance	%
Net income (loss) and comprehensive income (loss)	$ (174)	$ 133	$ (307)	–230.8%

Net income and comprehensive income decreased by $307, or 230.8%, to a net loss of $174 for the nine months ended September 30, 2018 as compared to net income of $133 for the nine months ended September 30, 2017. As discussed above, this decrease was primarily due to a net increase in the following components of net income and comprehensive income:

- a decrease in total revenue of $45 resulting primarily from decreases food and beverage revenue;
- an increase in operating expenses of $99 resulting from increases in payroll and property taxes and partially offset by costs of providing food and beverage;
- an increase in net interest expense of $143, primarily driven by increases in one-month LIBOR during 2018; and
- a decrease in income tax expense of $20 as a result of lower taxable income in 2018.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the HGI Property for the Nine Months Ended September 30, 2018 and 2017

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the nine months ended September 30, 2018 and 2017:

	Nine Months Ended September 30		Three Months Ended September 30	
	2018	2017	2018	2017
Net income (loss)	$ (174)	$ 133	$(179)	$(126)
Depreciation	1,094	1,063	365	356
Funds from Operations	**920**	**1,196**	**186**	**230**
Deferred financing costs	54	54	18	18
Income tax expense	2	22	—	22
Core Funds from Operations	**$ 976**	**$ 1,272**	**$204**	**$270**

	Nine Months Ended September 30		Three Months Ended September 30	
	2018	2017	2018	2017
Total revenues	$ 7,024	$ 7,069	$2,239	$2,211
Total operating expenses	(5,101)	(4,993)	(1,708)	(1,664)
Net Operating Income	**$ 1,923**	**$ 2,076**	**$531**	**$547**
Net Operating Income margin	27.4%	29.4%	23.7%	24.7%

Financial Statement Analysis of the HGI Property as of September 30, 2018 and December 31, 2017

The following table highlights selected financial information for the HGI Property as of September 30, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of the Company and the notes thereto included elsewhere in this prospectus.

	September 30 2018	December 31 2017
Total current assets	$ 1,572	$ 3,140
Property and equipment, net	27,074	28,025
Total assets	**28,646**	**31,165**
Total current liabilities	2,093	2,148
Note payable, net	20,662	20,922
Total liabilities	**22,755**	**23,070**
Members' equity	**$ 5,891**	**$ 8,095**

Total Current Assets

	September 30 2018	December 31 2017	Variance	%
Cash and cash equivalents	$ 1,355	$ 2,969	$ (1,614)	–54.4%
Trade and other receivables	138	113	(25)	–22.1%
Prepaid and other assets	79	58	(21)	–36.2%
Total current assets	**$ 1,572**	**$ 3,140**	**$ (1,568)**	**–49.9%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets decreased by $1,568, or 49.9%, to $1,572 as of September 30, 2018 compared to $3,140 as of December 31, 2017. The decrease was primarily due to an increase in cash distributions paid to the members.

Property and Equipment, Net

	September 30 2018	December 31 2017	Variance	%
Land	$ 2,555	$ 2,555	$ –	0.0%
Buildings and improvements	26,018	25,922	96	0.4%
Furniture, fixtures and equipment	3,148	3,101	47	1.5%
Total property and equipment	31,721	31,578	143	0.5%
Accumulated depreciation	(4,647)	(3,553)	(1,094)	30.8%
Total property and equipment, net	**$ 27,074**	**$ 28,025**	**$ (951)**	**–3.4%**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net decreased by $951, or 3.4%, to $27,074 as of September 30, 2018 compared to $28,025 as of December 31, 2017. The decrease was attributable primarily to increased accumulated depreciation, offset slightly by additions to buildings and improvements and furniture, fixtures and equipment.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the HGI Property reduced by the unamortized deferred financing cost and totaled $20,662 as of September 30, 2018, compared to $20,922 as of December 31, 2017, representing a decrease of $260, or 1.2%. The decrease was primarily attributable to amortization of deferred financing costs. As of September 30, 2018, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ 66
2019	271
2020	20,721
2021	–
2022	–
Thereafter	–
Note payable	**21,058**
Current maturities	(307)
Net unamortized deferred financing costs	(89)
Note payable, net	**$ 20,662**

Cash Flows of the HGI Property for the Nine Months Ended September 30, 2018 and 2017

The HGI Property reported a cash balance of $1,354 as of September 30, 2018 as compared to a cash balance of $2,763 as of September 30, 2017. The changes in cash flow for the nine months ended September 30, 2018 and 2017 are as follows:

	Nine Months Ended September 30		Three Months Ended September 30	
	2018	**2017**	**2018**	**2017**
Cash flow provided by (used in):				
Operating activities	$ 1,459	$ 1,657	$587	$734
Investing activities	204	182	(25)	(89)
Financing activities	(3,278)	(1,033)	(411)	(386)
Increase (decrease) in cash and cash equivalents	(1,615)	806	151	259
Cash and cash equivalents, beginning of period	2,969	1,957	1,204	2,504
Cash and cash equivalents, end of period	**$ 1,354**	**$ 2,763**	**$1,355**	**$2,763**

Operating activities for the nine months ended September 30, 2018 and 2017

Cash flows from operating activities for the nine months ended September 30, 2018 generated a net cash inflow of $1,459 compared to a net cash inflow of $1,657 for the nine months ended September 30, 2017. The decrease in cash inflows from operating activities was largely driven by lower net income and higher interest payments.

Investing activities for the nine months ended September 30, 2018 and 2017

Cash flows used in investing activities for the nine months ended September 30, 2018 resulted in a net cash inflow of $204 compared to a net cash inflow of $182 for the nine months ended September 30, 2017. The increase in net cash outflows from investing activities was primarily due to lower additions to restricted cash.

Financing activities for the nine months ended September 30, 2018 and 2017

Cash flows used in financing activities for the nine months ended September 30, 2018 resulted in a net cash outflow of $3,278 compared to a net cash outflow of $1,033 for the nine months ended September 30, 2017. The increase in net cash outflows from financing activities was driven by higher distributions paid to members.

Transactions with Related Parties

For the nine months ended September 30, 2018 and 2017, there were no transactions with related parties.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT 2325 Stemmons, LLC, which was immediately contributed to the OP in exchange for 3,944,221 Class B Units of the OP.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of September 30, 2018, are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 21,058	$ 21,058	$ 307	$ 20,751
Interest payable on note	–	1,636	1,312	324
Total	**$ 21,058**	**$ 22,694**	**$ 1,619**	**$ 21,075**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The HGI Property completed an extensive renovation in 2015. Other than normal maintenance only a moderate change to the lobby bar and dining area will be required by the spring of 2021, and no additional capital expenditures will be required for the HGI Property until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $9,600 per room and will be required in the next 3-5 years. The Company reserves annually 4% of gross revenue for future PIP renovations. We believe these reserves together with free cash flow are sufficient to fund any future PIP programs.

Acquisitions

For the nine months ended September 30, 2018 and 2017, the Company had no acquisitions.

Dispositions

For the nine months ended September 30, 2018 and 2017, the Company had no dispositions.

Interim Management Discussion and Analysis – Quarterly Highlights for Third Quarter 2018

Discussion of business activities, financial condition, financial performance and cash flow of the Company for the three months ended September 30, 2018

During the three months ended September 30, 2018, the Company continued executing its business plan. Occupancy for the period was an average of 75.1% as compared to 75.2% for the same period in 2017. This compared favorably to the competitor set in the submarket, which had an average occupancy of 61.1% for the third quarter of 2018. Likewise, ADR and RevPar were stable year over year at $114.55 and $85.98, respectively, in the third quarter of 2018 as compared to $113.92 and $85.76, respectively in the same period in 2017 and compared favorably to the competitor set at $108.73 and $66.51, respectively.

Net income was lower in the third quarter 2018 by approximately $53 as compared to the same period in 2017. This was driven by higher payroll expenses, property tax expense and interest expense and was partially offset by higher revenue of $2,239 compared to $2,211, which was a factor of stable occupancy together with higher to stable ADR and RevPar.

Operating cash flow declined in the third quarter 2018 as compared to the same period in 2017 to cash inflow of $587 versus cash inflow of $734. The decline we driven primarily by higher payments of liabilities in the third quarter of 2018 as compared to the same period in 2017. Cash increased from $1,204 to $1,354 at September 30, 2018 as a result of higher cash flow from operating activities than the cash outflows from investing and financing activities. The Company paid $327 in interest payments, paid down the note by $85 in the quarter and paid $22 in income taxes from the Company's taxable REIT subsidiary. Interest expense increased $50 year over year driven by higher LIBOR rate.

NREO NW Hospitality, LLC
DoubleTree Beaverton, DoubleTree Bend, Double Tree Olympia, DoubleTree Tigard and DoubleTree Vancouver
*(collectively the "**DT Portfolio**")*

Review of Selected Financial and Operating Information of the DT Portfolio as of September 30, 2018 and for the period from May 3, 2018 through September 30, 2018 and for the Three Months Ended September 30, 2018

The following tables highlight selected financial information of the DT Portfolio as of September 30, 2018 and for the period from May 3, 2018 through September 30, 2018. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of NREO NW Hospitality, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the period from May 3, 2018 through September 30, 2018, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin". Because the Company began operations in 2018, comparative information from the same period in 2017 is not presented.

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	**2018**
Total revenues	$ 10,702	$ 6,757
Operating expenses	(4,096)	(2,609)
General and administrative expenses	(2,026)	(1,241)
Acquisition costs	(852)	—
Depreciation	(1,333)	(800)
Interest expense, net	(1,331)	(806)
Income tax expense	(320)	(126)
Net income and comprehensive income	**$ 744**	**$1,175**

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	**2018**
Funds from Operations	$ 2,077	$1,975
Core Funds from Operations	2,644	2,252
Net Operating Income	4,580	2,907

	September 30,
	2018
Total assets	$ 84,050
Total liabilities	62,598
Members' equity	21,452

Review and Comparison of Operational Results of the DT Portfolio for the Period From May 3, 2018 Through September 30, 2018

Total Revenues

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Rooms	$ 10,153	$6,442
Food and beverage	456	278
Other	93	37
Total revenues	**$ 10,702**	**$6,757**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the Company. Total revenue was $10,702 for the period from May 3, 2018 to September 30, 2018, driven primarily by revenues from room rentals.

Operating Expenses

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Payroll	$ 2,054	$1,305
Repairs and maintenance	215	140
Utilities	271	174
Property taxes and insurance	271	169
Cost of goods sold	157	102
Franchise fees	534	338
Other operating expenses	594	381
Operating expenses	**$ 4,096**	**$2,609**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. Operating expenses were $4,096 for the period, driven largely by payroll, franchise fees and other operating expenses. It is anticipated there will be a sharp increase in revenue across the DT Portfolio in 2019 as the renovations to the properties is completed. For the nine month period ended September 30, 2018, occupancy, ADR and RevPAR for the DT Portfolio was 76.7%, $141.16 and $108.60.

General and Administrative Expenses

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Property management fees	$ 323	$204
Office operations	489	278
Marketing	875	561
Other administrative expenses	339	198
General and administrative expenses	**$ 2,026**	**$1,241**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses were $2,026 for the period and comprised primarily of marketing expenses.

Interest Expense, Net

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Interest on debt	$ 1,084	$655
Amortization of deferred financing costs	247	151
Interest expense, net	**$ 1,331**	**$806**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense was $1,331 for the period.

Income Tax Expense

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Income tax expense	$ 320	$126

Income tax expense consists of the income tax recorded for the taxable REIT subsidiary. Income tax expense for the period was $320.

Net Income and Comprehensive Income

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	2018
Net income and comprehensive income	$ 744	$1,175

Net income and comprehensive income was $744 for the period.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the DT Portfolio for the Period From May 3, 2018 through September 30, 2018

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the period from May 3, 2018 through September 30, 2018:

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	**2018**
Net income	$ 744	$1,175
Depreciation	1,333	800
Funds from Operations	**2,077**	**1,975**
Deferred financing costs	247	151
Income tax expense	320	126
Core Funds from Operations	**$ 2,644**	**$2,252**

	Period from May 3 (date of formation) to September 30,	Three Months Ended September 30
	2018	**2018**
Total revenues	$ 10,702	$6,757
Total operating expenses	(6,122)	(3,850)
Net Operating Income	**$ 4,580**	**$2,907**
Net Operating Income margin	42.8%	43.0%

Financial Statement Analysis of the DT Portfolio as of September 30, 2018

The following table highlights selected financial information for the DT Portfolio as of September 30, 2018. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of the Company and the notes thereto included elsewhere in this prospectus.

		September 30, 2018
Total current assets	$	$6,352
Total non-current assets		77,698
Total assets		**84,050**
Accounts payable and other accrued liabilities		1,793
Non-current liabilities		60,805
Total liabilities		62,598
Members' equity	**$**	**21,452**

Total Current Assets

		September 30, 2018
Cash and cash equivalents	$	4,717
Restricted cash		48
Trade and other receivables		507
Prepaid and other assets		1,080
Total current assets	**$**	**6,352**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets was $6,352 as of December 31, 2017. The primarily component of current assets is cash.

Property and Equipment, Net

		September 30, 2018
Land	$	10,416
Buildings and improvements		60,760
Furniture, fixtures and equipment		7,834
Construction in progress		–
Total property and equipment		79,009
Accumulated depreciation		(1,333)
Total property and equipment, net	**$**	**77,676**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to

the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net as of September 30, 2018 was $77,676 and the primary component is buildings and improvements thereto.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the DT Portfolio reduced by the unamortized deferred financing cost and as of September 30, 2018 was $53,624. Mezzanine note, net includes the outstanding balance of the mezzanine note on the DT Portfolio reduced by the unamortized deferred financing cost and as of September 30, 2018 was $7,181. As of September 30, 2018, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

		Note Payable	Mezzanine Note
2018	$	–	–
2019		–	–
2020		–	–
2021		55,000	7,365
2022		–	–
Thereafter		–	–
Note payable		**55,000**	–
Current maturities		–	–
Net unamortized deferred financing costs		(1,376)	(184)
Note payable, net	**$**	**53,624**	**7,181**

Cash Flows of the DT Portfolio for the Period From May 3, 2018 Through September 30, 2018

The Company reported a cash balance of $4,717 as of September 30, 2018. The changes in cash flow for the period from May 3, 2018 to September 30, 2018 is as follows:

		Period from May 4 to September 30,	Three Months Ended September 30
		2018	2018
Cash flow provided by (used in):			
Operating activities	$	3,477	$3,224
Investing activities		(79,148)	(60)
Financing activities		80,389	(1,204)
Increase in cash and cash equivalents		4,717	1,960
Cash and cash equivalents, beginning of period		—	2,757
Cash and cash equivalents, end of period	**$**	**$4,717**	**$4,717**

Cash flows for the period from May 3, 2018 through September 30, 2018

For the period from May 3, 2018 to September 30, 2018 cash flows from operating activities was a net cash inflow of $3,477, cash flows used in investing was a net cash outflow of $79,148 and was driven primarily by acquisition of the DT Portfolio and sash flows used in financing activities was a net inflow of $80,389 and was the result of the original contributions by the members.

Transactions with Related Parties

For the period from May 3, 2018 through September 30, 2018, there were no transactions with related parties.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to the OP in exchange for 9,629,170 Class B Units of the OP.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of September 30, 2018, are as follows:

	Carrying amount	1 year	More than 1 year
Note payable	$ 55,000	$ –	$ 55,000
Mezzanine note	7,365	–	7,365
Interest payable on note	207	3,492	2,489
Total	**$ 62,527**	**$ 3,492**	**$ 64,854**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The DT Portolio completed an extensive renovation in 2015 and is currently undergoing an additional $8,607 value add renovation. Other than normal maintenance no additional capital expenditures will be required for the DT Portfolio until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 6 years. The Company reserves annually 4% of gross revenue for future PIP renovations. We believe these reserves are sufficient to fund any future PIP programs.

Acquisitions

For the nine months ended September 30, 2018, the Company acquired a portfolio of five properties, the DT Portfolio as shown below:

	DoubleTree Beaverton	DoubleTree Bend	DoubleTree Olympia	DoubleTree Tigard	DoubleTree Vancouver	Total
Fair value of consideration transferred:						
Cash	$ 5,860	$ 6,653	$ 4,159	$ 34	$ 30	$ 16,735
Notes payable	10,437	15,793	10,025	9,407	9,338	55,000
Mezzanine debt	1,673	2,304	1,456	969	962	7,365
	$ 17,970	$ 24,750	$ 15,640	$ 10,410	$ 10,330	$ 79,100
Property and equipment	17,970	24,750	15,640	10,410	10,330	79,100
Fair value of net identifiable assets acquired and liabilities assumed	$ 17,970	$ 24,750	$ 15,640	$ 10,410	$ 10,330	$ 79,100

Dispositions

For the nine months ended September 30, 2018 and 2017, the Company had no dispositions.

Interim Management Discussion and Analysis – Quarterly Highlights for Third Quarter 2018

Discussion of business activities, financial condition, financial performance and cash flow of the Company for the three months ended September 30, 2018

During the three months ended September 30, 2018, the Company completed its first full calendar quarter since the purchase of the DT Portfolio in May 2018. The plan upon acquisition was to do an extensive renovation on each property, which began in October 2018. The REIT anticipates spending an additional $8.6 million or

$16,667 per room to complete the renovation, which will be funded by the mezzanine debt secured at the acquisition and cash flow from operations. It is estimated the renovations will be completed in May 2019.

For the third quarter, the Company continued transitioning the management from the prior owner and stabilizing operations in preparation for the renovation program. Occupancy for the period was an average of 84.9% which was down slightly for the same period in 2017 at 86.0%. This compared favorably to the competitor set in the submarket, which had an average occupancy of 76.3% for the third quarter of 2018. However, ADR and RevPar were up year over year at $157.23 and $134.19, respectively, in the third quarter of 2018 as compared to $153.79 and $132.44, respectively in the same period in 2017 and compared favorably to the competitor set at $128.04 and $98.63, respectively, for the third quarter 2018.

Net income was $1.175 for the third quarter 2018 which compared favorably to the net income for the period from May 3, 2018 to September 30, 2018, which was $744 but included acquisition costs. Revenues were strong driven by higher ADR and RevPar from the prior year and slightly offset by lower occupancy.

Operating cash flow was $3,224 in the third quarter 2018 as compared to $3,477 for the period from May 3, 2018 to September 30, 2018. Cash increased $1,960 during the quarter to $4,717 from $2,757The Company paid $651 in interest payments and paid a distribution of $553 during the quarter.

DoubleTree Portfolio

DoubleTree Beaverton, DoubleTree Bend, Double Tree Olympia, DoubleTree Tigard and DoubleTree Vancouver

Review of Selected Financial and Operating Information of the DT Portfolio as of May 3, 2018 and December 31, 2017 and for the Period from January 1, 2018 through May 3, 2018 and the Year ended December 31, 2017

The following tables highlight selected financial information of the DT Portfolio as of May 3, 2018 and December 31, 2017 and for the period from January 1, 2018 through May 3, 2018 and for the year ended December 31, 2017. This information has been compiled from, and should be read in conjunction with the combined financial statements of the DT Portfolio (the "Company") and notes thereto included elsewhere in this prospectus. Comparative data for the same period in 2017 was not available and therefore a comparison to the prior full year is included. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the period from January 1, 2019 through May 3, 2018 and for the year ended December 31, 2017, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	Period from January 1 to May 3,	For the Year Ended December 31,
	2018	2017
Total revenues	$ 6,552	$ 21,878
Operating expenses	(3,370)	(10,180)
General and administrative expenses	(1,510)	(4,361)
Depreciation	(1,998)	(3,235)
Interest expense, net	(1,208)	(2,058)
Gain on sale	39,693	-
Net income and comprehensive income	**$ 38,159**	**$ 2,045**

	Period from January 1 to May 3,	For the Year Ended December 31,
	2018	2017
Funds from Operations	$ 40,157	$ 5,280
Core Funds from Operations	40,524	5,280
Net Operating Income	1,672	7,338

	May 3, 2018	December 31, 2017
Total assets	$ –	$ 42,382
Total liabilities	–	70,390
Members' equity	–	(28,008)

Review and Comparison of Operational Results of the DT Portfolio for the Period From January 1, 2018 through May 3, 2018

Total Revenues

	Period from January 1 to May 3,	For the Year Ended December 31,		
	2018	2017	Variance	%
Rooms	$ 6,106	$ 20,450	$ (14,344)	-70.1%
Food and beverage	446	1,428	(982)	-68.8%
Total revenues	**$ 6,552**	**$ 21,878**	**(15,326)**	**-70.1%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the Company. Total revenue for the period decreased $15,326 to $6,552. The decrease in revenue as compared to the prior period is primarily attributable to the eight months of additional results in 2017 as compared to 2018 as the Company sold all of its assets on May 3, 2018 and dissolved the entity.

Operating Expenses

	Period from January 1 to May 3,	For the Year Ended December 31,		
	2018	2017	Variance	%
Payroll	$ 1,798	$ 5,223	$ (3,425)	-65.6%
Repairs and maintenance	99	293	(194)	-66.2%
Utilities	207	588	(381)	-64.8%
Property taxes and insurance	253	735	(482)	-65.6%
Cost of goods sold	127	350	(223)	-63.7%
Franchise fees	299	1,033	(734)	-71.0%
Other operating expenses	587	1,959	(1,372)	-70.0%
Operating expenses	**$ 3,370**	**$ 10,180**	**$ (6,810)**	**-66.9%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. Operating expenses for the period decreased $6,810 to $3,370. The decrease in operating expenses as compared to the prior period is primarily attributable to the eight months of additional results in 2017 as compared to 2018 as BRE GM Hotel JV Holdings, LLC sold all of its assets on May 3, 2018 and dissolved.

General and Administrative Expenses

	Period from January 1 to May 3, 2018	For the Year Ended December 31, 2017	Variance	%
Property management fees	$ 213	$ 656	$ (443)	-67.5%
Office operations	430	827	(397)	-48.0%
Marketing	494	1,590	(1,096)	-68.9%
Other administrative expenses	373	1,288	(915)	-71.0%
General and administrative expenses	**$ 1,510**	**$ 4,361**	**$ (2,851)**	**-65.4%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses for the period decreased $2,851 to $1,510. The decrease as compared to the prior period is primarily attributable to the eight months of additional results in 2017 as compared to 2018 as BRE GM Hotel JV Holdings, LLC sold all of its assets on May 3, 2018 and dissolved.

Interest Expense, Net

	Period from January 1 to May 3, 2018	For the Year Ended December 31, 2017	Variance	%
Interest on debt	$ 940	$ 2,058	$ (1,118)	-54.3%
Amortization of deferred financing costs	268	—	268	0.0%
Interest expense, net	**$ 1,208**	**$ 2,058**	**$ (850)**	**-41.3%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense for the period decreased $850 to $1,208. The decrease as compared to the prior period is primarily attributable to the eight months of additional results in 2017 as compared to 2018 as BRE GM Hotel JV Holdings, LLC sold all of its assets on May 3, 2018 and dissolved.

Net Income and Comprehensive Income

	Period from January 1 to May 3, 2018	For the Year Ended December 31, 2017	Variance	%
Net income and comprehensive income	$ 38,159	$ 2,045	$ 36,114	1766.2%

Net income and comprehensive income for the period increased $36,114. The increase was driven primarily by the gain on sale of the assets on May 3, 2018 and was partially offset by the fact that the prior period had eight months of additional results as compared to 2018.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the DT Portfolio for the Period From January 1, 2018 through May 3, 2018

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the period from January 1, 2018 through May 3, 2018:

	Period from January 1 to May 3, 2018	For the Year Ended December 31, 2017
Net income	$ 38,159	$ 2,045
Depreciation	1,998	3,235
Funds from Operations	**40,157**	5,280
Deferred financing costs	268	—
Core Funds from Operations	**$ 40,524**	**$ 5,280**

	Period from January 1 to May 3, 2018	For the Year Ended December 31, 2017
Total revenues	$ 6,552	$ 21,878
Total operating expenses	(4,880)	(14,541)
Net Operating Income	**$ 1,672**	**$ 7,338**
Net Operating Income margin	25.5%	33.5%

Financial Statement Analysis of the DT Portfolio as of May 3, 2018

The following table highlights selected financial information for the DT Portfolio as of May 3, 2018. This information has been compiled from, and should be read in conjunction with the combined financial statements of the Company and the notes thereto included elsewhere in this prospectus.

	May 03, 2018	December 31, 2017
Total current assets	$ –	$ 3,122
Total non-current assets	–	39,260
Total assets	–	**42,382**
Total current liabilities	–	1,177
Total non-current liabilities	–	69,213
Total liabilities	–	**70,390**
Members' Equity	**$ –**	**$ (28,008)**

Total Current Assets

	May 03 2018	December 31 2017
Cash and cash equivalents	$ –	$ 580
Trade and other receivables	–	2,087
Prepaid and other assets	–	455
Total current assets	**$ –**	**$ 3,122**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets were $0 as of May 3, 2018 as BRE GM Hotel JV Holdings, LLC sold all of its assets on May 3, 2018 and dissolved. As of December 31, 2017, total current assets were $3,122 with the primary component being receivable.

Property and Equipment, Net

	May 03 2018	December 31 2017
Land	$ –	$ 5,024
Buildings and improvements	–	43,374
Furniture, fixtures and equipment	–	17,615
Total property and equipment	–	66,013
Accumulated depreciation	–	(26,753)
Total property and equipment, net	**$ –**	**$ 39,260**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net was $0 as of May 3, 2018 as BRE GM Hotel JV Holdings, LLC sold all of its assets on May 3, 2018 and dissolved. As of December 31, 2017, property and equipment, net was $39,260 with the primary components being buildings and improvements and furniture, fixtures and equipment.

Note Payable, Net

Note payable, net, mezzanine loan, net and related party mezzanine loans, net (collectively the "Indebtedness") includes the outstanding balances of the note payable on the DT Portfolio reduced by the unamortized deferred financing cost. As of May 3, 2018 the balance of the Indebtedness was $0 as the proceeds from the sale of the DT Portfolio was used primarily to pay down the outstanding Indebtedness. As of December 31, 2017 the carrying value of the Indebtedness was $69,213.

Cash Flows of the DT Portfolio for the Period From January 1, 2018 Through May 3, 2018

The DT Portfolio reported a cash balance of $0 as of May 3, 2018 as compared to a cash balance of $580 as of December 31, 2017. The changes in cash flow for the period ended May 23, 2018 and the year ended December 31, 2017 are as follows:

	Period from January 1 to May 3	For the Year Ended December 31,
	2018	2017
Cash flow provided by (used in):		
Operating activities	$ 1,829	$ 3,346
Investing activities	78,501	(1,534)
Financing activities	(80,910)	(1,546)
Decrease in cash and cash equivalents	(580)	265
Cash and cash equivalents, beginning of period	580	315
Cash and cash equivalents, end of period	**$ 0**	**$ 580**

Cash flows for the period from January 1, 2018 through May 3, 2018 and for the year ended December 31, 2017

Cash flows from operating activities for the period generated a net cash inflow of $1,829 as compared to a net cash inflow of $3,346 for the year ended December 31, 2017. The difference was the result of eight months more results in 2017 as compared to the period in 2018. Cash flows used in investing activities for the period was a net cash inflow of $78,501 and was driven by the sale of all BRE GM Hotel JV Holdings, LLC's assets as compared to a net cash outflow of $1,534 for the year ended December 31, 2017. Cash flows used in financing activities for the period resulted in a net cash outflow of $80,910 and was driven by repayment of the Company's Indebtedness and distribution of remaining cash to the members after the sale of the DT Portfolio on May 3, 2018 as compared to a new cash outflow of $1,546 for the year ended December 31, 2017.

Transactions with Related Parties

For the period ended May 3, 2018, the Company had debt outstanding with an affiliate. The Company paid the affiliate $93 in interest in 2017. Additionally, as discussed in Note 8. Note payable, net in the combined financial statements of the Company, the Company was jointly and severally liable on $862.5 million of debt with affiliates.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these combined financial statements. On May 3, 2018, the DT Portfolio was purchased by NREO NW Hospitality, LLC. On January 8, 2019, the owner of NREO NW Hospitality, LLC, contributed its interests in NREO NW Hospitality, LLC to the OP in exchange for 9,629,170 Class B Units of the OP.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the combined financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the combined financial statements.

Liquidity, Capital Resources and Contractual Commitments

As all of the assets of the BRE GM JV Holdings, LLC were sold on May 3, 2018 and the Indebtedness was paid in full and all liabilities paid, there are no remaining liabilities of the Company.

As all of the assets were sold on May 3, 2018, there are no additional capital expenditures required for the Company.

Acquisitions

For the period from January 1, 2018 to May 3, 2018, the Company had no acquisitions.

Dispositions

For the period from January 1, 2018 to May 3, 2018, the Company sold all of its properties.

HCBH 11611 Ferguson, LLC
Homewood Suites Addison, Homewood Suites Las Colinas and Homewood Suites Plano
*(collectively, the "**HWS Portfolio**")*

Review of Selected Financial and Operating Information of the HWS Portfolio as of September 30, 2018 and 2017 and for the Nine Months and Three Months Ended September 30, 2018 and for the Period From May 4, 2017 Through September 30, 2017

The following tables highlight selected financial information of the HWS Portfolio as of September 30, 2018 and 2017 and for the nine months and three months ended September 30, 2018 and for the period From May 4, 2017 through September 30, 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of HCBH 11611 Ferguson, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the nine months and three months ended September 30, 2018 and for the period From May 4, 2017 through September 30, 2017, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Total revenues	$ 7,547	$ 4,850	$2,898	$2,950
Operating expenses	(4,113)	(2,325)	(1,502)	(1,433)
General and administrative expenses	(1,818)	(1,057)	(655)	(670)
Depreciation	(597)	(324)	(202)	(195)
Interest expense, net	(1,680)	(653)	(609)	(370)
Net income (loss) and comprehensive income (loss)	**$ (661)**	**$ 491**	**$(70)**	**$(282)**

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Funds from Operations	$ (64)	$ 815	$(459)	$686
Core Funds from Operations	82	896	(313)	767
Net Operating Income	1,616	1,468	741	847

	September 30, 2018	December 31, 2017
Total assets	$ 43,237	$ 37,522
Total liabilities	33,456	28,066
Members' equity	9,781	9,456

Review and Comparison of Operational Results of the HWS Portfolio for the Period From May 4, 2018 Through September 30, 2018, for the Nine Months and Three Months Ended September 30, 2018 and for the Period From May 4, 2017 Through September 30, 2017

Total Revenues

	Nine Months Ended September 30, 2018		Period From May 4, 2017 (date of formation) to September 30, 2017		Variance		%
Rooms	$	7,446	$	4,771	$	2,675	56.1%
Food and beverage		14		8		6	75.0%
Other		87		71		16	22.5%
Total revenues	**$**	**7,547**	**$**	**4,850**	**$**	**2,697**	**55.6%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the HWS Portfolio. Total revenue increased $2,697, or 55.6%, to $7,547 for the current period compared to $4,850 for the prior period. The increase in revenue as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017. Across the HWS Portfolio for the nine month period ended September 30, 2018, occupancy, ADR and RevPAR was 68.8%, $113.42 and $78.44, respectively, as compared to 78.0%, $113.80 and $88.84, respectively for the period in 2017. The significant decrease in occupancy was driven by the renovation that began in late 2017 and was completed in 2018 as rooms were out of service during renovation for significant periods of time.

Operating Expenses

	Nine Months Ended September 30, 2018		Period From May 4, 2017 (date of formation) to September 30, 2017		Variance		%
Payroll	$	1,826	$	995	$	831	83.5%
Repairs and maintenance		485		238		247	103.8%
Utilities		304		201		103	51.2%
Property taxes and insurance		524		314		210	66.9%
Cost of goods sold		186		100		86	86.0%
Franchise fees		409		264		145	54.9%
Other operating expenses		379		213		166	77.9%
Operating expenses	**$**	**4,113**	**$**	**2,325**	**$**	**1,788**	**76.9%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $1,788, or 76.9%, to $4,113 for the current period compared to $2,325 for the prior period. The increase as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017. A significant renovation was completed in mid-2018 at all of the properties and it is anticipated this will driver higher occupancy and RevPAR in 2019.

General and Administrative Expenses

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Variance	%
Property management fees	$ 189	$ 121	$ 68	56.2%
Office operations	463	245	218	89.0%
Marketing	807	516	291	56.4%
Other administrative expenses	359	175	184	105.1%
General and administrative expenses	**$ 1,818**	**$ 1,057**	**$ 761**	**72.0%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses increased by $761, or 72.0%, to $1,818 for the current period compared to $1,057 for the prior period. The increase as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017.

Interest Expense, Net

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Variance	%
Interest on debt	$ 1,534	$ 572	$ 962	168.2%
Amortization of deferred financing costs	146	81	65	80.2%
Interest expense, net	**$ 1,680**	**$ 653**	**$ 1,027**	**157.3%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense increased by $1,027, or 157.3%, to $1,680 for the current period compared to $653 for the prior period. The increase as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017.

Net Income and Comprehensive Income

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Variance	%
Net income (loss) and comprehensive income (loss)	$ (661)	$ 491	$ (1,152)	-234.6%

Net income and comprehensive income decreased by $1,152, or 234.6%, to a net loss of $661 for the current period as compared to net income of $491 for the prior period. As discussed above, the decrease as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the HWS Portfolio for the Nine Months and Three Months Ended September 30, 2018 and for the Period From May 4, 2018 Through September 30, 2018 and for the Period From May 4, 2017 Through September 30, 2017

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the period from May 4, 2018 through September 30, 2018 and for the period From May 4, 2017 through September 30, 2017:

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Net income	$ (661)	$ 491	$(70)	$282
Depreciation	597	324	202	195
Funds from Operations	**(64)**	**815**	**(132)**	**477**
Deferred financing costs	146	81	146	81
Core Funds from Operations	**$ 82**	**$ 896**	**$(623)**	**$558**

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Total revenues	$ 7,547	$ 4,850	$2,898	$2,950
Total operating expenses	(5,931)	(3,382)	(2,157)	(2,103)
Net Operating Income	**$ 1,616**	**$ 1,468**	**$741**	**$847**
Net Operating Income margin	21.4%	30.3%	25.6%	28.7%

Financial Statement Analysis of the HWS Portfolio as of September 30, 2018 and December 31, 2017

The following table highlights selected financial information for the HWS Portfolio as of September 30, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of the Company and the notes thereto included elsewhere in this prospectus.

	September 30, 2018	December 31, 2017
Total current assets	$ 2,023	$ 2,130
Total non-current assets	41,214	35,392
Total assets	**43,237**	**37,522**
Total current liabilities	1,815	1,762
Note payable, net	31,641	26,304
Total liabilities	**33,456**	**28,066**
Members' equity	**$ 9,781**	**$ 9,456**

Total Current Assets

	September 30, 2018	December 31, 2017	Variance	%
Cash and cash equivalents	$ 705	$ 697	$ 8	1.1%
Restricted cash	889	1,008	(119)	-11.8%
Trade and other receivables	242	245	(3)	-1.2%
Prepaid and other assets	187	180	7	3.9%
Total current assets	**$ 2,023**	**$ 2,130**	**$ (107)**	**-5%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets decreased by $107, or 5.0%, to $2,023 as of September 30, 2018 compared to $2,130 as of December 31, 2017. The decrease as compared to the prior period is primarily attributable to a decrease in cash as a result of lower net income.

Property and Equipment, Net

	September 30, 2018	December 31, 2017	Variance	%
Land	$ 6,715	$ 6,715	$ –	0.0%
Buildings and improvements	21,101	20,998	103	0.5%
Furniture, fixtures and equipment	2,255	2,094	161	7.7%
Construction in progress	12,260	6,105	6,155	100.8%
Total property and equipment	42,331	35,912	6,016	17.9%
Accumulated depreciation	(1,117)	(520)	(597)	114.8%
Total property and equipment, net	**$ 41,214**	**$ 35,392**	**$ 5,822**	**16.5%**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $5,822, or 16.5%, to $41,214 as of September 30, 2018 compared to $35,392 as of December 31, 2017. The increase as compared to the prior period is primarily attributable to increases to construction in progress reflecting the extensive renovation program completed in 2018.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the HWS Portfolio reduced by the unamortized deferred financing cost and the current maturities and totaled $31,641 as of September 30, 2018, compared to $26,304 as of December 31, 2017, representing an increase of $5,337, or 20.3%. The increase was primarily attributable to increases in the note payable as a result of funding renovations on the HWS Portfolio. As of September 30, 2018, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ –
2019	277
2020	31,830
2021	–
2022	–
Thereafter	–
Note payable	**32,107**
Current maturities	(158)
Net unamortized deferred financing costs	(308)
Note payable, net	**$ 31,641**

Cash Flows of the HWS Portfolio for the Period From May 4, 2018 Through September 30, 2018, for the Nine Months and Three Months Ended September 30, 2018 and for the Period From May 4, 2017 Through September 30, 2017

The Company reported a cash balance of $705 as of September 30, 2018 as compared to a cash balance of $1,850 as of September 30, 2017. The changes in cash flow for the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017 are as follows:

	Nine Months Ended September 30, 2018	Period From May 4, 2017 (date of formation) to September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Cash flow provided by (used in):				
Operating activities	$ 1,482	$ 2,679	$333	$944
Investing activities	(6,300)	(33,472)	(602)	(2,854)
Financing activities	4,826	32,643	181	2,047
Increase in cash and cash equivalents	8	1,850	(88)	137
Cash and cash equivalents, beginning of period	697	–	793	1,713
Cash and cash equivalents, end of period	**$ 705**	**$ 1,850**	**$705**	**$1,850**

Operating activities for the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017

Cash flows from operating activities for the current period generated a net cash inflow of $1,482 compared to a net cash inflow of $2,679 for the prior period. The decrease as compared to the prior period is primarily attributable to the four months of additional results in 2018 as compared to 2017.

Investing activities for the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017

Cash flows used in investing activities for the current period resulted in a net cash outflow of $6,300 compared to a net cash outflow of $33,472 for the prior period. The decrease as compared to the prior period is primarily attributable to the lower purchase of assets in 2018.

Financing activities for the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017

Cash flows used in financing activities for the current period resulted in a net cash inflow of $4,826 compared to a net cash inflow of $32,643 for the prior period. The decrease net cash inflows from financing activities was driven by a lower contributions from members.

Transactions with Related Parties

For the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017, there were no transactions with related parties.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT DFW Portfolio, LLC, which was immediately contributed to NHT Holdco, LLC in exchange for 3,843,184 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of September 30, 2018, are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 32,107	$ 32,107	$ 158	$ 31,949
Interest payable on note	173	3,893	2,345	1,548
Total	**$ 32,280**	**$ 36,000**	**$ 2,503**	**$ 33,497**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). The HWS Portfolio completed an extensive renovation in 2018. Other than normal maintenance no additional capital expenditures will be required for the HWS Portfolio until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 6 years. The Company reserves annually 4% of gross revenue for future PIP renovations. We believe these reserves together with free cash flow are sufficient to fund any future PIP programs.

Acquisitions

For the period from May 4, 2018 through September 30, 2018 the Company had no acquisitions. For the period from May 4, 2017 through September 30, 2017, the Company acquired the HWS Portfolio, comprising three properties, from a third party for $29,500.

Dispositions

For the period from May 4, 2018 through September 30, 2018 and for the period from May 4, 2017 through September 30, 2017, the Company had no dispositions.

Interim Management Discussion and Analysis – Quarterly Highlights for Third Quarter 2018

Discussion of business activities, financial condition, financial performance and cash flow of the Company for the three months ended September 30, 2018

During the three months ended September 30, 2018, the Company had its first full quarter since the completion of the renovation program, which began in June 2017 and was completed in May 2018. The renovation cost $12.2 million or $34,542 per room. During the comprehensive renovation, the décor was upgraded, flooring, furniture and bathroom fixtures were replaced in all rooms to conform to the then required brand standards and changing consumer tastes, and general improvements were made to common areas.

Occupancy for the period was an average of 76.7% as compared to 79.5% for the same period in 2017. This compared favorably to the competitor set in the submarket, which had an average occupancy of 71.3% for the third quarter of 2018. Likewise, ADR and RevPar were down slightly year over year at $112.48 and $86.62, respectively, in the third quarter of 2018 as compared to $113.96 and $90.71, respectively in the same period in 2017. Although occupancy, ADR and RevPar were down, they compared favorably to the competitor set at $99.70 and $71.37, respectively, which is an indication the renovation is driving better results on a relative basis to the competition. Given the Company completed the renovation in the prior quarter, it is not unexpected that occupancy, ADR and RevPar have not recovered to their levels from the prior year.

Net income was lower in the third quarter 2018 by approximately $350 as compared to the same period in 2017. This was driven primarily by lower revenue and higher interest expense. The lower revenue was caused by lower occupancy, ADR and RevPar as discussed above.

Operating cash flow declined in the third quarter 2018 as compared to the same period in 2017 to cash inflow of $333 versus cash inflow of $944. The decline was driven primarily by lower cash flow from net income and higher payments of liabilities in the third quarter of 2018 as compared to the same period in 2017. Cash decreased slightly from $793 to $705 at September 30, 2018 as a result of cash outflows from investing activities. The Company paid $564 in interest payments in the third quarter 2018 as compared to $351 in the same period in

2017. This was the result of rising LIBOR rates and higher principal balance on the note payable, which had an outstanding principal balance of $32,107 at September 30, 2018. The Company paid a distribution to its members of $540 during the quarter.

Pallas LLC
St. Petersburg Property
*(the "**St. Pete Property**")*

Review of Selected Financial and Operating Information of the St. Pete Property as of and for the Period from January 1 to September 24, 2018 and from January 1 to September 30, 2017

The following tables highlight selected financial information of the St. Pete Property as of and for the period from January 1 to September 24, 2018 and January 1 to September 30, 2017 and as of September 30, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the financial statements of Pallas, LLC (the "Company") and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the period from January 1 to September 24, 2018 and January 1 to September 30, 2017, with additional detail provided in "Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin".

	For the Period from January 1 to September 24,	For the Period from January 1 to September 30,
	2018	**2017**
Total revenues	$ 8,520	$ 8,442
Operating expenses	(4,747)	(4,674)
General and administrative expenses	(1,421)	(1,451)
Depreciation and amortization	(305)	(328)
Interest expense, net	(670)	(663)
Other income (expense)	61	69
Net income and comprehensive income	**$ 1,438**	**$ 1,395**

	For the Period from January 1 to September 24,	For the Period from January 1 to September 30,
	2018	**2017**
Funds from Operations	$ 1,743	$ 1,723
Core Funds from Operations	1,755	1,754
Net Operating Income	2,352	2,317

	September 24, 2018	December 31, 2017
Total assets	$ 18,297	$ 17,827
Total liabilities	23,624	23,342
Members' deficit	(5,327)	(5,515)

Review and Comparison of Operational Results of the St. Pete Property for the Period from January 1 to September 24, 2018 and from January 1 to September 30, 2017

Total Revenues

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017	Variance	%
Rooms	$ 6,273	$ 6,174	$ 99	1.6%
Food and beverage	744	772	(28)	–3.6%
Other	1,503	1,496	7	0.5%
Total revenues	**$ 8,520**	**$ 8,442**	**$ 78**	**0.9%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the St. Pete Property. Total revenue increased $78, or 0.9%, to $8,520 for the period ended September 24, 2018 compared to $8,442 for the period ended September 30, 2017. The increase in revenue as compared to the prior period is primarily attributable to higher room revenue from transient and group corporate customers. Because of the stable level of the customer base and the supply in the sub-market, the revenue from the St. Pete Property continued to grow at a slow pace. For the St. Pete Property during the period ended September 24, 2018, occupancy, ADR and RevPAR were 67.1%, $155.35 and $104.24, respectively, as compared to 71.0%, $154.33 and $109.50, respectively for the full year 2017.

Operating Expenses

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017	Variance	%
Payroll	$ 1,385	$ 1,411	$ (26)	-1.8%
Repairs and maintenance	800	668	132	19.8%
Utilities	325	325	—	0.0%
Property taxes and insurance	515	542	(27)	-5.0%
Cost of goods sold	960	962	(2)	-0.2%
Franchise fees	682	680	2	0.3%
Other operating expenses	81	86	(5)	-5.8%
Operating expenses	**$ 4,748**	**$ 4,674**	**$ 74**	**1.6%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $74, or 1.6%, to $4,748 for the period from January 1 to September 24, 2018 compared to $4,674 for the period from January 1 to September 30, 2017. The increase in expenses as compared to the prior period was primarily driven by an increase in repairs and maintenance and partially offset by decreases in payroll and property tax expenses.

General and Administrative Expenses

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017	Variance	%
Property management fees	$ 436	$ 409	$ 27	6.6%
Office operations	84	131	(47)	-35.9%
Marketing	898	906	(8)	-0.9%
Other administrative expenses	3	5	(2)	-40.0%
General and administrative expenses	**$ 1,421**	**$ 1,451**	**$ (30)**	**-2.1%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses decreased by $30, or 2.1%, to $1,421 for the period ended September 24, 2018 compared to $1,451 for the period ended September 30, 2017. The decrease was as compared to the prior period primarily attributable to a decrease in office operations in the comparative period related to professional fees.

Interest Expense, Net

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017	Variance	%
Interest on debt	$ 658	$ 632	$ 26	4.1%
Amortization of deferred financing costs	12	31	(19)	–61.3%
Interest expense, net	**$ 670**	**$ 663**	**$ 7**	**1.1%**

Interest expense, net consists of interest expense on the note payable and amortization of deferred financing costs. Interest expense, net increased by $7, or 1.1%, to $670 for the period ended September 24, 2018 compared to $663 for the period ended September 24, 2017. The increase as compared to the prior period was immaterial but related to additional interest expense in the comparative.

Net Income and Comprehensive Income

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017	Variance	%
Net Income and comprehensive income	$ 1,438	$ 1,395	$ 43	3.1%

Net income and comprehensive income increased by $43, or 3.1%, to a net gain of $1,438 for the period ended September 24, 2018 as compared to net income of $1,395 for the period ended September 30, 2017. As discussed above, this decrease as compared to the prior period was primarily due to a net increase in the following components of net income and comprehensive income:

- an increase in operating expenses of $73 related to an increase in repairs and maintenance; and
- a decrease in general and administrative expenses of $30 related to professional fees.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the St. Pete Property for the Period from January 1 to September 24, 2018 and from January 1 to September 30, 2017

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the periods ended September 24, 2018 and September 30, 2017:

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Net income	$ 1,438	$ 1,395
Depreciation and amortization	305	328
Funds from Operations	1,743	1,723
Deferred financing costs	12	31
Income tax expense	—	—
Core Funds from Operations	$ $1,755	$ $1,754

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Total revenues	$ 8,520	$ 8,442
Total operating expenses	(6,168)	(6,125)
Net Operating Income	$ 2,352	$ 2,317
Net Operating Income margin	27.6%	27.4%

Financial Statement Analysis of the St. Pete Property as of September 24, 2018 and December 31, 2017

The following table highlights selected financial information for the Company as of September 24, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the financial statements of the Company and the notes thereto included elsewhere in this prospectus.

	September 24, 2018	December 31, 2017
Total current assets	$ 4,402	$ 4,540
Property and equipment, net	13,895	13,287
Total assets	18,297	17,827
Total current liabilities	1,794	1,089
Note payable, net	21,830	22,253
Total liabilities	23,624	23,342
Members' deficit	$ $(5,327)	$ $(5,515)

Total Current Assets

	September 24, 2018		December 31, 2017		Variance		%
Cash and cash equivalents	$	3,803	$	4,271	$	(468)	–11.0%
Restricted cash		–		2		(2)	–100.0%
Trade and other receivables		146		23		123	534.8%
Prepaid and other assets		453		244		209	85.7%
Total current assets	**$**	**4,402**	**$**	**4,540**	**$**	**(138)**	**–3.0%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets decreased by $138, or 3.0%, to $4,402 as of September 24, 2018 compared to $4,540 as of December 31, 2017. The decrease as compared to the prior period was primarily due to a decrease in cash, offset by an increase in receivables and prepaid assets related to timing of collection of receivables and higher prepaid expenses to the franchisor in the comparative balance sheet dates.

Property and Equipment, Net

	September 24, 2018		December 31, 2017		Variance		%
Land	$	1,777	$	1,777	$	–	0.0%
Buildings and improvements		19,042		18,128		914	5.0%
Furniture, fixtures and equipment		4,325		4,325		0	0.0%
Total property and equipment		25,144		24,230		914	3.8%
Accumulated depreciation		(11,248)		(10,943)		(305)	2.8%
Total property and equipment, net	**$**	**13,896**	**$**	**13,287**	**$**	**609**	**4.6%**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $609, or 4.6%, to $13,896 as of September 24, 2018 compared to $13,287 as of December 31, 2017. The increase as compared to the prior period was attributable to higher accumulated depreciation and additions to buildings and improvements.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the St. Pete Property reduced by the unamortized deferred financing cost and current maturities and totaled $21,830 as of September 24, 2018, compared to $22,253 as of December 31, 2017, representing a decrease of $423, or 1.9%. The decrease as compared to the prior period was primarily attributable to amortization of the loan balance. As of September 24, 2018, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ 143
2019	586
2020	608
2021	632
2022	20,566
Thereafter	–
Note payable	**22,535**
Current maturities	(580)
Net unamortized deferred financing costs	(125)
Note payable, net	**$ 21,830**

Cash Flows of the St. Pete Property for the Period From January 1 to September 24, 2018 and September 30, 2017

The St. Pete Property reported a cash balance of $3,803 as of September 24, 2018 as compared to a cash balance of $2,771 as of September 30, 2017. The changes in cash flow for the period ended September 24, 2018 and September 30, 2017 are as follows:

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Cash flow provided by (used in):		
Operating activities	$ 2,804	$ 2,519
Investing activities	(912)	—
Financing activities	(2,360)	(1,087)
Increase (decrease) in cash and cash equivalents	(468)	1,432
Cash and cash equivalents, beginning of period	4,271	1,339
Cash and cash equivalents, end of period	**$ 3,803**	**$ 2,771**

Operating activities for the period ended September 24, 2018 and September 30, 2017

Cash flows from operating activities for the period ended September 24, 2018 generated a net cash inflow of $2,804 compared to a net cash inflow of $2,519 for the period ended September 30, 2017. The increase in cash inflows from operating activities was largely driven by higher net income and timing of receiving cash from receivables and paying cash for liabilities.

Investing activities for the period ended September 24, 2018 and September 30, 2017

Cash flows used in investing activities for the period ended September 24, 2018 resulted in a net cash outflow of $912 compared to a net cash flow of $0 for the period ended September 30, 2017. The increase in net outflows was due to higher additions to property and equipment in the current period.

Financing activities for the period ended September 24, 2018 and September 30, 2017

Cash flows used in financing activities for the period ended September 24, 2018 resulted in a net cash outflow of $2,360 compared to a net cash outflow of $1,087 for the period ended September 30, 2017. The increase in net cash outflows from financing activities was driven by higher distributions paid to members.

Transactions with Related Parties

For the periods from January 1 to September 24, 2018 and from January 1 to September 30, 2017, the Company engaged MDM for the day-to-day management of the Property. For the period ended September 24, 2017, Pallas, LLC had a note payable to MDM, and Pallas accrued interest on the note and made principal payments. The note payable was repaid in full on November 25, 2017 and there was no outstanding balance as of September 30, 2018. Additionally, the Company paid MDM property management fees for the periods from January 1 to September 24, 2018 and from January 1 to September 30, 2017.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these financial statements. On September 24, 2018, the Company sold the Property to NHT SP, LLC. On January 8, 2019, the parent of NHT SP, LLC (NHT SP Parent, LLC), was contributed to NHT Holdco, LLC in exchange for 3,613,498 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of September 24, 2018, are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 22,535	$ 22,535	$ 580	$ 21,995
Interest payable on note	–	–	–	–
Total	**$ 22,535**	**$ 22,535**	**$ 580**	**$ 21,955**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). It is anticipated the St. Petersburg Property will begin an extensive renovation on the property in 2019. It is estimated the renovation will be completed in 2020 for an estimated cost of $7 million. Other than normal maintenance no additional capital expenditures will be required for the St. Pete Property until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 4-6 years. The Company was required to reserve annually 4% of gross revenue for future PIP renovations, but as discussed in Note15 of the financial statements, the Company failed to reserve the required amount under the Franchise Agreement. Upon contribution of the Property to the REIT, additional cash was contributed to fund the initial budgeted renovations. After the initial renovations are complete, the REIT believes the reserves required by the lender together with free cash flow generated by the REIT are sufficient to fund any future PIP programs.

Acquisitions

For the period ended September 24, 2018 and 2017, the Company had no acquisitions.

Dispositions

For the period ended September 30, 2017, the Company had no dispositions. For the period ended September 24, 2018, the Company disposed of the St. Pete Property.

Birchmont H.I. Nashville Partner LLC
*Holiday Inn Express Nashville (“**Nashville Property**”)*

Review of Selected Financial and Operating Information of the Nashville Property as of and for the Nine Months Ended September 30, 2018 and 2017

The following tables highlight selected financial information of the Nashville Property as of and for the nine months ended September 30, 2018 and 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of Birchmont H.I. Nashville Partner, LLC (the “Company”) and notes thereto included elsewhere in this prospectus. Additionally, presented below is a summary of the unaudited FFO, CFFO, NOI and NOI Margin for the nine months ended September 30, 2018 and 2017, with additional detail provided in “Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin”.

	Nine Months Ended September 30		Three Months Ended September 30	
	2018	**2017**	**2018**	**2017**
Total revenues	$ 16,062	$ 15,027	$5,620	$5,402
Operating expenses	(7,008)	(6,883)	(2,481)	(2,538)
General and administrative expenses	(1,831)	(843)	(425)	(289)
Depreciation and amortization	(1,188)	(933)	(402)	(311)
Interest expense, net	(2,793)	(2,833)	(938)	(951)
Net income and comprehensive income	**$ 3,242**	**$ 3,535**	**$1,374**	**$1,313**

	Nine Months Ended September 30,		Three Months Ended September 30	
	2018	**2017**	**2018**	**2017**
Funds from Operations	$ 4,430	$ 4,468	$1,776	$1,624
Core Funds from Operations	4,482	4,520	1,794	1,642
Net Operating Income	7,223	7,301	2,714	2,575

	September 30, 2018	December 31, 2017
Total assets	$ $40,209	$ 38,214
Total liabilities	72,440	72,458
Members’ deficit	(32,231)	(34,244)

Review and Comparison of Operational Results of the Nashville Property for the Nine Months Ended September 30, 2018 and 2017

Total Revenues

	Nine Months Ended September 30,			
	2018	2017	Variance	%
Rooms	$ 14,222	$ 13,609	$ 613	4.5%
Food and beverage	235	87	148	170.1%
Other	1,605	1,331	274	20.6%
Total revenues	**$ 16,062**	**$ 15,027**	**$ 1,035**	**6.9%**

Room revenue consists of income related to the rental of hotel rooms. Food and beverage revenue is comprised of revenues from the sale of food and beverage to hotel guests while other revenue consists of all other income generated by the Nashville Property. Total revenue increased $1,035, or 6.9%, to $16,062 for the nine months ended September 30, 2018 compared to $15,027 for the nine months ended September 30, 2017. The increase in revenue as compared to the prior period is primarily attributable to higher room revenue, related to higher discount transient business and group corporate business; food and beverage revenue, related to higher catering business; and higher other revenue related to higher gift shop revenue. The property is currently undergoing a significant renovation that is expected to be completed in early 2019 and this, coupled with the increased customer base (Alliance Bernstein announced the relocation of its headquarters from New York City to Nashville in close proximity to the Nashville Property) it is expected that RevPAR, occupancy and ADR will continue to increase at a significant pace. For the Nashville Property during the nine month period ended September 30, 2018, occupancy, ADR and RevPAR were 83.2%, $218.33 and $181.76, respectively, as compared to 76.9%, $226.75 and $174.34, respectively for the full year 2017. The 6.9% increase in total revenue was primarily attributable to the 8.2% increase in occupancy and the 4.3% increase in RevPAR and was slightly offset by the 3.7% decrease in ADR.

Operating Expenses

	Nine Months Ended September 30,			
	2018	2017	Variance	%
Payroll	$ 1,966	$ 1,895	$ 71	3.7%
Property management fees	803	751	52	6.9%
Repairs and maintenance	143	143	—	0.0%
Utilities	312	304	8	2.6%
Property taxes and insurance	659	593	66	11.1%
Cost of goods sold	1,844	1,718	126	7.3%
Franchise fees	1,037	987	50	5.1%
Franchise and excise taxes	136	395	(259)	-65.6%
Other operating expenses	108	97	11	11.3%
Operating expenses	**$ 7,008**	**$ 6,883**	**$ $125**	**1.8%**

Operating expenses are comprised mainly of costs associated with the management and maintenance of the property including maintenance, payroll, insurance and the costs associated with deriving the food and beverage revenue and franchise fees paid to the franchisor. These expenses increased by $125, or 1.8%, to $7,008 for the nine months ended September 30, 2018 compared to $6,883 for the nine months ended September 30, 2017. The increase in expenses as compared to the prior period was primarily driven by an increase in payroll expenses across all departments, an increase in property taxes and an increase in cost of goods sold, attributable primarily to an increase in catering costs for banquet events as a result of an increase in catering business.

General and Administrative Expenses

	Nine Months Ended September 30,			
	2018	2017	Variance	%
Marketing	$ 597	$ 547	$ 50	9.1%
Asset management fee	1,004	156	848	543.6%
Other administrative expenses	230	140	90	64.3%
General and administrative expenses	**$ 1,831**	**$ 843**	**$ $988**	**117.2%**

General and administrative expenses are comprised of the costs to market the services of the property, management fees paid to the Manager and general costs of operating the business. General and administrative expenses increased by $988, or 117.2%, to $1,831 for the nine months ended September 30, 2018 compared to $843 for the nine months ended September 30, 2017. The increase as compared to the prior period was attributable to an increase in asset management fees.

Interest Expense, Net

	Nine Months Ended September 30,			
	2018	2017	Variance	%
Interest on debt	$ 2,741	$ 2,781	$ (40)	–1.4%
Amortization of deferred financing costs	52	52	-	0.0%
Interest expense, net	**$ 2,793**	**$ 2,833**	**$ (40)**	**–1.4%**

Net interest expense consists of interest expense on the note payable and amortization of deferred financing costs. Net interest expense decreased by $40, or 1.4%, to $2,793 for the nine months ended September 30, 2018 compared to $2,833 for the nine months ended September 30, 2017. The decrease as compared to the prior period was attributable to amortization of the note balance resulting in lower interest expense.

Net Income and Comprehensive Income

	Nine Months Ended September 30,			
	2018	2017	Variance	%
Net Income and comprehensive income	$ 3,242	$ 3,535	$ (293)	-8.3%

Net income and comprehensive income decreased by $293, or 8.3%, to a net income of $3,242 for the nine months ended September 30, 2018 as compared to net income of $3,535 for the nine months ended September 30, 2017. As discussed above, this increase as compared to the prior period was primarily due to a net increase in the following components of net income and comprehensive income:

- an increase in total revenue of $1,035 resulting primarily from higher room revenue, related to discount transient business and group corporate business; food and beverage revenue, related to catering business; and higher other revenue related to give shop revenue;

- an increase in operating expenses of $125 resulting from increases in all expenses and offset by a decrease in franchise and excise taxes;

- · an increase in general and administrative expense of $988, primarily driven by an increase in asset management fees; and

- an increase in depreciation and amortization expense of $255.

Funds from Operations, Core Funds from Operations, Net Operating Income and Net Operating Income Margin Results of the Nashville Property for the Nine Months and Three Months Ended September 30, 2018 and 2017

Set out below is a reconciliation of the unaudited FFO, CFFO, NOI and NOI Margin for the nine months ended September 30, 2018 and 2017:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2018	2017	2018	2017
Net income	$ 3,242	$ 3,535	1,374	1,313
Depreciation	1,188	933	402	311
Funds from Operations	4,430	4,468	1,776	1,624
Deferred financing costs	52	52	18	18
Income tax expense	—	—	—	—
Core Funds from Operations	**$ 4,482**	**$ 4,520**	**1,794**	**1,642**

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2018	2017	2018	2017
Total revenues	$ 16,062	$ 15,027	$5,620	$5,402
Total operating expenses	(8,839)	(7,726)	(2,906)	(2,827)
Net Operating Income	**$ $7,223**	**$ 7,301**	**$2,714**	**$2,575**
Net Operating Income margin	45.0%	48.6%	48.3%	47.7%

Financial Statement Analysis of the Nashville Property as of September 30, 2018 and December 31, 2017

The following table highlights selected financial information for the Nashville Property as of September 30, 2018 and December 31, 2017. This information has been compiled from, and should be read in conjunction with the consolidated financial statements of the Nashville Property and the notes thereto included elsewhere in this prospectus.

	September 30, 2018	December 31, 2017
Total current assets	$ 4,746	$ 3,606
Property and equipment, net	35,463	34,608
Total assets	**40,209**	**38,214**
Total current liabilities	3,801	3,029
Note payable, net	68,639	69,429
Total liabilities	**72,440**	**72,458**
Members' deficit	**$ (32,231)**	**$ (34,244)**

Total Current Assets

	September 30, 2018	December 31, 2017	Variance	%
Cash and cash equivalents	$ 2,091	$ 1,310	$ 781	59.6%
Restricted cash	1,495	871	624	71.6%
Trade and other receivables	676	801	(125)	-15.6%
Prepaid and other assets	484	624	(140)	-22.4%
Total current assets	**$ 4,746**	**$ 3,606**	**$ 1,140**	**31.6%**

Total current assets are comprised of cash and cash equivalents, restricted cash, receivables, prepaid expenses and other assets. Total current assets increased by $1,140, or 31.6%, to $4,746 as of September 30, 2018 compared to $3,606 as of December 31, 2017. The increase as compared to the prior period was primarily due to increases in cash and restricted cash, offset by a decrease in receivables and prepaid assets.

Property and Equipment, Net

	September 30, 2018	December 31, 2017	Variance	%
Land	$ 5,440	$ 5,440	$ –	0.0%
Buildings and improvements	34,118	34,118	–	0.0%
Furniture, fixtures and equipment	8,713	8,590	123	1.4%
Construction in Progress	2,490	573	1,917	334.6%
Total property and equipment	50,761	48,721	2,040	4.2%
Accumulated depreciation	(15,298)	(14,113)	(1,185)	8.4%
Total property and equipment, net	**$ 35,463**	**$ 34,608**	**$ 855**	**2.5%**

Property and equipment, net includes land, building and building improvements, as well as furniture, fixtures and equipment, reduced by accumulated depreciation. Land, buildings, improvements and furniture, fixtures and equipment are measured initially at cost, including transaction costs. Subsequent to initial recognition, these assets are measured at historical cost or fair value, whichever is lower. Subsequent capital expenditures are added to the carrying value of the assets only when it is probable that future economic benefits will flow to the property and the cost can be measured reliably.

Property and equipment, net increased by $855, or 2.5%, to $35,463 as of September 30, 2018 compared to $34,608 as of December 31, 2017. The increase as compared to the prior period was attributable primarily to increased construction in progress related to the ongoing renovation and partially offset by higher accumulated depreciation.

Note Payable, Net

Note payable, net includes the outstanding balance of the note payable on the Nashville Property reduced by the unamortized deferred financing cost and totaled $68,639 as of September 30, 2018, compared to $69,429 as of December 31, 2017, representing a decrease of $790, or 1.1%. The decrease as compared to the prior period was primarily attributable to amortization of the principal balance, a larger current maturity balance and amortization of deferred financing costs. As of September 30, 2018, the aggregate principal repayments in the next five years, and thereafter, or until maturity if shorter, are as follows:

	Note Payable
2018	$ 267
2019	1,118
2020	1,168
2021	1,240
2022	1,306
Thereafter	65,190
Note payable	**70,289**
Current maturities	(1,104)
Net unamortized deferred financing costs	(546)
Note payable, net	**$ 68,639**

Cash Flows of the Nashville Property for the Nine Months and Three Months Ended September 30, 2018 and 2017

The Nashville Property reported a cash balance of $2,091 as of September 30, 2018 as compared to a cash balance of $2,906 as of September 30, 2017. The changes in cash flow for the nine months and three months ended September 30, 2018 and 2017 are as follows:

	Nine Months Ended September 30,		Three Months Ended September 30,	
	2018	**2017**	**2018**	**2017**
Cash flow provided by (used in):				
Operating activities	$ 8,228	$ 7,510	$2,730	$2,704
Investing activities	(2,664)	(1,949)	(1,891)	(412)
Financing activities	(4,783)	(3,549)	(1,183)	(1,183)
Increase (decrease) in cash and cash equivalents	781	2,012	(344)	1,109
Cash and cash equivalents, beginning of period	1,310	894	2,435	1,797
Cash and cash equivalents, end of period	**$ 2,091**	**$ 2,906**	**$2,091**	**$2,906**

Operating activities for the nine months ended September 30, 2018 and 2017

Cash flows from operating activities for the nine months ended September 30, 2018 generated a net cash inflow of $8,228 compared to a net cash inflow of $7,510 for the nine months ended September 30, 2017. The increase in cash inflows from operating activities was largely driven by increases in receivables and prepaid assets and was partially offset by increased cash outflows to settle liabilities.

Investing activities for the nine months ended September 30, 2018 and 2017

Cash flows used in investing activities for the nine months ended September 30, 2018 resulted in a net cash outflow of $2,664 compared to a net cash outflow of $1,949 for the nine months ended September 30, 2017. The increase in net cash outflows from investing activities was primarily due to a decrease in restricted cash and more additions to property and equipment.

Financing activities for the nine months ended September 30, 2018 and 2017

Cash flows used in financing activities for the nine months ended September 30, 2018 resulted in a net cash outflow of $4,783 compared to a net cash outflow of $3,549 for the nine months ended September 30, 2017. The increase in net cash outflows from financing activities was driven by higher distributions paid to members.

Transactions with Related Parties

For the nine months ended September 30, 2018, the Company had the following transactions with related parties:

The Company has an asset management agreement with an affiliate of the member. For the nine months ended September 30, 2018, asset management fees were $1,004 and are included in general and administrative expenses in the consolidated statements of comprehensive income.

The Company has a property management agreement with an affiliate of the member. For the nine months ended September 30, 2018, property management fees and oversight management fees totaled $803 and are included in operating expenses in the consolidated statements of comprehensive income.

Certain labor costs are reimbursed to entities affiliated with the member. The labor costs are mainly for on-site maintenance and other labor costs related to property management and hotel services. For the nine months ended September 30, 2018, labor costs incurred totaled to $1,966 and are included in operating expenses in the consolidated statements of comprehensive income.

Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements.

On January 8, 2019, the Company sold the Property to NHT Nashville, LLC, a subsidiary of NexPoint Multifamily Capital Trust, Inc. ("NMCT") for $117,500. Immediately after the purchase of the Property was complete, the shareholders of NMCT contributed 100% of the units of NMCT to NHT Holdco, LLC in exchange for 6,756,364 units.

Critical Accounting Estimates and Assumptions

Management makes estimates and assumptions concerning the future. The resultant accounting estimates may differ from actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial period are outlined below. Further information is set forth in Note 3 of the consolidated financial statements presented in this prospectus.

Property and Equipment, Net

Property and equipment, net is recorded at historical cost less accumulated depreciation and any accumulated impairment losses. Real estate fair values for all other periods presented were determined internally by management through an impairment analysis process. For the internal valuations, a direct capitalization income method was used to calculate fair value. In determining estimates of fair value of the property and equipment, the assumptions underlying estimated values are limited by the availability of comparable data and the uncertainty of predictions concerning future events.

The primary assumptions underpinning the fair value determination are capitalization rates and stabilized net operating income. The estimates used when determining the fair value of real estate are capitalization rates and stabilized future net operating income. The capitalization rate applied is reflective of the characteristics, location and

market of each property. The stabilized future cash flows of each real estate property are based upon rental income from current income and assumptions about occupancy rates and RevPAR. In addition, there is a normalized management fee allowance and capital expenditure reserve taken into consideration when determining future property cash flows. For fair values determined internally, management utilized internal financial information, external market data and capitalization rates provided by independent industry experts and other periodic third-party appraisals.

Significant Accounting Policies

A summary of significant accounting policies is set forth in Note 3 of the consolidated financial statements.

Liquidity, Capital Resources and Contractual Commitments

A summary of future debt obligations, based on principal debt maturities as of September 30, 2018, are as follows:

	Carrying amount	Contractual cash flows	1 year	More than 1 year
Note payable	$ 70,289	$ 70,289	$ 1,104	$ 69,185
Interest payable on note	300	300	300	–
Total	**$ 70,589**	**$ 70,589**	**$ 1,404**	**$ 69,185**

Additionally, the REIT's strategy entails performing renovations to newly acquired properties and under the Franchise Agreement, a further requirement exists to fund periodic property improvement plans ("**PIPs**"). As of September 30, 2018, the Nashville Property was undergoing an extensive renovation. It is estimated the renovation will be completed in 2019 at an additional cost subsequent to September 30, 2018 of $3 million. Other than normal maintenance no additional capital expenditures will be required for the Nashville Property until the next PIP. Although the costs and timing of the next PIP are not known, we estimate the costs will approximate $10,000 - $15,000 per room and will be required in the next 4-6 years. The Company reserves 4% of gross revenue for future PIP renovations. We believe these reserves together with free cash flow are sufficient to fund any future PIP programs.

Acquisitions

For the nine months ended September 30, 2018 and 2017, the Company had no acquisitions.

Dispositions

For the nine months ended September 30, 2018 and 2017, the Company had no dispositions.

Interim Management Discussion and Analysis – Quarterly Highlights for Third Quarter 2018

Discussion of business activities, financial condition, financial performance and cash flow of the Company for the three months ended September 30, 2018

During the three months ended September 30, 2018, the Company was undergoing a standard PIP renovation. For the quarter, it added $1,423 to property and equipment related to the renovation. The renovation is scheduled to be completed in 2019. During the renovation, the décor will be upgraded, flooring, furniture and bathroom fixtures will be replace replaced in all rooms to conform to the then required brand standards and changing consumer tastes, and general improvements will be made to common areas.

Occupancy for the period was an average of 90% as compared to 79.1% for the same period in 2017, a significant increase. The competitor set in the submarket had an average occupancy of 92.9% for the third quarter of

2018. ADR and RevPar for the Company were down to stable year over year at $212.26 and $191.07, respectively, in the third quarter of 2018 as compared to $240.77 and $190.75, respectively in the same period in 2017. ADR and RevPar for the competitor set was $257.53 and $239.19, respectively, which is an indication that the renovations underway at the Property could potentially result in significant increases to revenue once completed and stabilized. Given the Company has not done a renovation the Property since 2010, it is not unexpected that ADR and RevPar have lagged the competitor set. The high occupancy at the Property indicates how much demand exists in the submarket.

Net income was higher in the third quarter 2018 by approximately $60 as compared to the same period in 2017. This was driven primarily by higher revenue as a result of a significant increase in occupancy despite a decrease in ADR. Operating cash flow was stable year over year in the third quarter 2018 as compared to the same period in 2017 to cash inflow of $2,730 versus cash inflow of $2,704 in the prior year. Cash decreased from $2,435 to $2,091 at September 30, 2018 as a result of cash outflows from investing activities related to the renovation program. The Company paid $921 in interest payments in the third quarter 2018 as compared to $935 in the same period in 2017. The decrease was the result of a lower principal balance on the note payable, which had an outstanding principal balance of $70,289 at September 30, 2018.

Other Financial and Operating Information of the REIT

Future Accounting Changes

New standards and amendments to existing standards issued by the IASB may be relevant to the REIT in preparing its consolidated financial statements in future periods, including IFRS 16. The REIT intends to adopt this standard on its effective date.

IFRS 16, *Leases* ("**IFRS 16**") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption is permitted. The REIT intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

Financial Risk Management

The activities of the Initial Portfolio expose them to market risk and liquidity risk. Risk management is carried out by the Chief Financial Officer under policies approved by executive management.

(a) Market Risk

Market risk is the risk that the fair value or future cash flows of financial assets or liabilities will fluctuate due to movements in market prices. There may be interest rate risk associated with the Initial Portfolio's fixed rate mortgages payable due to the expected requirement to refinance such mortgages payable in the year of maturity. To manage exposure to interest rate risk, management endeavors to manage maturities of fixed rate mortgages payable, and match the nature of the mortgages payable with the cash flow characteristics of the underlying assets. This risk may also be minimized through having a portion of the REIT's notes payable in fixed term arrangements.

(b) Liquidity Risk

Liquidity risk is the risk that the REIT may encounter difficulties in accessing capital and refinancing its financial obligations as they come due. To mitigate the risk associated with the refinancing of maturing debt, the REIT intends to stagger the maturity dates of its mortgage portfolio over a number of years.

Liquidity, Capital Resources and Contractual Commitments

The REIT will seek to maintain a combination of short, medium and long-term debt maturities that are appropriate for the overall debt level of its portfolio, taking into account the availability of financing and market conditions, and the financial characteristics of each property. The REIT believes that reserves set aside annually, which are generally 4% of gross revenues, and the cash generated from hotel operations will be sufficient to meet future operating expenses, capital expenditures, including the planned and in progress renovation programs as well as future PIP requirements, and future debt service requirements. In addition to the replacement reserves, the REIT anticipates having additional free cash flow that may be used to fund PIPs. Depending on the state of debt markets at the time a PIP is required, it may be possible for the REIT to refinance certain mortgages and take out additional cash to fund a PIP. Generally, once a PIP becomes required, the REIT will have 24 months or more to complete the program, pushing the total expenditures out beyond the starting point of the PIP.

In addition, the REIT believes that its capital structure will provide it with financial flexibility to pursue future growth strategies. However, the REIT's ability to fund operating expenses, capital expenditures and future debt service requirements will depend on, among other things, future operating performance, which will be affected

by general economic, industry, financial and other factors, including factors beyond the REIT's control. See the "Risk Factors" section in this prospectus.

Cash flow generated from leasing properties represents the primary source of liquidity to service debt, pay operating expenses and make distributions. Cash flow from operations is dependent upon continually leasing available rooms, cost of debt and other factors.

Disclosure Controls and Procedures and Internal Controls

The REIT's management maintains appropriate information systems, procedures and controls to ensure that information used internally and disclosed externally is complete, accurate, reliable and timely. The disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed in its various reports are recorded, processed, summarized and reported accurately. As of the end of the period covered by this MD&A, the Chief Executive Officer and the Chief Financial Officer of the REIT have reviewed and evaluated the Initial Portfolio disclosure controls and procedures (as that term is defined in National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings ("**NI 52-109**")) and, based upon that review and evaluation, concluded that those disclosure controls and procedures were effective and met the requirements thereof. Nevertheless, management does recognize that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance and not absolute assurance of achieving the desired control objectives.

NI 52-109 requires the Chief Executive Officer and Chief Financial Officer to certify that they are responsible for establishing and maintaining internal control over financial reporting for the Initial Portfolio and that those internal controls have been designed and are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with IFRS. The Chief Executive Officer and Chief Financial Officer are also responsible for disclosing any changes to the internal controls for the Initial Portfolio that have materially affected, or are reasonably likely to materially affect, the REIT's internal control over financial reporting.

Management, including the Chief Executive Officer and Chief Financial Officer, does not expect that the disclosure controls or internal controls over financial reporting of the Initial Portfolio will prevent or detect all errors and all fraud or will be effective under all potential future conditions. A control system is subject to inherent limitations and, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control systems objectives will be met.

The Chief Executive Officer and Chief Financial Officer have, using the framework and criteria established by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control – Integrated Framework (2013), evaluated the design and operating effectiveness of the internal controls over financial reporting of the Initial Portfolio and concluded that, as of September 30, 2018, and subject to the inherent limitations described above, internal controls over financial reporting were effective to provide reasonable assurance that information related to consolidated results and decisions to be made on those results were appropriate.

There have been no changes in the internal controls over financial reporting of the Initial Portfolio during the nine months ended September 30, 2018 that have materially affected, or are reasonably likely to materially affect the REIT's internal controls over financial reporting.

INVESTMENT GUIDELINES AND OPERATING POLICIES

Investment Guidelines

The Declaration of Trust provides certain guidelines on investments that may be made directly or indirectly by the REIT. The assets of the REIT after Closing may be invested only with the approval of the trustees and only in accordance with the following restrictions:

(a) the REIT may only invest, directly or indirectly, in interests (including fee ownership and leasehold interests) in income-producing real estate located in the United States and Canada (including, for greater certainty, assets whose revenue stems primarily from hospitality assets but which may include income from other asset classes), assets ancillary thereto necessary for the operation of such real estate and such other activities as are consistent with the other investment guidelines of the REIT;

(b) notwithstanding anything else contained in the Declaration of Trust, the REIT shall not make any investment, take any action or omit to take any action that would result in Units not being units of a "mutual fund trust" within the meaning of the Tax Act or that would result in the Units not being qualified investments for Exempt Plans;

(c) the business, operations, and the assets of the REIT shall be limited to and conducted in such a manner as to permit the REIT at all times to be qualified and classified as a Real Estate Investment Trust (as defined in the Code) for U.S. federal income tax purposes, unless the Trustees have determined, at their full discretion, that the REIT cease qualifying as a real estate investment trust under the Code;

(d) the REIT may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the REIT; provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Independent Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on the transfer, acquisition and sale of the REIT's and any joint venturer's interest in the joint venture arrangement, provisions to provide liquidity to the REIT, provisions to limit the liability of the REIT and its Unitholders to third parties, and provisions to provide for the participation of the REIT in the management of the joint venture arrangement. For purposes hereof, a "joint venture arrangement" is an arrangement between the REIT and one or more other persons pursuant to which the REIT, directly or indirectly, conducts an undertaking for one or more of the purposes set out in the investment guidelines of the REIT and in respect of which the REIT may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity;

(e) except for temporary investments held in cash, deposits with a Canadian or U.S. chartered bank or trust company registered under the laws of a province of Canada or a state of the United States, short-term government debt securities or money market instruments maturing prior to one year from the date of issue and except as permitted pursuant to the investment guidelines and operating policies of the REIT, the REIT may not hold securities of a person other than to the extent such securities would constitute an investment in real property (as determined by the Trustees) and provided further that, notwithstanding anything contained in the Declaration of Trust to the contrary, but in all events subject to paragraph (b) above, the REIT may hold securities of a person: (i) acquired in connection with the carrying on, directly or indirectly, of the REIT's activities or the holding of its assets; or (ii) which focuses its activities primarily on the activities described in paragraph (a) above, provided in the case of any proposed investment or acquisition which would result in the beneficial ownership of more than 10% of the outstanding securities of an issuer (the "**Acquired Issuer**"), the investment is made for the purpose of subsequently effecting the merger or combination of the business and assets of the REIT and the Acquired

Issuer or for otherwise ensuring that the REIT will control the business and operations of the Acquired Issuer;

(f) the REIT shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;

(g) the REIT shall not invest, directly or indirectly, in operating businesses unless:

(i) revenue will be principally associated with the ownership, directly or indirectly, of hospitality properties; or

(ii) it principally involves the ownership, maintenance, development, improvement, leasing or management, directly or indirectly, of a hospitality property (in each case as determined by the Trustees); or

(iii) it is an indirect investment and is incidental to a transaction which satisfies (i) or (ii) above;

(h) the REIT shall not invest in raw land for development, except (a) for existing properties with additional development or properties adjacent to existing properties of the REIT for the purpose of the renovation or expansion of existing properties, or (b) the development of new properties which will be capital property of the REIT, provided that the aggregate value of the investments of the REIT in raw land, excluding raw land under development, after giving effect to the proposed investment, will not exceed 10% of Gross Real Estate Value;

(i) the REIT may invest in and originate mortgages and mortgage bonds (including participating or convertible mortgages) and similar instruments where:

(i) the real property which is security for such mortgages and similar instruments is income producing real property which otherwise meets the other investment guidelines of the REIT; and

(ii) the aggregate book value of the investments of the REIT in mortgages, after giving effect to the proposed investment, will not exceed 15% of Gross Real Estate Value; and

(j) the REIT may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any debt incurred or assumed in connection with such investment) up to 15% of the Gross Real Estate Value of the REIT in investments which do not comply with one or more of paragraphs (a), (d), (e), (g) and (h).

Operating Policies

The Declaration of Trust provides that operations and affairs of the REIT are to be conducted in accordance with the following policies:

(a) the REIT shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term "hedging" has the meaning ascribed thereto by National Instrument 81-102 – *Mutual Funds adopted by the Canadian Securities Administrators*, as replaced or amended from time to time;

(b) (i) any written instrument creating an obligation which is or includes the granting by the REIT of a mortgage; and

(ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duties to act in the best interest of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation,

shall contain a provision, or be subject to an acknowledgement to the effect, that the obligation being created is not personally binding upon, and that resort must not be had to, nor will recourse or satisfaction be sought from, by lawsuit or otherwise the private property of any of the Trustees, Unitholders, annuitants or beneficiaries under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the REIT, but that only property of the REIT or a specific portion thereof is bound; the REIT, however, is not required, but must use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the REIT upon the acquisition of real property;

(c) the REIT may engage in construction or development of real property: (a) to maintain its real properties in good repair or to improve the income producing potential of properties in which the REIT has an interest; and (b) to develop new properties that will be capital properties of the REIT on completion, provided that the aggregate value of the investments of the REIT in properties under development under this subparagraph (b) after giving effect to the proposed investment in the construction or development, will not exceed 20% of Gross Real Estate Value;

(d) title to each real property shall be held by and registered in the name of the REIT, a subsidiary of the REIT, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the REIT or jointly- owned, directly or indirectly, by the REIT, with joint venturers; provided, that where land tenure will not provide fee simple title, the REIT, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the REIT or jointly owned, directly or indirectly, by the REIT shall hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;

(e) the REIT shall not incur or assume any indebtedness if, after giving effect to the incurrence or assumption of such indebtedness, the total indebtedness of the REIT would be more than 70% of Gross Real Estate Value;

(f) the REIT shall not directly or indirectly guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness or liabilities assumed or incurred by an entity in which the REIT holds an interest, directly or indirectly, or by an entity jointly owned by the REIT with joint venturers and operated solely for the purpose of holding a particular property or properties, where such indebtedness, if granted by the REIT directly, would cause the REIT to contravene its investment guidelines or operating policies. The REIT is not required but shall use its reasonable best efforts to comply with this requirement (a) in respect of obligations assumed by the REIT pursuant to the acquisition of real property; or (b) if doing so is necessary or desirable in order to further the initiatives of the REIT permitted under the Declaration of Trust;

(g) the REIT shall directly or indirectly obtain and maintain at all times property insurance coverage in respect of potential liabilities of the REIT and the accidental loss of value of the assets of the REIT from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practice of owners of comparable properties;

(h) the REIT shall have obtained an appraisal of each real property that it intends to acquire and an engineering survey with respect to the physical condition thereof, in each case, by an independent and experienced consultant, unless the requirement for such an appraisal or engineering survey is waived by the Independent Trustees;

(i) the REIT shall obtain a Phase I environmental site assessment of each real property to be acquired by it and, if the Phase I environmental site assessment report recommends that a further

environmental site assessment be conducted, the REIT shall have conducted such further environmental site assessments, in each case by an independent and experienced environmental consultant; as a condition to any acquisition such assessments shall be satisfactory to the Trustees; and

(j) the REIT shall not engage in any sales or other dispositions of properties, directly or indirectly, if it would subject the REIT to tax under Section 857 of the Code.

For the purpose of the foregoing investment guidelines and operating policies, the assets, liabilities and transactions of a corporation or other entity wholly or partially-owned by the REIT will be deemed to be those of the REIT on a proportionate consolidation basis. In addition, any references in the foregoing investment guidelines and operating policies to investment in real property will be deemed to include an investment in a joint venture arrangement that invests in real property.

Amendments to Investment Guidelines and Operating Policies

Pursuant to the Declaration of Trust, all of the investment guidelines set out under the heading “Investment Guidelines” and the operating policies contained in paragraphs (a), (e), (f), (g), (h) and (i) set out under the heading “Operating Policies” may be amended only with the approval of two-thirds of the votes cast by Unitholders of the REIT at a meeting of Unitholders called for such purpose. The remaining operating policies may be amended with the approval of a majority of the votes cast by Unitholders at a meeting called for such purpose.

Notwithstanding the foregoing paragraph, if at any time a government or regulatory authority having jurisdiction over the REIT or any property of the REIT shall enact any law, regulation or requirement which is in conflict with any investment guideline or operating policy of the REIT then in force (other than subparagraph (b) at “Investment Guidelines and Operating Policies – Investment Guidelines”), such investment guideline or operating policy in conflict shall, if the Trustees on the advice of legal counsel to the REIT so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary, any such resolution of the Trustees shall not require the prior approval of Unitholders.

DECLARATION OF TRUST

General

The REIT is an unincorporated open-ended real estate investment trust established pursuant to the Declaration of Trust under, and governed by, the laws of the Province of Ontario. Although the REIT is expected to qualify on Closing as a “mutual fund trust” as defined in the Tax Act, the REIT will not be a “mutual fund” as defined by applicable securities legislation.

The Units are not “deposits” within the meaning of the *Canada Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of such Act or any other legislation. The Units are not shares in the REIT and, although the protections, rights and remedies set out in the Declaration of Trust are similar to those provided under the CBCA, Unitholders do not have statutory rights of shareholders of a corporation including, for example, “dissent rights” in respect of certain corporate transactions and fundamental changes, the right to apply to a court to order the liquidation or dissolution of the REIT, or the right to bring “oppression” or “derivative” actions. Furthermore, the REIT is not a trust company and accordingly, is not registered under any trust and loan company legislation as it does not carry on or intend to carry on the business of a trust company.

Units

The REIT is authorized to issue an unlimited number of Units. Issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without notice to or the approval of the Unitholders.

No Unit will have any preference or priority over another. Each Unit will represent a Unitholder's proportionate undivided beneficial ownership interest in the REIT and will confer the right to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the REIT, whether of net income, net realized capital gains or other amounts and, in the event of termination or winding-up of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities. Units will be fully paid and non-assessable when issued and are transferable. The Units are redeemable by the holder thereof, as described below under "Declaration of Trust – Redemption Right" and, except as set out in "Retained Interest", "Declaration of Trust – Issuance of Units" and "The Operating Partnership – Operation", the Units have no other conversion, retraction, redemption or pre-emptive rights. Fractional Units may be issued as a result of an act of the Trustees, but fractional Units will not entitle the holders thereof to vote, except to the extent that such fractional Units may represent in the aggregate one or more whole Units.

Restrictions on Ownership and Transfer

REIT Qualification

In order for the REIT to qualify as a real estate investment trust for U.S. federal income tax purposes, the Units must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding Units (after taking into account options to acquire Units) may be owned, directly or through certain constructive ownership rules, by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year.

The Declaration of Trust contains restrictions on the ownership and transfer of the Units that are intended to assist the REIT in complying with these requirements to qualify as a real estate investment trust. The relevant sections of the Declaration of Trust provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 6.2% of the Units, excluding any Units that are not treated as outstanding for U.S. federal income tax purposes. Each of these restrictions, as well as the restrictions described below under "Declaration of Trust – FIRPTA", is referred to as an "ownership limit" and collectively as the "ownership limits". A person or entity that would have acquired actual, beneficial or constructive ownership of the Units but for the application of the ownership limits or any of the other restrictions on ownership and transfer of the Units is a "prohibited owner".

The constructive ownership rules under the Code are complex and may cause Units owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 6.2% of the Units (or the acquisition of an interest in an entity that owns, actually or constructively, the Units) by an individual or entity could, nevertheless, cause that individual or entity, or another individual or entity, to own constructively in excess of 6.2% of the Units and thereby violate the applicable ownership limit.

The Declaration of Trust provides that the Board, subject to certain limits including any applicable fiduciary duties, shall prospectively exempt a person from the ownership limits and, if necessary, establish a different limit on ownership for such person if it determines that such exemption could not cause or permit:

- five or fewer individuals to actually or beneficially own more than 49% in value of the outstanding Units;
- the REIT to own, actually or constructively, an interest in a tenant of the REIT (or a tenant of any entity owned in whole or in part by the REIT), other than a TRS Entity; or
- any hotel manager engaged by the TRS Entities to fail to qualify as an eligible independent contractor.

As a condition of the exception, the Board may require an opinion of counsel or a U.S. Internal Revenue Service (the "**IRS**") ruling, in either case in form and substance satisfactory to the Board, in its sole and absolute

discretion, in order to determine or ensure the REIT's status for U.S. federal income tax purposes, and such representations, covenants and/or undertakings as are necessary or prudent to make the determinations above. Notwithstanding the receipt of any ruling or opinion, the Board may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with a waiver of an ownership limit or at any other time, the Board may, in its sole and absolute discretion, increase or decrease Unit ownership limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of the Units exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of the Units equals or falls below the decreased ownership limit, although any further acquisition of the Units will violate the decreased ownership limit. The Board may not increase or decrease any ownership limit if the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49% of the Units.

The Declaration of Trust further prohibits:

- any person from actually, beneficially or constructively owning Units that could result in the REIT being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause the REIT to fail to qualify as a real estate investment trust (including, but not limited to, actual, beneficial or constructive ownership of Units that could result in the REIT owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income the REIT derives from such tenant, taking into account the REIT's other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause the REIT to fail to satisfy any of the gross income requirements imposed on real estate investment trusts); and

- any person from transferring Units if such transfer would result in the Units being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of Units that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of the Units described above must give written notice immediately to the REIT or, in the case of a proposed or attempted transaction, provide it at least 15 days prior written notice, and provide the REIT with such other information as the REIT may request in order to determine the effect of such transfer on the REIT's status for U.S. federal income tax purposes.

The ownership limits and other restrictions on ownership and transfer of the Units described above will not apply if the Board determines that it is no longer in the REIT's best interests to continue to qualify as a real estate investment trust or that compliance is no longer required in order for the REIT to qualify as a real estate investment trust.

Every owner of 5% or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Units, within 30 days after the end of each taxable year, must give written notice to the REIT stating the name and address of such owner, the number of Units that the owner actually or beneficially owns and a description of the manner in which the Units are held. Each such owner also must provide the REIT with any additional information that the REIT requests in order to determine the effect, if any, of the person's actual or beneficial ownership on the REIT's status for U.S. federal income tax purposes and to ensure compliance with the ownership limits and the other restrictions on ownership and transfer of the Units set forth in the Declaration of Trust. In addition, any person that is an actual, beneficial or constructive owner of Units and any person (including the Unitholder of record) who is holding Units for an actual, beneficial or constructive owner must, on request, disclose to the REIT in writing such information as the REIT may request in good faith in order to determine the REIT's status for U.S. federal income tax purposes and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

FIRPTA

Under the *Foreign Investment in Real Property Tax Act of 1980*, as amended ("**FIRPTA**"), if any non-U.S. person holds, actually or constructively, more than 10% of the outstanding Units, the REIT will be required to withhold 15% on distributions in excess of the REIT's current and accumulated earnings and profits (as determined for U.S. federal income tax purposes), and to withhold 21% (or less to the extent provided in applicable Treasury Regulations) of any distribution to such non-U.S. person that could be designated by the REIT as a capital gain dividend. Any such withheld amount is creditable against such non-U.S. person's FIRPTA tax liability.

In order for the REIT to comply with its withholding obligations under FIRPTA (and certain other regulatory requirements), the Units are subject to notice requirements and transfer restrictions. Non-U.S. persons holding Units are required to provide the REIT with such information as the REIT may request. Furthermore, any non-U.S. person that would be treated as having acquired sufficient Units to be treated as owning more than 5% of the Units is required to notify the REIT by the close of the business day prior to the date of the transfer that would cause the non-U.S. person to own more than 5% of the Units.

The constructive ownership rules under the Code are complex and may cause Units owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of 5% or less of the Units (or the acquisition of an interest in an entity that owns, actually or constructively, the Units) by an individual or entity could, nevertheless, cause that individual or entity, or another individual or entity, to own constructively in excess of 5% of the Units and thereby become subject to the notice requirement. Under these rules of constructive ownership, Units can be attributed (i) among family members, (ii) to non-U.S. persons from entities that own Units, to the extent that such non-U.S. persons own interests in such entities, and (iii) to entities from non-U.S. persons that own interests in such entities. Under these attribution rules, Units of related entities (including related investment funds) may be aggregated to the extent of overlapping ownership.

If any non-U.S. person that would otherwise be treated as having acquired sufficient Units to be treated as owning more than 5% of the Units fails to comply with the FIRPTA notice provisions described above, the excess Units (i.e., the excess of the number of Units it would be treated as owning over an amount equal to 5% of the outstanding Units) will be sold, through the mechanism described below under "Declaration of Trust – Excess Units," with such non-U.S. person receiving the lesser of (i) its original purchase price for the excess Units, and (ii) the sale price of the excess Units (net of commissions and other expenses of sale). Non-U.S. persons holding Units are strongly advised to monitor their actual and constructive ownership of Units.

Excess Units

Pursuant to the Declaration of Trust, if any purported transfer of the Units or any other event would otherwise result in any person violating the ownership limits described above under "Declaration of Trust – REIT Qualification" or such other limit established by the Board or otherwise failing to qualify as a real estate investment trust, or if a non-U.S. person would otherwise be treated as owning more than 5% of the Units and has not complied with the notice provisions described under "Declaration of Trust – FIRPTA", then the number of Units that exceeds the applicable ownership limit (rounded up to the nearest whole Unit) will be automatically transferred to, and held by, a charitable trust for the exclusive benefit of one or more charitable beneficiaries selected by the REIT. The prohibited owner will have no rights in Units held by the charitable trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in the transfer to the charitable trust. Any dividend or other distribution paid to the prohibited owner, prior to the REIT's discovery that the Units had been automatically transferred to a charitable trust, must be repaid to the charitable trustee upon demand. If the transfer to the charitable trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of the Units, then the transfer of the number of Units that otherwise would cause any person to violate the above restrictions will be void and of no force or effect and the intended transferee will acquire no rights in the Units. If any transfer of the Units would result in Units being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the Units.

Units transferred to the charitable trustee are deemed offered for sale to the REIT, or the REIT's designee, at a price per Unit equal to the lesser of (i) the price per Unit in the transaction that resulted in the transfer of the Units to the charitable trust (or, in the event of a gift, devise or other such transaction, the last sale price reported on the TSXV on the day of the transfer or other event that resulted in the transfer of such Units to the charitable trust); and (ii) the last sale price reported on the TSXV on the date the REIT accepts, or the REIT's designee accepts, such offer. The REIT must reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the charitable trustee and pay the amount of such reduction to the charitable trustee for the benefit of the charitable beneficiary. The REIT has the right to accept such offer until the charitable trustee has sold the Units held in the charitable trust. Upon a sale to the REIT, the interest of the charitable beneficiary in the Units sold terminates and the charitable trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the charitable trustee with respect to such Units will be paid to the charitable beneficiary.

If the REIT does not buy the Units, the charitable trustee must, within 20 days of receiving notice from the REIT of the transfer of Units to the charitable trust, sell the Units to a person or persons designated by the charitable trustee who could own the Units without violating the ownership limits or other restrictions on ownership and transfer of the Units. Upon such sale, the charitable trustee must distribute to the prohibited owner an amount equal to the lesser of (i) the price paid by the prohibited owner for the Units (or, if the prohibited owner did not give value in connection with the transfer or other event that resulted in the transfer to the charitable trust (e.g., a gift, devise or other such transaction), the last sale price reported on the TSXV on the day of the transfer or other event that resulted in the transfer of such Units to the charitable trust); and (ii) the sales proceeds (net of commissions and other expenses of sale) received by the charitable trustee for the Units. The charitable trustee must reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the charitable trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by the REIT that Units have been transferred to the charitable trustee, such Units are sold by a prohibited owner, then such Units shall be deemed to have been sold on behalf of the charitable trust and, to the extent that the prohibited owner received an amount for or in respect of such Units that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the charitable trustee upon demand.

The charitable trustee will be designated by the REIT and will be unaffiliated with the REIT and with any prohibited owner. Prior to the sale of any Units by the charitable trust, the charitable trustee will receive, in trust for the beneficiary, all dividends and other distributions paid by the REIT with respect to such Units, and may exercise all voting rights with respect to such Units for the exclusive benefit of the charitable beneficiary.

Subject to Ontario law, effective as of the date that the Units have been transferred to the charitable trust, the charitable trustee may, at the charitable trustee's sole discretion:

- rescind as void any vote cast by a prohibited owner prior to the REIT's discovery that the Units have been transferred to the charitable trust; and

- recast the vote in accordance with the desires of the charitable trustee acting for the benefit of the beneficiary of the charitable trust.

However, if the REIT has already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If the Board determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of the Units set forth in the Declaration of Trust, the Board may take such action as it deems advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing the REIT to redeem Units, refusing to give effect to the transfer on the REIT's books or instituting proceedings to enjoin the transfer.

The Units are subject to the restrictions on ownership and transfer of the Units described herein under "Declaration of Trust – Restrictions on Ownership and Transfer". These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of the REIT that might involve a premium price for the Units that the Unitholders believe to be in their best interest.

Meetings of Unitholders

The Declaration of Trust provides that meetings of Unitholders will be required to be called and held in various circumstances, including (i) for the election or removal of Trustees, (ii) the appointment or removal of the auditors of the REIT, (iii) the approval of amendments to the Declaration of Trust (except as described below under "Amendments to the Declaration of Trust"), (iv) the sale or transfer of the assets of the REIT as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the REIT approved by the Trustees), (v) the termination of the REIT, and (vi) for the transaction of any other business as the Trustees may determine or as may be properly brought before the meeting. Meetings of Unitholders will be called and held annually, commencing in 2020, for the election of the Trustees and the appointment of the auditors of the REIT. All meetings of Unitholders must be held in Canada.

A meeting of Unitholders may be convened at any time and for any purpose by the Trustees and must be convened, except in certain circumstances, if requisitioned in writing by the holders of not less than 5% of the Units then outstanding. A requisition must state in reasonable detail the business proposed to be transacted at the meeting. Unitholders have the right to obtain a list of Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the CBCA.

Unitholders may attend and vote at all meetings of Unitholders either in person or by proxy. Two persons present in person or represented by proxy, and such persons holding or representing by proxy not less in aggregate than 25% of the total number of outstanding Units, will constitute a quorum for the transaction of business at all such meetings. Any meeting at which a quorum is not present within one-half hour after the time fixed for the holding of such meeting, if convened upon the request of the Unitholders, will be terminated, but in any other case, the meeting will stand adjourned to a day not less than 14 days later and to a place and time as chosen by the chair of the meeting, and if at such adjourned meeting a quorum is not present, the Unitholders present either in person or by proxy will be deemed to constitute a quorum.

Pursuant to the Declaration of Trust, a resolution in writing executed by Unitholders holding a proportion of the outstanding Units equal to the proportion required to vote in favour thereof at a meeting of Unitholders to approve that resolution is valid as if it had been passed at a meeting of Unitholders.

Advance Notice Provision

The Declaration of Trust includes certain advance notice provisions (the "**Advance Notice Provision**"), which will: (i) facilitate orderly and efficient annual general or, where the need arises, special, meetings; (ii) ensure that all Unitholders receive adequate notice of the Trustee nominations and sufficient information with respect to all nominees; and (iii) allow Unitholders to register an informed vote.

Except as otherwise provided in the Declaration of Trust, only persons who are nominated by Unitholders in accordance with the Advance Notice Provision or in accordance with the Investor Rights Agreement shall be eligible for election as Trustees. Nominations of persons for election to the Board may be made for any annual meeting of Unitholders, or for any special meeting of Unitholders if one of the purposes for which the special meeting was called was the election of Trustees: (i) by or at the direction of the Board, including pursuant to a notice of meeting; (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders made in accordance with the Declaration of Trust; or (iii) by any person (a "**Nominating Unitholder**"): (a) who, at the close of business on the date of the giving of the notice provided for below and on the record date for notice of such meeting, is entered in the REIT's register as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and (b) who complies with the notice procedures set forth in the Advance Notice Provision.

In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof in proper written form to the Trustees.

To be timely, a Nominating Unitholder's notice to the Trustees must be made: (i) in the case of an annual meeting of Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is to be held on a date that is less than 50 days after the date that is the earlier of the date that a notice of meeting is filed for such meeting or the date on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the 10th day following the date on which the first public announcement of the date of the annual meeting of Unitholders was made; and (ii) in the case of a special meeting (which is not also an annual meeting) of Unitholders called for the purpose of electing Trustees (whether or not called for other purposes), not later than the close of business on the 15th day following the date on which the first public announcement of the date of the special meeting of Unitholders was made.

To be in proper written form, a Nominating Unitholder's notice to the Trustees must set forth: (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (a) the name, age, business address and residential address of the person; (b) the principal occupation or employment of the person; (c) the class or series and number of Units which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; and (d) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable Securities Laws (as defined in the Declaration of Trust); and (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable Securities Laws.

The chairperson of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.

Notwithstanding the foregoing, the Board may, in its sole discretion, waive any requirement in the Advance Notice Provision.

Redemption Right

Units are redeemable at any time on demand by the holders thereof upon delivery to the REIT of a duly completed and properly executed notice requesting redemption in a form reasonably acceptable to the Trustees, together with written instructions as to the number of Units to be redeemed. A Unitholder not otherwise holding a fully registered Unit certificate who wishes to exercise the redemption right will be required to obtain a redemption notice form from the Unitholder's investment dealer who will be required to deliver the completed redemption notice form to the REIT and to CDS. Upon receipt of the redemption notice by the REIT, all rights to and under the Units tendered for redemption shall be surrendered and the holder thereof will be entitled to receive a price per Unit (the "**Redemption Price**") equal to the lesser of:

(a) 90% of the "Market Price" of a Unit calculated as of the date on which the Units were surrendered for redemption (the "**Redemption Date**"); and

(b) 100% of the "Closing Market Price" on the Redemption Date.

For purposes of this calculation, the "**Market Price**" of a Unit as at a specified date will be:

(a) an amount equal to the weighted average trading price of a Unit on the principal exchange or market on which the Units are listed or quoted for trading during the period of 10 consecutive trading days ending on such date;

(b) an amount equal to the weighted average of the closing market prices of a Unit on the principal exchange or market on which the Units are listed or quoted for trading during the period of 10 consecutive trading days ending on such date, if the applicable exchange or market does not provide information necessary to compute a weighted average trading price; or

(c) if there was trading on the applicable exchange or market for fewer than five of the 10 trading days, an amount equal to the simple average of the following prices established for each of the 10 consecutive trading days ending on such date: the simple average of the last bid and last asking price of the Units for each day on which there was no trading; the closing price of the Units for each day that there was trading if the exchange or market provides a closing price; and the simple average of the highest and lowest prices of the Units for each day that there was trading, if the market provides only the highest and lowest prices of Units traded on a particular day.

The "**Closing Market Price**" of a Unit for the purpose of the foregoing calculations, as at any date will be:

(a) an amount equal to the weighted average trading price of a Unit on the principal exchange or market on which the Units are listed or quoted for trading on the specified date if the principal exchange or market provides information necessary to compute a weighted average trading price of the Units on the specified date;

(b) an amount equal to the closing price of a Unit on the principal market or exchange if there was a trade on the specified date and the principal exchange or market provides only a closing price of the Units on the specified date;

(c) an amount equal to the simple average of the highest and lowest prices of the Units on the principal market or exchange, if there was trading on the specified date and the principal exchange or market provides only the highest and lowest trading prices of the Units on the specified date; or

(d) the simple average of the last bid and last asking prices of the Units on the principal market or exchange, if there was no trading on the specified date.

If Units are not listed or quoted for trading in a public market, the Redemption Price will be the fair market value of the Units, which will be determined by the Trustees in their sole discretion.

The aggregate Redemption Price payable by the REIT in respect of any Units surrendered for redemption during any calendar month will be paid in U.S. dollars within 30 days after the end of the calendar month in which the Units were tendered for redemption, provided that the entitlement of Unitholders to receive cash upon the redemption of their Units is subject to the limitations that: (i) the total amount payable by the REIT in respect of such Units and all other Units tendered for redemption in the same calendar month must not exceed $50,000 (provided that such limitation may be waived at the discretion of the Trustees); (ii) on the date such Units are tendered for redemption, the outstanding Units must be listed for trading on the TSXV or traded or quoted on any other stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units; (iii) the normal trading of Units is not suspended or halted on any stock exchange on which the Units are listed (or, if not listed on a stock exchange, in any market where the Units are quoted for trading) on the Redemption Date or for more than five trading days during the 10-day trading period commencing immediately before the Redemption Date; and (iv) the redemption of the Units must not result in the delisting of the Units from the principal stock exchange on which the Units are listed.

Cash payable on redemptions will be paid *pro rata* to all Unitholders tendering Units for redemption in any month. To the extent a Unitholder is not entitled to receive cash upon the redemption of Units as a result of any of the foregoing limitations, then the balance of the Redemption Price for such Units will, subject to any applicable regulatory approvals, be paid and satisfied by way of a distribution in specie to such Unitholder of Redemption Notes. In the event of distributions of Redemption Notes, each Redemption Note so distributed to the redeeming holder of Units shall be in the principal amount of $100 or such other amount as may be determined by the Trustees. No fractional Redemption Notes shall be distributed and where the number of Redemption Notes to be received upon redemption by a holder of Units would otherwise include a fraction, that number shall be rounded down to the next lowest whole number. The Trustees may deduct or withhold from all payments or other distributions payable to any Unitholder pursuant to the Declaration of Trust all amounts required by law to be so withheld.

It is anticipated that the redemption right described above will not be the primary mechanism for Unitholders to dispose of their Units. Redemption Notes which may be distributed to holders of Units in connection with a redemption will not be listed on any exchange, no market is expected to develop in Redemption Notes and such securities may be subject to an indefinite "hold period" or other resale restrictions under applicable securities laws. Redemption Notes so distributed may not be qualified investments for Exempt Plans, depending upon the circumstances at the time.

Purchases of Units by the REIT

The REIT may from time to time purchase Units in accordance with applicable securities legislation and the rules prescribed under applicable stock exchange and regulatory policies. Any such purchase will constitute an "issuer bid" under Canadian provincial securities legislation and must be conducted in accordance with the applicable requirements thereof.

Take-Over Bids

The Declaration of Trust contains provisions to the effect that if a take-over bid or issuer bid is made for Units within the meaning of the *Securities Act* (Ontario) and not less than 90% of the Units (other than Units held at the date of the take-over bid by or on behalf of the offeror or associates or affiliates of the offeror) are taken up and paid for by the offeror, the offeror will be entitled to acquire the Units held by Unitholders who do not accept the offer either, at the election of each Unitholder, on the terms offered by the offeror or at the fair value of such Unitholder's Units determined in accordance with the procedures set out in the Declaration of Trust.

The Declaration of Trust and the LLC Agreement will provide that in the event that a non-exempt take-over bid from a person acting at arm's length to holders of Class B OP Units (or any affiliate or associate thereof) is made for Units, unless the take-over bid is structured to (i) permit holders of Class B OP Units to both redeem for Units and tender conditional on take-up, or (ii) such that the offer is made for all Class B OP Units on identical terms, then from and after the first take-up of Units under the said take-over bid (provided that not less than 25% of the Units other than Units held at the date of the take-over bid by the offeror or associates or affiliates of the offeror are so taken up) the terms and conditions of the Class B OP Units held by persons other than the offeror (or any affiliate or associate thereof) will automatically (without further action) be amended such that the redemption rate shall be varied to equal 110% of the redemption rate then in effect (such that on conversion, exercise, redemption or exchange the holder shall receive 1.1 Units for each Unit that the holder would otherwise have received). Notwithstanding any adjustment on completion of an exclusionary offer as described above, the distribution rights attaching to the Class B OP Units will also not be adjusted until the redemption right is actually exercised.

Non-Certificated Inventory System

Other than pursuant to certain exceptions, registration of interests in and transfers of Units held through CDS, or its nominee, will be made electronically through the NCI system of CDS. On Closing, the REIT, via its transfer agent, will electronically deliver the Units registered to CDS or its nominee. Units held in CDS must be purchased, transferred and surrendered for redemption through a CDS participant, which includes securities brokers and dealers, banks and trust companies. All rights of Unitholders who hold Units in CDS must be exercised through, and all payments or other property to which such Unitholders are entitled will be made or delivered by CDS or the

CDS participant through which the Unitholder holds such Units. A holder of a Unit participating in the NCI system will not be entitled to a certificate or other instrument from the REIT or the REIT's transfer agent evidencing that person's interest in or ownership of Units, nor, to the extent applicable, will such Unitholder be shown on the records maintained by CDS, except through an agent who is a CDS participant.

The ability of a beneficial owner of Units to pledge such Units or otherwise take action with respect to such Unitholder's interest in such Units (other than through a CDS participant) may be limited due to the lack of a physical certificate.

Issuance of Units

The REIT may issue new Units from time to time, in such manner, for such consideration and to such person or persons as the Trustees shall determine. Unitholders will not have any pre-emptive rights whereby additional Units proposed to be issued would be first offered to existing Unitholders. If the Trustees determine that the REIT does not have cash in an amount sufficient to make payment of the full amount of any distribution, the payment may include the issuance of additional Units having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.

The REIT may also issue new Units (or securities exchangeable into Units) (i) as consideration for the acquisition of new properties or assets by it, at a price or for the consideration determined by the Trustees, (ii) pursuant to any incentive or option plan established by the REIT from time to time, (iii) pursuant to a distribution reinvestment plan of the REIT (See "Distribution Policy"), or (iv) pursuant to a Unitholder rights plan of the REIT.

The Declaration of Trust also provides that immediately after any *pro rata* distribution of Units to all Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated so that each Unitholder will hold, after the consolidation, the same number of Units as the Unitholder held before the non-cash distribution. In this case, each certificate representing a number of Units prior to the non-cash distribution is deemed to represent the same number of Units after the non-cash distribution and the consolidation. Where amounts distributed represent income, non-resident holders will be subject to withholding tax and the consolidation will not result in such non-resident Unitholders holding the same number of Units. Such non-resident Unitholders will be required to surrender the certificates (if any) representing their original Units in exchange for a certificate representing post-consolidation Units.

Information and Reports

The REIT will furnish to Unitholders such financial statements (including quarterly and annual financial statements) and other reports as are from time to time required by the Declaration of Trust and by applicable law. Prior to each meeting of Unitholders, the Trustees will provide the Unitholders (along with notice of such meeting) information as required by applicable tax and securities laws.

Amendments to the Declaration of Trust

The Declaration of Trust may be amended or altered from time to time. Certain amendments require approval by at least two-thirds of the votes cast at a meeting of Unitholders called for such purpose. Other amendments to the Declaration of Trust require approval by a majority of the votes cast at a meeting of Unitholders called for such purpose.

Except as described below, the following amendments, among others, require the approval of two-thirds of the votes cast by all Unitholders at a meeting:

(a) an exchange, reclassification or cancellation of all or part of the Units;

(b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units;

(c) any constraint on the issue, transfer or ownership of the Units or the change or removal of such constraint;

(d) any sale or transfer of the assets of the REIT as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the REIT approved by the Trustees and not prejudicial to Unitholders);

(e) the termination of the REIT or its subsidiaries (other than as part of an internal reorganization of the assets of the REIT or its subsidiaries as approved by the Trustees and not prejudicial to Unitholders);

(f) the combination, amalgamation or arrangement of any of the REIT or its subsidiaries with any other entity (other than as part of an internal reorganization of the assets of the REIT or its subsidiaries as approved by the Trustees and not prejudicial to Unitholders); and

(g) except as described herein, the amendment of the investment guidelines and operating policies of the REIT. See "Investment Guidelines and Operating Policies – Amendments to Investment Guidelines and Operating Policies".

Notwithstanding the foregoing, the Trustees may, without the approval of the Unitholders, make the following amendments to the Declaration of Trust:

(a) aimed at ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees or the REIT; (ii) the continuing status of the REIT as a "mutual fund trust" under the Tax Act; (iii) the continuing status of the REIT as a "real estate investment trust" for U.S. federal income tax purposes; or (iv) the distribution of Units;

(b) to increase the 6.2% ownership limit to a maximum of 9.8%;

(c) which, in the opinion of the Trustees, provide additional protection for the Unitholders;

(d) to address any conflicts or inconsistencies in the Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;

(e) which, in the opinion of the Trustees, are necessary or desirable to address any conflicts or inconsistencies between the disclosure in this prospectus and the Declaration of Trust;

(f) of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders;

(g) which, in the opinion of the Trustees, are necessary or desirable: (i) to ensure continuing compliance with IFRS; or (ii) to ensure the Units are classified as equity for purposes of IFRS;

(h) which, in the opinion of the Trustees, are necessary or desirable for the REIT to qualify for a particular status under, or as a result of changes in, taxation or other laws, or the interpretation of such laws, including to qualify for the definition of "real estate investment trust" in the Tax Act and the Code or to otherwise prevent the REIT or any of its subsidiaries from becoming subject to tax under the SIFT Rules (as defined below); and

(i) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, is not prejudicial to Unitholders and is necessary or desirable.

NHT INTERMEDIARY, LLC

NHT Intermediary, LLC ("**US Holdco**") is a newly formed Delaware limited liability company that currently owns all of the issued and outstanding membership interests in NHT Holdings, LLC ("**NHI**"). On or prior to Closing, the REIT will acquire all of the issued and outstanding membership interests in US Holdco. The board of directors of US Holdco will be determined (and may be removed without cause) by the REIT; provided that the board of directors of US Holdco shall always be comprised of a majority of U.S. residents. The operations of US Holdco will be subject to the terms of its organizing documents, which will provide, among other things, that US Holdco will operate in a manner consistent with the governance and other terms of the Declaration of Trust, including the investment guidelines and operating principles set out therein. The REIT will exercise effective oversight of US Holdco.

NHT HOLDINGS, LLC

NHI is a newly formed Delaware limited liability company. On or prior to Closing, the REIT will indirectly acquire all of issued and outstanding the membership interests in NHI. The board of directors of NHI will be determined (and may be removed without cause) indirectly by the Board of the REIT, provided that the board of directors of NHI shall always be comprised of a majority of U.S. residents. The operations of NHI will be subject to the terms of its organizing documents, which will provide, among other things, that NHI will operate in a manner consistent with the governance and other terms of the Declaration of Trust, including the investment guidelines and operating principles set out therein. The REIT will exercise effective oversight of NHI.

THE OPERATING PARTNERSHIP

General

NHT Operating Partnership, LLC (the "**OP**") is a Delaware limited liability company governed by the LLC Agreement and the laws of the State of Delaware. The registered office of the OP is located at 1209 Orange Street, Wilmington, Delaware, U.S.A, 19801. The principal place of business of the OP is located at 300 Crescent Court, Suite 700, Dallas, Texas, U.S.A, 75201. The holder of all of the issued and outstanding Class A OP Units is NHI and the holders of the issued and outstanding Class B OP Units are NREO, certain minority partners and the OP GP (as defined below), who maintains a nominal number of Class B OP Units.

The REIT, indirectly through NHI, operates through an umbrella partnership real estate investment trust (an "**UPREIT**") structure in which substantially all of the REIT's (and NHI's) assets are held by the OP. An UPREIT is a structure that real estate investment trusts often use to acquire real property from sellers on a tax deferred basis for U.S. federal income tax purposes because the sellers can generally accept equity interests and defer taxable gain otherwise required to be recognized by them upon the disposition of their properties. Such sellers may also desire to achieve diversity in their investment and other benefits afforded to unitholders in a real estate investment trust. For purposes of satisfying the asset and income tests for qualification as a real estate investment trust for U.S. federal income tax purposes, the REIT's proportionate share of the assets and income of the OP will be deemed to be assets and income of the REIT, so long as the OP continues to be treated as a partnership for U.S. federal income tax purposes.

OP Units

Following Closing, the OP will have outstanding (i) Class A OP Units, all of which will be held by NHI, and (ii) Class B OP Units, all of which will be held by NREO, certain minority partners and the OP GP (as defined below). The Class B OP Units will, in all material respects, be economically equivalent to the Units on a per unit basis, subject to certain customary anti-dilution adjustments. The holders of Class B OP Units will be entitled to

receive distributions from the OP on the same per unit basis as holders of Class A OP Units. Class B OP Units do not carry a voting right with respect to matters put before Unitholders of the REIT for a vote. It is anticipated that Class B OP Units may be subsequently issued to U.S. persons in connection with the acquisition of additional properties by the REIT in the United States.

Transfers of Class A OP Units and Class B OP Units are generally not permitted without the consent of holders of the Class A OP Units ("**Class A Unitholders**") subject to limited exceptions, including (i) pursuant to the redemption of the Class B OP Units and (ii) transfers to an affiliate (as defined in the LLC Agreement).

Manager of the OP

The management powers over the business and affairs of the OP are vested in a manager, which is appointed by NREO. NREO has appointed NHT Operating Partnership GP, LLC (the "**OP GP**") as the initial manager. The OP GP is wholly-owned by a party that is not affiliated with the Advisor or the REIT. The LLC Agreement provides NHI with a call right to acquire all of the issued and outstanding equity interests in the OP GP, so long as the OP GP is the manager of the OP (the "**GP Call Right**"). Pursuant to the LLC Agreement, a call right on substantially the same terms as the GP Call Right will also apply in respect of any substitute manager of the OP appointed by NREO following the resignation, disqualification or removal of the OP GP as the manager of the OP.

Redemption Rights

After Class B OP Units have been issued for at least 12 months (subject to acceleration in certain circumstances), holders of such Class B OP Units, acting individually, have the right to cause the OP to redeem all or a portion of such Class B OP Units for a cash payment to be paid by the OP. The OP shall not be obligated to satisfy such redemption right if NHI elects to purchase the Class B OP Units in exchange for a cash payment or equivalent value in Units, as determined by NHI (and the REIT, indirectly) in its sole discretion. If NHI elects to redeem such Class B OP Units for the equivalent value in Units, NHI shall purchase such Class B OP Units from the redeeming Class B unitholder and shall be treated for all purposes of the LLC Agreement as the owner of such Class B OP Units. If NHI elects to redeem Class B OP Units for Units, the REIT will generally deliver (indirectly) one Unit for each Class B OP Unit redeemed (subject to customary anti-dilution adjustments).

In connection with the exercise of these redemption rights, a holder of Class B OP Units will be required to make certain representations, including that the delivery of Units upon redemption will not result in such holder owning Units in excess of the ownership limits in the Declaration of Trust.

Compulsory Acquisition

The LLC Agreement provides that in the event of an acquisition of not less than 90% of the Units (including Units issuable upon the redemption of Class B OP Units) by a person (including persons acting jointly or in concert with such person), NHI will have the right, subject to applicable laws, to acquire outstanding Class B OP Units in exchange for an equal number of Units, subject to adjustments for splits, consolidations and reorganizations in accordance with the Declaration of Trust.

Take-Over Bid Protection

The LLC Agreement provides that no holder of Class B OP Units may effect a transfer of its Class B OP Units unless (i) such transfer would not require the person acquiring such Class B OP Units to make an offer to the registered holders of Units to acquire Units on the same terms and conditions under applicable securities laws if such Class B OP Units, and all other outstanding Class B OP Units were converted into Units, or (ii) the person acquiring such Class B OP Units submits an identical and contemporaneous offer for Units to the registered holders thereof, and acquires such Class B OP Units along with a proportionate number of Units actually tendered to such identical offer.

Operation

The LLC Agreement requires that the OP be operated in a manner that will enable the REIT to (i) satisfy the requirements for being classified as a real estate investment trust for U.S. federal income tax purposes, unless the Board elects for the REIT to cease to qualify as a real estate investment trust, (ii) not be subject to any federal income or excise tax liability, unless the Board elects for the REIT to cease to qualify as a real estate investment trust, and (iii) ensure that the OP will not be classified as a "publicly traded partnership" for purposes of Section 7704 of the Code, which classification could result in the OP being taxed as a corporation for U.S. federal income tax purposes, rather than as a partnership.

The authority of NHI with respect to the OP will be limited to certain matters indirectly delegated to it by the REIT and its Board. NHI's authority will also be limited in certain other respects. In particular, pursuant to the Investor Rights Agreement, certain material transactions taken by the REIT or the OP will require the approval of the REIT (through its indirect control of NHI) and the NexPoint Holders (for so long as the NexPoint Holders own, in the aggregate, 33% or more of the Units (determined as if all Class B Units are redeemed for Units)). See "Investor Rights Agreement."

The operations of the OP will be subject to the terms of the LLC Agreement, which will provide, among other things, that (i) the OP will operate in a manner consistent with the governance and other terms of the Declaration of Trust, including the investment guidelines and operating principles set out therein, and (ii) certain fundamental actions to be taken by the OP (including items such as acquisitions, dispositions and refinancings of real property) will require the approval of Class A Unitholders.

Distributions and Allocations of Profits and Losses

The LLC Agreement generally provides that the OP will distribute cash flow from operations and, except as provided below, net sales proceeds from the disposition of assets, to all unitholders of the OP on a *pro rata* basis in accordance with their ownership interests. Upon the liquidation of the OP, after payment of (or adequate provision for) debts and obligations, any remaining assets of the OP will be distributed in accordance with the distribution provisions contained in the LLC Agreement. Following Closing, it is anticipated that the aggregate distributions paid on Class A OP Units will be approximately 53% and the aggregate distributions paid on Class B OP Units will be approximately 47% of the total distributions paid.

The LLC Agreement provides that generally, subject to special allocations set forth in the LLC Agreement, net income will be allocated among the unitholders of the OP (i) first to the equityholders until the cumulative net income allocated to such holders equals the cumulative net loss allocated to such holders, and (ii) then to the equityholders on a *pro rata* basis in accordance with their ownership interests. The LLC Agreement provides that generally, subject to special allocations set forth in the LLC Agreement, net loss will be allocated to the unitholders with positive balances in their economic capital account in accordance with such balances until their economic capital account balances are reduced to zero. Following Closing, it is anticipated that approximately 53% of the profits and losses will be allocated to the Class A OP Units and approximately 47% of the profits and losses will be allocated to the Class B OP Units.

In addition to the administrative and operating costs and expenses incurred by the OP and its subsidiaries in acquiring and managing their properties, the OP will either pay the administrative costs and expenses of NHI and the REIT directly or make cash distributions to reimburse for expenses incurred by NHI and the REIT. For U.S. federal income tax purposes, such expenses will be treated as expenses of the OP. Such expenses will include, but not be limited to:

- administrative and operating costs and expenses and other expenses, including any accounting and legal expenses (but expressly excluding any Advisory Fees paid to the Advisor, incentive fees or internalization fees);

- costs and expenses relating to the formation and continuity of existence of the REIT, including taxes, fees and assessments associated therewith, any and all costs, expenses or fees payable to any director, officer or employee of the REIT (but expressly excluding any incentive fees);

- costs and expenses associated with the preparation and filing of any periodic reports by the REIT under Canadian federal or provincial laws or regulations and U.S. federal, state or local laws or regulations;

- costs and expenses associated with compliance by the REIT with laws, rules and regulations promulgated by any regulatory body; and

- costs and expenses relating to any issuance, redemption or repurchase of Units or other securities by the REIT.

Indemnification

To the fullest extent permitted by law, the LLC Agreement provides for indemnification of any person for any loss incurred by such a person by reason of such person's status with as the REIT manager of the OP, as a trustee, director, officer, shareholder, partners, member, employee, representative or agent of the manager, as an officer, employee, representative or agent of the OP and such other persons as the manager of the OP may designate from time to time at the direction of the Class A Unitholders.

Tax Matters

Pursuant to the LLC Agreement, the REIT or its designee will be the "partnership representative" of the OP for U.S. federal income tax purposes pursuant to Section 6223 of the Code, and as such, will have authority to make tax decisions under the Code on behalf of the OP. The OP will file a U.S. federal income tax return annually on IRS Form 1065 (or such other successor form) or on any other IRS form as may be required.

DISTRIBUTION POLICY

The following outlines the distribution policy of the REIT to be adopted pursuant to the Declaration of Trust. Determinations as to the amounts distributable, however, will be made in the sole discretion of the Trustees from time to time.

Distribution Policy

The REIT intends to adopt a distribution policy, as permitted under the Declaration of Trust, pursuant to which it will make *pro rata* quarterly cash distributions to Unitholders initially equal to, on an annual basis, approximately 65% to 80% of estimated Core FFO and initially expected to be approximately 65% of Core FFO. See "Non-IFRS Measures" and "Risk Factors". Management of the REIT believes that the 65% payout ratio initially set by the REIT should allow the REIT to meet its internal funding needs, while being able to support stable growth in cash distributions and comply with federal U.S. tax laws in regard to maintaining its status as a REIT. However, the actual payout ratio will be determined by the Trustees in their discretion. To the extent that it is consistent with maintaining the REIT's and/or NHI's status as a real estate investment trust for U.S. federal income tax purposes, the REIT and NHI (indirectly through the OP) may maintain accumulated earnings and profits of the TRS Entities in those entities. Pursuant to the Declaration of Trust, the Trustees have full discretion respecting the timing and amounts of distributions including the adoption, amendment or revocation of any distribution policy. It is the REIT's current intention to make distributions to Unitholders at least equal to the amount of net income and net realized capital gains of the REIT as is necessary to ensure that the REIT will not be liable for ordinary income taxes on such income.

Because the REIT will be treated as a real estate investment trust for U.S. federal income tax purposes, distributions paid by the REIT to Canadian investors that are made out of the REIT's current or accumulated

earnings and profits (as determined under U.S. federal income tax principles) generally will be subject to U.S. withholding tax at a rate of 30%, which may be reduced to 15% for investors that qualify for benefits under the Treaty. To the extent a Canadian investor is subject to U.S. withholding tax in respect of distributions paid by the REIT on the Units out of the REIT's current or accumulated earnings and profits, the amount of such tax generally will be eligible for foreign tax credit or deduction treatment, subject to the detailed rules and limitations under the Tax Act. The foregoing is qualified by the more detailed summary in this prospectus. Distributions in excess of the REIT's current and accumulated earnings and profits that are distributed to Canadian investors that have not owned (or been deemed to own) more than 10% of the outstanding Units generally will not be subject to U.S. withholding tax, although there can be no assurances that withholding on such amounts will not be required. The composition of distributions for U.S. federal income tax purposes may change over time, which may affect the after-tax return to Unitholders. Qualified residents of Canada that are tax-exempt entities established to provide pension, retirement or other employee benefits (including trusts governed by a RRSP, a RRIF or a RDSP, but excluding trusts governed by a TFSA, a RESP or a RDSP) may be eligible for an exemption from U.S. withholding tax. See "Certain Canadian Federal Income Tax Considerations" and "Certain U.S. Federal Income Tax Considerations". See also "Risk Factors – Tax-related Risk Factors".

Pursuant to the REIT's distribution policy, Unitholders of record as at the close of business on the applicable distribution record date determined by the Trustees from time to time will have an entitlement to receive distributions on such distribution date. Distributions may be adjusted for amounts paid in prior periods if the actual Core FFO for the prior periods is greater than or less than the estimates for the prior periods. Under the Declaration of Trust and pursuant to the distribution policy of the REIT, where the REIT's cash is not sufficient to make payment of the full amount of a distribution, such payment will, to the extent necessary, be distributed in the form of additional Units. See "Declaration of Trust – Units", "Certain Canadian Federal Income Tax Considerations" and "Certain U.S. Federal Income Tax Considerations".

The ability of the REIT to make cash distributions, and the actual amount distributed, will be entirely dependent on the operations and assets of the REIT and will be subject to various factors including financial performance, obligations under applicable credit facilities and restrictions on payment of distributions thereunder on the occurrence of an event of default, fluctuations in working capital, the sustainability of income derived from the REIT's properties and any capital expenditure requirements. See "Risk Factors".

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Goodmans LLP, Canadian counsel to the REIT, the following is a summary of the principal Canadian federal income tax considerations under the Tax Act generally applicable as of the date hereof to a purchaser who acquires, as beneficial owner, Units pursuant to this prospectus and who, for the purposes of the Tax Act and at all relevant times, is, or is deemed to be, resident in Canada, deals at arm's length with the REIT and the Agent, and is not affiliated with the REIT or the Agent and holds the Units as capital property (in this section of the prospectus, referred to as a "**Holder**"). The Units generally will be capital property to a Holder provided that the Holder does not hold such Units in the course of carrying on a business and has not acquired them in a transaction or transactions considered to be an adventure or concern in the nature of trade. Certain Holders who might not otherwise be considered to hold their Units as capital property may, in certain circumstances, be entitled to make an irrevocable election in accordance with subsection 39(4) of the Tax Act to have such Units, and any other "Canadian security" (as defined in the Tax Act) owned in the taxation year in which the election is made, and in all subsequent taxation years, deemed to be capital property. Holders who do not hold their Units as capital property should consult their own tax advisors regarding their particular circumstances.

This summary does not apply to a Holder: (i) that is a "financial institution" subject to the mark-to-market rules in the Tax Act; (ii) an interest in which would be a "tax shelter investment" within the meaning of the Tax Act; (iii) that has elected to determine its Canadian tax results in a foreign currency pursuant to the "functional currency" reporting rules, in the Tax Act; (iv) that holds or has held, actually or constructively, more than 10% of the outstanding Units, as determined for U.S. federal income tax purposes (See "Certain U.S. Federal Income Tax Considerations"); or (v) that has entered or will enter into a "derivative forward agreement", as defined in the Tax Act, with respect to the Holder's Units. Such Holders should consult their own tax advisors to determine the tax

consequences to them of the acquisition, holding and disposition of Units. In addition, this summary does not address the deductibility of interest by a purchaser who has borrowed money to acquire Units under the Offering.

This summary assumes that either the TSXV Publicly Traded Exception or the U.S. Publicly Traded Exception applies. See “Certain U.S. Federal Income Tax Considerations”.

This summary is based on the current provisions of the Tax Act, all specific proposals to amend the Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) before the date hereof (“**Proposed Amendments**”), counsel’s understanding of the current published administrative policies and practices of the Canada Revenue Agency (the “**CRA**”), and a certificate as to certain factual matters from an executive officer of the REIT. Except for Proposed Amendments, this summary does not take into account or anticipate any changes in law, whether by legislative, governmental or judicial action, nor does it take into account other federal or any provincial, territorial or foreign tax legislation or considerations. No assurance can be given that the Proposed Amendments will be enacted in the form proposed or at all.

This summary is of a general nature only and is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in Units. The income and other tax consequences of acquiring, holding or disposing of Units will vary depending on a purchaser’s particular status and circumstances, including the province or territory in which the purchaser resides or carries on business. This summary is not intended to be, nor should it construed to be, legal or tax advice to any particular purchaser. Purchasers should consult their own tax advisors for advice with respect to the income tax consequences of an investment in Units in their own circumstances.

Generally, for purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Units must be expressed in Canadian dollars. Amounts denominated in another currency must be converted into Canadian dollars using the appropriate exchange rate determined in accordance with the detailed rules in the Tax Act in that regard. An investment in Units will be dominated in U.S. dollars and distributions made on the Units will be made in U.S. dollars. Accordingly, a holder of Units must convert such amounts to Canadian dollars for the purposes of the Tax Act.

Status of the REIT

This summary assumes the REIT will qualify at all times as a “mutual fund trust” within the meaning of the Tax Act and that the REIT will validly elect under the Tax Act to be a mutual fund trust from the date it was established. An executive officer of the REIT has advised counsel that it intends to ensure that the REIT will meet the requirements necessary for it to qualify as a mutual fund trust no later than the Closing and at all times thereafter, and to file the necessary election so that the REIT will qualify as a mutual fund trust throughout its first taxation year. **If the REIT were not to qualify as a mutual fund trust at all times, the income tax considerations could be materially and adversely different from those described below**.

This summary is also based on the assumption that the REIT will at no time be a “SIFT trust”, as defined in the rules applicable to SIFT trusts and SIFT partnerships in the Tax Act (the “**SIFT Rules**”). The SIFT Rules effectively tax certain income of a publicly traded trust or partnership that is distributed to its investors on the same basis as would have applied had the income been earned through a taxable Canadian corporation and distributed by way of dividend to its shareholders. These rules apply only to “SIFT trusts” and “SIFT partnerships” (each as defined in the Tax Act) and their investors.

Where the SIFT Rules apply, distributions of a SIFT trust’s “non-portfolio earnings” are not deductible in computing the SIFT trust’s net income. Non-portfolio earnings generally are defined as income attributable to a business carried on by the SIFT trust in Canada or to income (other than certain dividends) from, and capital gains from the disposition of, “non-portfolio properties” (as defined in the Tax Act). The SIFT trust is itself liable to pay an income tax on an amount equal to the amount of such non-deductible distributions at a rate that is substantially equivalent to the combined federal and provincial general tax rate applicable to taxable Canadian corporations. Such non-deductible distributions paid to a holder of units of the SIFT trust generally are deemed to be taxable dividends received by the holder of such units from a taxable Canadian corporation. Such deemed dividends will qualify as

"eligible dividends" for purposes of the enhanced gross-up and dividend tax credit available under the Tax Act to individuals resident in Canada and for purposes of computing a Canadian resident corporation's "general rate income pool" or "low rate income pool", as the case may be (each as defined in the Tax Act). In general, distributions paid as returns of capital will not be subject to the SIFT Rules.

The REIT will not be considered to be a SIFT trust in respect of a particular taxation year and, accordingly, will not be subject to the SIFT Rules in that year, if it does not own any non-portfolio property and does not carry on business in Canada in that year. Management has advised counsel that the REIT has not and does not currently intend to own any non-portfolio property or carry on a business in Canada.

If the REIT is subject to the SIFT Rules, certain of the income tax considerations described below would, in some respects, be materially and adversely different, and the SIFT Rules may, depending on the nature and extent of distributions from the REIT, including what portion of its distributions are income and what portion are returns of capital, have a material adverse effect on the after-tax returns of Unitholders.

For the remainder of this summary, it is assumed that the REIT will not own any "non-portfolio property" or carry on business in Canada and, accordingly, will not be a SIFT trust.

Taxation of the REIT

The taxation year of the REIT is the calendar year. The REIT must compute its income or loss for each taxation year as though it were an individual resident in Canada. The income of the REIT for purposes of the Tax Act will include, among other things, foreign accrual property income ("**FAPI**") in respect of its "controlled foreign affiliates", dividends received from US Holdco, and any net realized taxable capital gains.

US Holdco will be a "foreign affiliate" and a "controlled foreign affiliate" of the REIT for purposes of the Tax Act. To the extent that US Holdco or any other controlled foreign affiliate of the REIT earns in a particular taxation year income that is characterized as FAPI for purposes of the Tax Act, the FAPI allocable to the REIT must be included in computing the income of the REIT for the taxation year of the REIT in which the taxation year of US Holdco (or such other controlled foreign affiliate) ends whether or not the REIT actually receives a distribution of FAPI in that year. The FAPI in respect of US Holdco will include FAPI earned directly or indirectly by US Holdco. If an amount of FAPI is included in computing the income of the REIT for Canadian tax purposes, an amount may be deductible in respect of the "foreign accrual tax" ("**FAT**") applicable to the FAPI as computed in accordance with the Tax Act. The adjusted cost base to the REIT of its shares in US Holdco will be increased by the net amount of FAPI included in the income of the REIT in respect of FAPI earned directly or indirectly by US Holdco. At such time as the REIT receives a dividend of amounts that were previously included in its income as FAPI, that dividend will effectively not be taxable to the REIT and there will be a corresponding deduction in the adjusted cost base to the REIT of its shares in US Holdco.

For the purposes of the Tax Act, all income of the REIT (including FAPI) must be calculated in Canadian currency. Where the REIT (or any of its subsidiaries) holds investments or incurs indebtedness denominated in foreign currencies, gains or losses may be realized by the REIT as a consequence of fluctuations in the relative value of the Canadian and foreign currencies.

In computing its income, the REIT will be entitled to deduct reasonable current administrative and other expenses incurred by it to earn income. Reasonable expenses incurred in respect of the issuance of Units generally may be deducted by the REIT on a five-year, straight-line basis, pro-rated for short taxation years.

The REIT may generally deduct from its income for a taxation year amounts which are paid or become payable by it to Unitholders in such year. An amount will be considered to be payable in a taxation year if a Unitholder is entitled in the year to enforce payment of the amount. Counsel has been advised by an executive officer of the REIT that the Trustees' current intention is to make payable to Unitholders each year sufficient amounts such that the REIT generally will not be liable to pay tax under Part I of the Tax Act. Where the REIT does not have sufficient cash to distribute such amounts in a particular taxation year, the REIT intends to make one or more in-kind distributions in that year in the form of additional Units. Income of the REIT payable in a taxation year

of the REIT to the Unitholders in the form of additional Units will generally be deductible to the REIT in computing its income for that year.

A distribution by the REIT of its property upon a redemption of Units will be treated as a disposition by the REIT of such property for proceeds of disposition equal to the fair market value thereof. The REIT will realize a capital gain (or a capital loss) to the extent that the proceeds from the disposition of the property exceed (or are less than) the adjusted cost base of the relevant property and any reasonable costs of disposition.

Losses incurred by the REIT cannot be allocated to Unitholders, but can be deducted by the REIT in future years in computing its taxable income, in accordance with the Tax Act. In the event the REIT would otherwise be liable for tax on its net realized taxable capital gains for a taxation year, it will be entitled for such taxation year to reduce (or receive a refund in respect of) its liability for such tax by an amount determined under the Tax Act based on the redemption of Units of the REIT during the year (the "**capital gains refund**"). If the REIT transfers property in specie to redeeming Holders on the redemption of Units, the capital gains refund in a particular taxation year may not completely offset the REIT's tax liability for the taxation year arising in connection with the transfer of property in specie to such redeeming Holders. If income or capital gains realized by the REIT in connection with the distribution of property in specie on the redemption of Units has been designated by the REIT to a redeeming Holder, the Holder will be required to include in income the income or taxable portion of the capital gain so designated, and such amount may be deductible by the REIT in computing its income, in the circumstances set out in, and in accordance with the detailed rules in, the Tax Act.

Taxation of Taxable Holders

REIT Distributions

A Holder generally will be required to include in computing income for a particular taxation year the portion of the net income of the REIT, including FAPI attributed to the REIT, dividends received by the REIT from US Holdco and any net realized taxable capital gains, that is paid or payable to the Holder in that taxation year, whether or not those amounts are received in cash, additional Units or otherwise. Any loss of the REIT for purposes of the Tax Act cannot be allocated to, or treated as a loss of, a Holder.

Provided that the appropriate designations are made by the REIT, such portion of its net taxable capital gains and foreign source income that are paid or become payable to a Holder will retain its character as taxable capital gains or foreign source income, as the case may be, to Holders for purposes of the Tax Act.

The non-taxable portion of any net realized capital gains of the REIT that is paid or payable to a Holder in a year will not be included in computing the Holder's income for the year. Any other amount in excess of the net income of the REIT that is paid or payable to a Holder in a year generally should not be included in the Holder's income for the year, but such an amount which becomes payable to a Holder (other than as proceeds of disposition of Units or any part thereof) will reduce the adjusted cost base of the Units held by such Holder. To the extent that the adjusted cost base of a Unit otherwise would be less than zero, the Holder will be deemed to have realized a capital gain equal to the negative amount and the Holder's adjusted cost base of the Units will be increased by the amount of such deemed capital gain.

Foreign Tax Credits and Deductions

To the extent a Holder is subject to U.S. withholding tax in respect of distributions paid by the REIT on the Units, the amount of such tax generally will be eligible for foreign tax credit or deduction treatment, subject to the detailed rules and limitations under the Tax Act, and as described in the ensuing paragraphs; provided, however, that in the event any U.S. tax is withheld that does not represent the final U.S. income tax liability for the year, the Holder also files a U.S. federal income tax return to establish the Holder's final U.S. income tax liability for the year and the Holder is not entitled to a refund of such tax.

The U.S. withholding tax deducted in respect of a distribution paid on a Unit in a taxation year will generally be characterized as "non-business income tax", as defined in the Tax Act, and may be deductible as a foreign tax credit from the Holder's Canadian federal income tax otherwise payable for that year where the Holder has sufficient non-business income from U.S. sources, to the extent permitted by the Tax Act and that such tax has not been deducted in computing the Holder's income. Alternatively, such non-business income tax (including any amount not deductible from tax otherwise payable as a foreign tax credit) generally may be deducted by the Holder in computing the Holder's net income for the purposes of the Tax Act.

A Holder's ability to apply U.S. withholding taxes in the foregoing manner may be affected where the Holder does not have sufficient taxes otherwise payable under Part I of the Tax Act, or sufficient U.S. source income in the taxation year the U.S. withholding taxes are paid, or where the Holder has other U.S. sources of income or losses, or has paid other U.S. taxes. Although the foreign tax credit provisions are designed to avoid double taxation, the maximum credit is limited. Because of this, and because of timing differences in recognition of expenses and income and other factors, there is a risk of double taxation. Holders should consult their own tax advisors with respect to the availability of a foreign tax credit or deduction, having regard to their own circumstances.

Disposition of Units

Upon the disposition or deemed disposition of Units by a Holder, whether on a redemption or otherwise, the Holder generally will realize a capital gain (or a capital loss) equal to the amount by which the proceeds of disposition (excluding any amount payable by the REIT which represents an amount that must otherwise be included in the Holder's income as described herein) are greater (or less) than the aggregate of the Holder's adjusted cost base of the Units immediately before such disposition and any reasonable costs of disposition.

The adjusted cost base to a Holder of a Unit generally will include all amounts paid by the Holder for the Unit subject to certain adjustments and may be reduced as a consequence of distributions paid by the REIT in excess of its net income as described above. The cost of additional Units received in lieu of a cash distribution will be the amount of income of the REIT distributed by the issuance of such Units. For the purpose of determining the adjusted cost base to a Holder, when a Unit is acquired, the cost of the newly-acquired Unit will be averaged with the adjusted cost base of all of the Units owned by the Holder as capital property immediately before that acquisition.

A redemption of Units in consideration for cash, Redemption Notes, or other assets of the REIT, as the case may be, will be a disposition of such Units for proceeds of disposition equal to such cash or the fair market value of such Redemption Notes or other assets, as the case may be, less any income or capital gain realized by the REIT in connection with the redemption of those Units to the extent such income or capital gain is designated by the REIT to the redeeming Holder. Holders exercising the right of redemption will consequently realize a capital gain, or sustain a capital loss, to the extent that such proceeds of disposition exceed, or are exceeded by, the adjusted cost base of the Units redeemed. Where income or capital gains realized by the REIT in connection with the distribution of property *in specie* on the redemption of Units has been designated by the REIT to a redeeming Holder, the Holder will be required to include in income the income or taxable portion of the capital gain so designated. The cost of any property distributed *in specie* by the REIT to a Holder upon a redemption of Units will be equal to the fair market value of that property at the time of the distribution. The Holder will thereafter be required to include in income interest or other income derived from the property, in accordance with the provisions of the Tax Act.

Capital Gains and Losses

One-half of any capital gain realized by a Holder from a disposition of Units and the amount of any net taxable capital gains designated by the REIT in respect of the Holder will be included in the Holder's income under the Tax Act as a taxable capital gain. One-half of any capital loss (an "**allowable capital loss**") realized on the disposition of a Unit will be deducted against any taxable capital gains realized by the Holder in the year of disposition, and any excess of allowable capital losses over taxable capital gains may be carried back to the three preceding taxation years or forward to any subsequent taxation year and applied against net taxable capital gains in those years, subject to the detailed rules contained in the Tax Act.

Refundable Tax

A Holder which is a Canadian-controlled private corporation (as defined in the Tax Act) will be subject to a refundable tax in respect of its "aggregate investment income" (as defined in the Tax Act) for the year, which will include all or substantially all income and capital gains paid or payable to the Holder by the REIT and capital gains realized on a disposition of Units.

Alternative Minimum Tax

A Holder who is an individual or trust (other than certain specified trusts) may have an increased liability for alternative minimum tax as a result of capital gains realized on a disposition of Units and net income of the REIT, paid or payable, or deemed to be paid or payable, to the Holder and that is designated net taxable capital gains.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of (i) the principal U.S. federal income tax consequences of the treatment of the REIT and NHI as a real estate investment trust and (ii) the principal U.S. federal income tax consequences of the ownership and disposition of Units to Non-U.S. Holders (as defined below). This summary is based upon the Code, its legislative history, existing and proposed regulations promulgated thereunder by the U.S. Treasury Department (the "**Treasury Regulations**"), published rulings and other administrative pronouncements issued by the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. An advance ruling has not been requested and will not be requested from the IRS regarding any matter discussed in this prospectus. The summary is also based upon the assumption that the subsidiaries and affiliated entities of the REIT will operate in accordance with their applicable organizational documents and those of the REIT. This summary is for general information only and is not tax advice. This summary does not cover any U.S. state, or local or non-U.S. tax issues, nor does it cover issues under the U.S. federal estate or gift tax laws. It does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular investor in light of its investment or tax circumstances or to investors subject to special tax rules, such as:

- financial institutions;
- insurance companies and real estate investment trusts, and each of their stockholders;
- controlled foreign corporations and passive foreign investment companies, and each of their stockholders;
- broker-dealers;
- regulated investment companies;
- partnerships (or other entities classified as partnerships for U.S. federal income tax purposes) and trusts and their partners and beneficiaries;
- persons subject to the alternative minimum tax;
- persons who hold Units on behalf of other persons as nominees;
- persons who receive Units through the exercise of employee stock options or otherwise as compensation;
- tax-exempt organizations;

- persons holding Units as part of a "straddle", "hedge", "conversion transaction", "synthetic security" or other integrated investment; and
- U.S. expatriates.

As used herein, "**U.S. Holder**" means a holder of Units that is a beneficial owner of the Units and is (i) an individual citizen or resident of the United States for U.S. federal income tax purposes; (ii) a corporation (or other entity classified as a corporation for U.S. federal income tax purposes), created or organized in or under the laws of the United States, any state therein or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust if a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all substantial decisions of the trust (or otherwise if the trust has a valid election in effect under the Treasury Regulations to be treated as a domestic trust). A "**Non-U.S. Holder**" is a beneficial owner of Units that is an individual, corporation, estate or trust and is not a U.S. Holder.

In the case of partnerships that hold Units, including for this purpose any entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, the U.S. federal income tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of Units.

The U.S. federal income tax treatment of beneficial owners of Units depends in some instances on determinations of fact and interpretations of complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. In addition, the tax consequences to any particular beneficial owner of Units will depend on the beneficial owner's particular tax circumstances. You are urged to consult your tax advisor regarding the U.S. federal, state, local, and non-U.S. income and other tax consequences to you in light of your particular investment or tax circumstances of acquiring, holding, exchanging, or otherwise disposing of Units.

U.S. Status of the REIT

Although the REIT is organized as an unincorporated trust under Canadian law, the REIT intends to take the position that, pursuant to Section 7874 of the Code, the REIT is treated as a U.S. corporation for all purposes under the Code and, as a result, it is permitted to elect to be treated as a real estate investment trust under the Code, notwithstanding the fact that it is organized as a Canadian entity. The discussion herein reflects this classification and uses terminology consistent with this classification, including references to "dividends" and "earnings and profits". Baker & McKenzie LLP, U.S. counsel to the REIT, will render an opinion in connection with the Closing in respect of the treatment of the REIT as a U.S. corporation under Section 7874, subject to certain representations, assumptions and factual matters.

Taxation of the REIT

This summary assumes the REIT and NHI will qualify at all times as a "real estate investment trust" within the meaning of the Code and that the REIT and NHI each will validly elect under the Code to be a real estate investment trust, commencing with its taxable year ending December 31, 2019. If the REIT or NHI were not to qualify as a real estate investment trust at all times, the income tax considerations could be materially and adversely different from those described below. To the extent that NHI fails to qualify as a real estate investment trust in any year, and does not qualify for the relief provisions described herein, the REIT also likely will not qualify as a real estate investment trust for such year.

The law firm of Baker & McKenzie LLP has acted as U.S. tax counsel to the REIT in connection herewith. In connection with this prospectus, Baker & McKenzie LLP will provide an opinion to the effect that, commencing with the taxable year ending December 31, 2019, each of the REIT and NHI has been or will be organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust under the Code, and its current and proposed method of operation will enable it to continue to maintain its qualification and

taxation as a real estate investment trust under the Code. It must be emphasized that the opinion of Baker & McKenzie LLP is based on various assumptions relating to the organization and operation of the REIT and NHI, and will be conditioned upon fact-based representations and covenants made by the REIT and NHI regarding its organization, assets, and income, and the present and future conduct of its business operations, and other items regarding the REIT's and NHI's ability to meet the various requirements for qualification as a real estate investment trust, and will assume that such representations and covenants are accurate and complete and that the REIT and NHI will take no action inconsistent with its qualification as a real estate investment trust. While it is intended that the REIT and NHI will continue to operate so that each will continue to qualify as a real estate investment trust, given the highly complex nature of the rules governing real estate investment trusts, the ongoing importance of factual determinations, and the possibility of future changes in circumstances, no assurance can be given by Baker & McKenzie LLP or by the REIT, that the REIT and NHI will qualify as a real estate investment trust for any particular year. The opinion is expressed as of the date issued. Baker & McKenzie LLP has no obligation to advise the REIT or holders of Units of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinion.

Qualification and taxation as a real estate investment trust depends on the ability of the REIT and NHI to meet on a continuing basis, through actual operating results, distribution levels, and diversity of stock and asset ownership, various qualification requirements imposed upon real estate investment trusts by the Code, the compliance with which will not be reviewed by Baker & McKenzie LLP. In addition, the REIT's and NHI's ability to qualify as a real estate investment trust may depend in part upon the operating results, organizational structure and entity classification for U.S. federal income tax purposes of certain entities in which the REIT and NHI invest, which entities will not have been reviewed by Baker & McKenzie LLP. The ability to maintain real estate investment trust qualification also requires that the REIT and NHI satisfy certain asset tests, some of which depend upon the fair market values of assets that it owns directly or indirectly. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of the REIT's or NHI's operations for any taxable year will satisfy such requirements for qualification and taxation as a real estate investment trust.

Taxation of Real Estate Investment Trusts in General

As indicated above, qualification and taxation as a real estate investment trust depends upon the ability of the REIT and NHI to meet, on a continuing basis, various qualification requirements imposed upon real estate investment trusts by the Code. The material qualification requirements are summarized below under "— Requirements for qualification — General". While it is intended that the REIT and NHI will operate so that each qualifies as a real estate investment trust, no assurance can be given that the IRS will not challenge this qualification, or that the REIT and NHI will be able to operate in accordance with the real estate investment trust requirements in the future. See "— Failure to qualify".

The summary below of the principal U.S. federal income tax consequences of the treatment of the REIT as a real estate investment trust and the various qualification requirements imposed upon real estate investment trusts by the Code is also applicable to NHI. Accordingly, all references below to the REIT should also be read as referring to NHI, except to the extent the context otherwise requires.

Provided that the REIT maintains its qualification as a real estate investment trust, generally the REIT will be entitled to a deduction for dividends that the REIT pays and therefore will not be subject to U.S. federal income tax on its taxable income that is currently distributed to holders of Units. This treatment substantially eliminates the "double taxation" at the corporate and Unitholder levels that generally results from investment in a corporation. In general, the income generated by the REIT is taxed only at the Unitholder level upon a distribution of dividends to Unitholders. It is expected that the REIT will distribute amounts at least equal to the REIT's taxable income and capital gain on an annual basis. However, no assurance can be given that distributions equal to these amounts will in fact be made every year.

Any net operating losses, foreign tax credits and other tax attributes present at the REIT level generally do not pass through to the Unitholders, subject to special rules for certain items such as the capital gains that the REIT recognizes.

- Even if the REIT maintains its qualification as a real estate investment trust, the REIT will nonetheless be subject to U.S. federal income tax in the following circumstances:
  - the REIT will be taxed at regular corporate rates on any undistributed taxable income, including undistributed net capital gains;
  - if the REIT has net income from "prohibited transactions", which are, in general, sales or other dispositions of inventory or property held primarily for sale to customers in the ordinary course of business, other than "foreclosure property", such income will be subject to a 100% tax. See "— Foreclosure property" below;
  - if the REIT elects to treat property that it acquired in connection with a foreclosure of a mortgage loan or certain leasehold terminations as "foreclosure property", the REIT may thereby avoid the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the REIT's income from the sale or operation of the property may be subject to U.S. federal income tax at the highest rate applicable to corporations (currently 21%);
  - if the REIT fails to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but nonetheless maintains its qualification as a real estate investment trust because it satisfies other requirements, the REIT will be subject to a 100% tax on an amount based on the magnitude of the failure, as adjusted to reflect the profit margin associated with its gross income;
  - if the REIT violates the asset tests (other than certain *de minimis* violations) or other requirements applicable to real estate investment trusts, as described below, and yet maintains its qualification as a real estate investment trust because there is reasonable cause for the failure and other applicable requirements are met, the REIT may be subject to a penalty tax (and, in such case, the amount of the penalty tax will be at least $50,000 per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the assets in question multiplied by the highest rate applicable to corporations (currently 21%) if that amount exceeds $50,000 per failure);
  - if the REIT fails to distribute during each calendar year at least the sum of (1) 85% of its real estate investment trust ordinary income for such year, (2) 95% of its real estate investment trust capital gain net income for such year, and (3) any undistributed taxable income from prior periods, the REIT will be subject to a nondeductible 4% excise tax on the excess of the required distribution over the sum of (a) the amounts that the REIT actually distributed (taking into account excess distributions from prior years); and (b) the amounts the REIT retained and upon which it paid U.S. federal income tax at the corporate level;
  - the REIT may be required to pay monetary penalties to the IRS in certain circumstances, including if the REIT fails to meet record-keeping requirements intended to monitor its compliance with rules relating to the composition of a real estate investment trust's Unitholders, as described below in "Requirements for qualification-General";
  - earnings of any subsidiaries that are subchapter C corporations, including any taxable REIT subsidiaries, are subject to U.S. federal corporate income tax;

- a 100% tax may be imposed on transactions between the REIT and a taxable REIT subsidiary as defined under Section 856(l) of the Code (a "**TRS**"), that do not reflect arm's-length terms (and, in addition, the earnings of TRSs are subject to U.S. federal income tax); and

- if the REIT acquires appreciated assets from a corporation that is not a REIT (i.e., a corporation taxable under subchapter C of the Code) in a transaction in which the adjusted tax basis of the assets in the REIT's hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, the REIT may be subject to U.S. federal income tax on such appreciation at the highest rate then applicable to corporations if it subsequently recognizes gain on a disposition of any such assets during the five-year period following their acquisition from the subchapter C corporation.

In addition, the REIT may be subject to a variety of taxes, including state, local, and non-U.S. income, property and other taxes on its assets and operations. The REIT could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification—General

The Code defines a real estate investment trust as a corporation, trust or association:

(a) that is managed by one or more trustees or directors;

(b) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(c) that would be taxable as a U.S. corporation but for its election to be subject to tax as a real estate investment trust;

(d) that is neither a financial institution nor an insurance company subject to specific provisions of the Code;

(e) the beneficial ownership of which is held by 100 or more persons;

(f) in which, during the last half of each taxable year, not more than 50% in value of the outstanding stock is owned, directly or indirectly, by five or fewer "individuals" (as defined in the Code to include specified tax-exempt entities);

(g) that makes an election to be a real estate investment trust for the current taxable year or has made such an election for a previous taxable year that has not been terminated or revoked; and

(h) that meets other tests described below, including with respect to the nature of its income and assets.

The Code provides that conditions (a) through (d) must be met during the entire taxable year, and that condition (e) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Conditions (e) and (f) need not be met during a corporation's initial tax year as a real estate investment trust.

To monitor compliance with the stock ownership requirements, the REIT generally is required to maintain records regarding the actual ownership of the Units. To do so, the REIT must demand written statements each year from the record holders of significant percentages of Units pursuant to which the record holders must disclose the actual owners of the Units (i.e., the persons required to include dividends in their gross income). The REIT must maintain a list of those persons failing or refusing to comply with this demand as part of the REIT's records. The REIT could be subject to monetary penalties if the REIT fails to comply with these record-keeping requirements. If

the REIT satisfies these requirements and after exercising reasonable diligence would not have known that condition (f) is not satisfied, the REIT will be deemed to have satisfied such condition. If you fail or refuse to comply with the demands, you will be required by the Treasury Regulations to submit a statement with your U.S. federal income tax return disclosing your actual ownership of Units and other information.

In addition, a corporation generally may not elect to become a real estate investment trust unless its taxable year is the calendar year.

Effect of Subsidiary Entities

Disregarded subsidiaries. If the REIT owns a corporate subsidiary that is a "qualified real estate investment trust subsidiary", that subsidiary is disregarded for U.S. federal income tax purposes, and all of the subsidiary's assets, liabilities and items of income, deduction and credit are treated as the REIT's assets, liabilities and items of income, deduction and credit, including for purposes of the gross income and asset tests applicable to real estate investment trusts. A qualified real estate investment trust subsidiary is any corporation, other than a TRS (as described below), that is directly or indirectly wholly owned by a real estate investment trust. Other entities that are wholly owned by the REIT, including single member limited liability companies that have not elected to be taxed as corporations for U.S. federal income tax purposes, are also disregarded as separate entities for U.S. federal income tax purposes, including for purposes of the real estate investment trust income and asset tests. Disregarded subsidiaries, along with any partnerships in which the REIT holds an equity interest, are sometimes referred to herein as "pass-through subsidiaries".

In the event that a disregarded subsidiary of the REIT ceases to be wholly-owned — for example, if any equity interest in the subsidiary is acquired by a person other than the REIT or another disregarded subsidiary of the REIT — the subsidiary's separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, the subsidiary would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect the REIT's ability to satisfy the various asset and gross income requirements applicable to real estate investment trusts, including the requirement that real estate investment trusts generally may not own, directly or indirectly, more than 10% of the securities of another corporation. See "— Asset tests" and "— Income tests".

The REIT owns its interest in NHI through US Holdco, which will be treated as a disregarded entity for U.S. federal income tax purposes. Accordingly, for purposes of the real estate investment trust status tests discussed below, all of the assets and income and loss of US Holdco will be treated as assets and income and loss of the REIT.

Ownership of partnership interests. If the REIT is a partner in an entity that is treated as a partnership for U.S. federal income tax purposes, the Treasury Regulations provide that the REIT is deemed to own its proportionate share of the partnership's assets, and to earn its proportionate share of the partnership's income, for purposes of the asset and gross income tests applicable to real estate investment trusts. The REIT's proportionate share of a partnership's assets and income is based on its capital interest in the partnership (except that for purposes of the 10% of value asset test, described below, its proportionate share of the partnership's assets is based on its proportionate interest in the equity and certain debt securities issued by the partnership, as described in the Code). In addition, the assets and gross income of the partnership are deemed to retain the same character in the REIT's hands. Thus, the REIT's proportionate share of the assets and items of income of any subsidiary partnership will be treated as the REIT's assets and items of income for purposes of applying the real estate investment trust requirements. Consequently, to the extent that the REIT directly or indirectly holds a preferred or other equity interest in a partnership, the partnership's assets and operations may affect its ability to maintain real estate investment trust qualification, even though the REIT may have no control or only limited influence over the partnership. All or substantially all of NHI's real estate assets are expected to be owned through the OP (which will be treated as a partnership for U.S. federal income tax purposes) and its subsidiaries.

In addition, the *Bipartisan Budget Act of 2015* changed the rules applicable to U.S. federal income tax audits of partnerships. Under the new rules (which are generally effective for taxable years beginning after December 31, 2017), among other changes and subject to certain exceptions, any audit adjustment to items of income, gain, loss, deduction, or credit of a partnership (and any partner's distributive share thereof) is determined,

and taxes, interest, or penalties attributable thereto are assessed and collected, at the partnership level. Notwithstanding that final regulations have been issued with respect to these new rules, it remains uncertain exactly how these new rules will be implemented, and it is possible that they could result in partnerships in which the REIT directly or indirectly invests being required to pay additional taxes, interest and penalties as a result of an audit adjustment, and the REIT, as a direct or indirect partner of these partnerships, could be required to bear the economic burden of those taxes, interest, and penalties even though, as a real estate investment trust, it may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment. The changes created by these new rules are sweeping and in many respects dependent on the promulgation and/or finalization of future Treasury Regulations or other guidance by the U.S. Treasury Department. Prospective investors are urged to consult their tax advisors with respect to these changes and their potential impact on their investment in Units.

Taxable subsidiaries. A real estate investment trust may jointly elect with a subsidiary corporation, whether or not wholly-owned, to treat such subsidiary corporation as a TRS. The real estate investment trust generally may not own more than 10% of the securities of a taxable corporation, as measured by voting power or value, unless it and such corporation elect to treat such corporation as a TRS. The separate existence of a TRS or other taxable corporation is not ignored for U.S. federal income tax purposes. Accordingly, a TRS or other taxable subsidiary corporation generally is subject to U.S. federal income tax on its earnings, which may reduce the cash flow that the REIT and its subsidiaries generate in the aggregate, and may reduce the REIT's ability to make distributions to its Unitholders.

A real estate investment trust is not treated as holding the assets of a TRS or other taxable subsidiary corporation (including a subsidiary that is also a real estate investment trust) or as receiving any income that the subsidiary earns. Rather, the stock issued by a TRS to it is an asset in its hands, and a real estate investment trust treats the dividends paid to it from such taxable subsidiary, if any, as income. This treatment can affect a real estate investment trust's income and asset test calculations, as described below. Because a real estate investment trust does not include the assets and income of TRSs or other taxable subsidiary corporations in determining its compliance with the real estate investment trust requirements, it may use such entities (to the extent such entities are not also real estate investments trusts) to undertake indirectly activities that the real estate investment trust rules might otherwise preclude it from doing directly or through pass-through subsidiaries. For example, a real estate investment trust may use TRSs or other taxable subsidiary corporations to conduct activities that give rise to certain categories of income such as management fees or gain from sales of assets held for sale to customers or to conduct activities that, if conducted by the real estate investment trust directly, would be treated in its hands as prohibited transactions. However, as discussed below, a TRS may not directly or indirectly operate or manage certain lodging facilities or health care properties.

Under the recently enacted Tax Cuts and Jobs Act (described below), in general, the deductibility of net interest for a business, including a TRS is limited to 30% of the business's adjusted taxable income (i.e. business taxable income computed without regard to business interest or business interest income, net operating loss deductions and the deduction for certain qualified business income of non-corporate taxpayers). Interest that is disallowed can be carried forward indefinitely. Notwithstanding the foregoing, a "real property trade or business" is permitted to elect out of these interest limitation rules.

The TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent real estate investment trust to ensure that the TRS is subject to an appropriate level of U.S. federal income taxation. Further, these rules impose a 100% excise tax on certain transactions between a TRS and its parent real estate investment trust or the real estate investment trust's tenants that are not conducted on an arm's-length basis. The 100% tax also will apply to "redetermined services income", i.e., non-arm's-length income of a TRS attributable to services provided to, or on behalf of, its parent real estate investment trust (other than services provided to the real estate investment trust's tenants, which are potentially taxed as "redetermined rents").

NHI will indirectly own, through the OP, shares of NMCT, a taxable subsidiary that will elect real estate investment trust status beginning with its taxable year ending December 31, 2019, and the discussion below assumes that it will qualify as a real estate investment trust for such taxable year and in each taxable year thereafter. As discussed above, NHI will not be treated as holding the assets of NMCT or currently earning any income that

NMCT earns. To qualify as a real estate investment trust, NMCT will need to independently meet, on a continuing basis, the various qualifications requirements imposed upon real estate investment trusts discussed herein, including making joint elections with a subsidiary corporation of NMCT to treat such subsidiary corporation as a TRS. Prior to December 31, 2019, NMCT will also have to distribute all of its earnings and profits accumulated in tax years, if any, prior to the tax year in which NMCT elects real estate investment trust status. While it is intended that NMCT will operate so that it qualifies as a real estate investment trust, no assurance can be given that NMCT will qualify, or will continue to qualify in any taxable year, as a real estate investment trust, since qualification as a real estate investment trust depends on continuing to satisfy numerous asset, income and distribution tests described below, which in turn will be dependent in part on the REIT's ongoing operating results. To the extent that NMCT fails to qualify as a real estate investment trust in any year, and does not qualify for the relief provisions described herein, the REIT and NHI also likely will not qualify as a real estate investment trust for such year.

Income Tests

In order to maintain real estate investment trust qualification, the REIT must satisfy two gross income requirements on an annual basis. First, at least 75% of the REIT's gross income for each taxable year, excluding gross income from prohibited transactions, discharge of indebtedness and certain hedging transactions, generally must be derived from investments relating to real property or mortgages on real property, including interest income derived from mortgage loans secured by real property, "rents from real property" (generally, rents for use of real property, but not including certain contingent and related-party rents), dividends received from other real estate investment trusts, and gains from the sale of certain real estate assets, as well as specified income from temporary investments. Second, at least 95% of the REIT's gross income in each taxable year, excluding gross income from prohibited transactions, discharge of indebtedness and certain hedging transactions, must be derived from some combination of income that qualifies under the 75% gross income test described above, as well as other dividends, interest, and gain from the sale or disposition of stock or securities, which need not have any relation to real property. Income and gain from certain hedging transactions will be excluded from both the numerator and the denominator for purposes of both the 75% and 95% gross income tests. It is intended that the amount of the REIT's non-qualifying income will be monitored and its portfolio of assets will be managed to comply with the gross income tests but it cannot be assured that the REIT will be successful in this effort.

As indicated above, for purposes of the 75% and 95% gross income tests, a real estate investment trust is deemed to have earned a proportionate share of the income earned by any partnership, or any limited liability company treated as a partnership for U.S. federal income tax purposes, in which it owns an interest, which share is determined by reference to its capital interest in such entity, and is deemed to have earned the income earned by any qualified REIT subsidiary or entity that is disregarded as separate from the REIT for U.S. federal income tax purposes.

Rents from real property. Rent that the REIT receives from its real property will qualify as "rents from real property", which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met:

- first, the rent must not be based, in whole or in part, on the income or profits of any person, but may be based on a fixed percentage or percentages of receipts or sales;

- second, neither the REIT nor a direct or indirect owner of 10% or more of its shares of beneficial interest may own, actually or constructively, 10% or more of a tenant from whom the REIT receives rent, other than a TRS. If the tenant is a TRS and the applicable property is a lodging facility, such TRS may not directly or indirectly operate or manage the property. Instead, the property must be operated on behalf of the TRS by a person who qualifies as an "independent contractor" and who is, or is related to a person who is, actively engaged in the trade or business of operating lodging facilities for any person unrelated to the REIT and the TRS;

- third, if the rent attributable to personal property leased in connection with a lease of real property is 15% or less of the total rent received under the lease, then the rent attributable to personal property

will qualify as rents from real property. However, if the 15% threshold is exceeded, the rent attributable to personal property will not qualify as rents from real property; and

- fourth, the REIT generally must not operate or manage its real property or furnish or render services to its tenants, other than through an "independent contractor" who is adequately compensated and from whom the REIT does not derive revenue. However, the REIT need not provide services through an "independent contractor", but instead may provide services directly to its tenants, if the services are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, the REIT may provide a minimal amount of "noncustomary" services to the tenants of a property, other than through an independent contractor, as long as the REIT's income from the services (valued at not less than 150% of the REIT's direct cost of performing such services) does not exceed 1% of the REIT's income from the related property. Furthermore, the REIT may own up to 100% of the stock of a TRS which may provide customary and noncustomary services to the REIT's tenants without tainting its rental income for the applicable property provided that the property is not a lodging facility.

The TRS Entities of the REIT will lease the land, buildings, improvements, furnishings and equipment comprising the REIT's hotel properties. In order for the rent paid under the leases to constitute "rents from real property", the leases must be respected as true leases for U.S. federal income tax purposes and not treated as service contracts, joint ventures or some other type of arrangement. The determination of whether these leases are true leases depends on an analysis of all the surrounding facts and circumstances. In making such a determination, courts have considered a variety of factors, including the following:

- the intent of the parties;
- the form of the agreement;
- the degree of control over the property that is retained by the property owner (for example, whether the lessee has substantial control over the operation of the property or whether the lessee was required simply to use its best efforts to perform its obligations under the agreement); and
- the extent to which the property owner retains the risk of loss with respect to the property (for example, whether the lessee bears the risk of increases in operating expenses or the risk of damage to the property) or the potential for economic gain with respect to the property.

It is believed that the leases of the REIT are structured so that they qualify as true leases for U.S. federal income tax purposes. Investors should be aware that there are no controlling Treasury Regulations, published rulings or judicial decisions involving leases with terms substantially the same as the REIT's leases that discuss whether such leases constitute true leases for U.S. federal income tax purposes. If these leases are characterized as service contracts or partnership agreements, rather than as true leases, part or all of the payments that the operating partnership of the REIT and its subsidiaries receive from the TRS Entities may not be considered rent or may not otherwise satisfy the various requirements for qualification as "rents from real property". In that case, the REIT likely would not be able to satisfy either the 75% or 95% gross income test and, as a result, would lose its real estate investment trust status unless the REIT qualifies for relief, as described below under "— Failure to Satisfy Gross Income Tests".

As described above, in order for the rent that the REIT receives to constitute "rents from real property", several other requirements must be satisfied. One requirement is that percentage rent must not be based in whole or in part on the income or profits of any person. Percentage rent, however, will qualify as "rents from real property" if it is based on percentages of receipts or sales and the percentages: (1) are fixed at the time the percentage leases are entered into; (2) are not renegotiated during the term of the percentage leases in a manner that has the effect of basing percentage rent on income or profits; and (3) conform with normal business practice. More generally, percentage rent will not qualify as "rents from real property" if, considering the leases and all the surrounding

circumstances, the arrangement does not conform with normal business practice, but is in reality used as a means of basing the percentage rent on income or profits.

The REIT must not own, actually or constructively, 10% or more of the shares or the assets or net profits of any lessee (a "**related party tenant**"), other than a TRS. The constructive ownership rules generally provide that, if 10% or more in value of the REIT's Units of beneficial interest is owned, directly or indirectly, by or for any person, the REIT is considered as owning the shares owned, directly or indirectly, by or for such person. The REIT currently leases all of its hotels to the TRS Entities and it is intended that the REIT will lease to a TRS Entity any hotels the REIT acquires in the future.

As described above, the REIT may own up to 100% of the capital stock of one or more TRSs. A TRS is a fully taxable corporation that is permitted to lease hotel properties from the related REIT as long as it does not directly or indirectly operate or manage any lodging facilities or provide rights to any brand name under which any lodging facility is operated, unless such rights are provided to an "eligible independent contractor" to operate or manage a lodging facility if such rights are held by the TRS as a franchisee, licensee, or in a similar capacity and such hotel is either owned by the TRS or leased to the TRS by its parent real estate investment trust. A TRS will not be considered to operate or manage a qualified lodging facility solely because the TRS directly or indirectly possesses a license, permit, or similar instrument enabling it to do so. Additionally, a TRS will not be considered to operate or manage a qualified lodging facility located outside of the United States, as long as an "eligible independent contractor" is responsible for the daily supervision and direction of such individuals on behalf of the TRS pursuant to a management contract or similar service contract. Moreover, rent that the REIT receives from a TRS will qualify as "rents from real property" as long as the property is operated on behalf of the TRS by an "independent contractor" who is adequately compensated, who does not, directly or through its shareholders, own more than 35% of the Units, taking into account certain ownership attribution rules, and who is, or is related to a person who is, actively engaged in the trade or business of operating "qualified lodging facilities" for any person unrelated to the REIT and the TRS lessee (an "**eligible independent contractor**"). A "qualified lodging facility" is a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis, unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. A "qualified lodging facility" includes customary amenities and facilities operated as part of, or associated with, the lodging facility as long as such amenities and facilities are customary for other properties of a comparable size and class owned by other unrelated owners.

The rent attributable to the personal property leased in connection with the lease of a hotel must not be greater than 15% of the total rent received under the lease. The rent attributable to the personal property contained in a hotel is the amount that bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property contained in the hotel at the beginning and at the end of such taxable year (the "**personal property ratio**"). To comply with this limitation, a TRS lessee may acquire furnishings, equipment and other personal property. With respect to each hotel in which the TRS lessee does not own the personal property, it is believed either that the personal property ratio is less than 15% or that any rent attributable to excess personal property does not jeopardize the ability of the REIT to qualify as a real estate investment trust. There can be no assurance, however, that the IRS would not challenge the calculation of a personal property ratio, or that a court would not uphold such assertion. If such a challenge were successfully asserted, the REIT could fail to satisfy the 75% or 95% gross income test and thus potentially lose its real estate investment trust status.

The REIT cannot furnish or render noncustomary services to the tenants of its hotels, or manage or operate its hotels, other than through an independent contractor who is adequately compensated and from whom the REIT does not derive or receive any income. However, the REIT needs not provide services through an "independent contractor", but instead may provide services directly to its tenants, if the services are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, the REIT may provide a minimal amount of "noncustomary" services to the tenants of a property, other than through an independent contractor, as long as the REIT's income from the services does not exceed 1% of its income from the related property. Finally, the REIT may own up to 100% of the capital

stock of one or more TRSs, which may provide noncustomary services to the REIT's tenants without tainting its rents from the related hotel properties. The REIT will not perform any services other than customary ones for its lessees, unless such services are provided through independent contractors.

Interest income. Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test (as described above) to the extent that the obligation upon which such interest is paid is secured by a mortgage on real property. If the REIT receives interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that the REIT acquired or originated the mortgage loan (or, in the event of a "significant modification", the date the loan is modified), the interest income will be apportioned between the real property and the other collateral, and the REIT's income from the arrangement will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. However, in the case of a loan that is secured by both real property and personal property, for purposes of the 75% gross income test, if the fair market value of the personal property securing the loan does not exceed 15% of the total fair market value of all such property, such personal property is treated as real property. Even if a loan is not secured by real property, or is under secured, the income that it generates may nonetheless qualify for purposes of the 95% gross income test.

Dividend income. The REIT may directly or indirectly receive distributions from TRSs or other corporations that are not real estate investment trusts or qualified real estate investment trust subsidiaries. These distributions generally are treated as dividend income to the extent of the earnings and profits of the distributing corporation. Such distributions generally constitute qualifying income for purposes of the 95% gross income test, but not for purposes of the 75% gross income test. Any dividends that the REIT receives from another real estate investment trust, however, are qualifying income for purposes of both the 95% and 75% gross income tests.

Failure to satisfy the gross income tests. It is intended that the sources of income, including any nonqualifying income received by the REIT, will be monitored and the REIT's assets will be managed so as to ensure compliance with the gross income tests. No assurance can be given, however, that the REIT will be able to satisfy the gross income tests. If the REIT fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year the REIT may still maintain its qualification as a real estate investment trust for such year if the REIT is entitled to relief under applicable provisions of the Code. These relief provisions will be generally available if (1) the REIT's failure to meet these tests was due to reasonable cause and not due to willful neglect; and (2) following the identification of the failure to meet the 75% or 95% gross income test for any taxable year, the REIT files a schedule with the IRS setting forth each item of its gross income for purposes of the 75% or 95% gross income test for such taxable year in accordance with Treasury Regulations yet to be issued. It is not possible to state whether the REIT would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances, the REIT will fail to maintain its qualification as a real estate investment trust. Even where these relief provisions apply, the Code imposes a tax based upon the profit attributable to the amount by which the REIT fails to satisfy the particular gross income test.

Asset Tests

At the close of each calendar quarter, the REIT must also satisfy five tests relating to the nature of its assets.

First, at least 75% of the value of the REIT's total assets must be represented by some combination of "real estate assets", cash, cash items, U.S. Government securities, and, under some circumstances, stock or debt instruments purchased with new capital. For this purpose, "real estate assets" include interests in real property, some kinds of mortgage loans (including an interest in an obligation secured by a mortgage on both real property and personal property if the fair market value of the personal property does not exceed 15% of the total fair market value of all the property securing the obligation), certain mezzanine loans indirectly secured by interests in entities that own interests in real property, stock of other corporations that qualify as real estate investment trusts, debt instruments issued by publicly offered real estate investment trusts, and personal property to the extent income from such personal property is treated as "rents from real property" because the personal property is rented in connection

with a rental of real property and the rent attributable to the personal property does not exceed 15% of the total rent received under the lease.

Second, the value of any one issuer's securities that the REIT owns may not exceed 5% of the value of the REIT's total assets.

Third, the REIT may not own more than 10% of any one issuer's outstanding securities, as measured by either value (the "**10% of value asset test**"), or voting power.

The 5% and 10% asset tests do not apply to securities that qualify under the 75% asset test, or to securities of TRSs and qualified real estate investment trust subsidiaries, and the 10% of value asset test does not apply to "straight debt" having specified characteristics and to certain other securities described below. Solely for purposes of the 10% of value asset test, the determination of the REIT's interest in the assets of a partnership (or entity treated as a partnership for tax purposes) in which the REIT owns an interest will be based on the REIT's proportionate interest in any securities issued by the partnership (or entity treated as a partnership for U.S. federal income tax purposes), excluding for this purpose certain securities described in the Code.

Fourth, the aggregate value of all securities of TRSs that the REIT holds may not exceed 20% of the value of its total assets, with respect to taxable years beginning on and after January 1, 2018.

Fifth, not more than 25% of the REIT's assets may consist of debt instruments issued by publicly offered real estate investment trusts that qualify as "real estate assets" only because of the express inclusion of "debt instruments issued by publicly offered real estate investment trusts" in the definition of "real estate assets".

Notwithstanding the general rule, as noted above, that for purposes of the real estate investment trust income and asset tests the REIT is treated as owning its proportionate share of the underlying assets of a subsidiary partnership, if the REIT holds indebtedness issued by a partnership, the indebtedness will be subject to, and may cause a violation of, the asset tests unless the indebtedness is a qualifying mortgage asset or other conditions are met.

Certain securities will not cause a violation of the 10% of value asset test described above. Such securities include instruments that constitute "straight debt", which includes, among other things, securities having certain contingency features. A security does not qualify as "straight debt" where a real estate investment trust (or a "controlled taxable real estate investment trust subsidiary", as defined in the Code, of the real estate investment trust) owns other securities of the same issuer which do not qualify as straight debt, unless the value of those other securities constitute, in the aggregate, 1% or less of the total value of that issuer's outstanding securities. In addition to straight debt, the Code provides that certain other securities will not violate the 10% of value asset test. Such securities include (1) any loan made to an individual or an estate, (2) certain rental agreements pursuant to which one or more payments are to be made in subsequent years (other than agreements between a real estate investment trust and certain persons related to the real estate investment trust under attribution rules), (3) any obligation to pay rents from real property, (4) securities issued by governmental entities that are not dependent in whole or in part on the profits of (or payments made by) a non-governmental entity, (5) any security (including debt securities) issued by another real estate investment trust, and (6) any debt instrument issued by a partnership if the partnership's income is of a nature that it would satisfy the 75% gross income test described above under "— Income tests". In applying the 10% of value asset test, a debt security issued by a partnership is not taken into account to the extent of the REIT's proportionate interest, if any, in the equity and debt securities issued by that partnership.

It is expected that the assets that the REIT owns generally will be qualifying assets for purposes of the 75% asset test, and it is intended that compliance with this requirement will be monitored on an ongoing basis. There can be no assurance, however, that the REIT will be successful in this effort. No independent appraisals have been obtained to support the conclusions as to the value of the REIT's total assets or the value of any particular security or securities. Accordingly, there can be no assurance that the IRS will not contend that the REIT's interests in its subsidiaries or in the securities of other issuers will not cause a violation of the real estate investment trust asset tests.

However, certain relief provisions are available to allow real estate investment trusts to satisfy the asset requirements or to maintain real estate investment trust qualification notwithstanding certain violations of the asset and other requirements. One such provision allows a real estate investment trust which fails one or more of the asset requirements to nevertheless maintain its real estate investment trust qualification if (1) the real estate investment trust provides the IRS with a description of each asset causing the failure, (2) the failure is due to reasonable cause and not willful neglect, (3) the real estate investment trust pays a tax equal to the greater of (a) $50,000 per failure, and (b) the product of the net income generated by the assets that caused the failure multiplied by the highest applicable rate applicable to corporations (currently 21%), and (4) the real estate investment trust either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or otherwise satisfies the relevant asset tests within that time frame.

In the case of *de minimis* violations of the 5% and 10% asset tests, a real estate investment trust may maintain its qualification despite a violation of such requirements if (1) the value of the assets causing the violation does not exceed the lesser of 1% of the real estate investment trust's total assets at the end of the applicable quarter or $10,000,000, and (2) the real estate investment trust either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or the relevant tests are otherwise satisfied within that time frame.

If the REIT should fail to satisfy the asset tests at the end of a calendar quarter, such a failure would not cause the REIT to lose its real estate investment trust qualification if it (1) satisfied the asset tests at the close of the preceding calendar quarter; and (2) the discrepancy between the value of its assets and the asset requirements was not wholly or partly caused by an acquisition of non-qualifying assets, but instead arose from changes in the market value of its assets. If the condition described in (2) were not satisfied, the REIT still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose or by making use of relief provisions described above.

Annual Distribution Requirements

In order to maintain real estate investment trust qualification, the REIT is required to distribute dividends, other than capital gain dividends, to Unitholders in an amount at least equal to:

(a) the sum of

(i) 90% of its "real estate investment trust taxable income", computed without regard to its net capital gains and the deduction for dividends paid, and

(ii) 90% of its net income, if any, (after tax) from foreclosure property (as described below), minus,

(b) the sum of specified items of non-cash income that exceeds a certain percentage of the REIT's income.

For these purposes, "real estate investment trust taxable income" is computed without regard to the dividends paid deduction and the REIT's net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount on purchase money debt, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

The REIT's deduction for net business interest expense will generally be limited to 30% of its taxable income, as adjusted for certain items of income, gain, deduction or loss. Any business interest deduction that is disallowed due to this limitation may be carried forward to future taxable years. If the REIT is subject to this interest expense limitation, the real estate investment trust taxable income for a taxable year may be increased. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property. The REIT may be eligible to make this election. If so, although the REIT would not be subject to the interest expense limitation described above,

its depreciation deductions may be reduced and, as a result, the real estate investment trust taxable income for a taxable year may be increased.

The REIT generally must make these distributions in the taxable year to which they relate, or in the following taxable year if such distributions are declared before a U.S. federal income tax return is timely filed for the REIT for the year and are paid with or before the first regular dividend payment after such declaration (provided that such payment is made during the 12-month period following the close of such taxable year). These latter distributions are taxable to Unitholders in the year in which they are paid, even though these latter distributions relate to the REIT's prior taxable year for purposes of the 90% distribution requirement.

To the extent that the REIT distributes at least 90%, but less than 100%, of "real estate investment trust taxable income", as adjusted, the REIT will be subject to tax at ordinary U.S. federal corporate income tax rates on the retained portion. The REIT may elect to retain, rather than distribute, its net long-term capital gains and pay tax on such gains. In this case, the REIT could elect for Unitholders to include their proportionate shares of such undistributed long-term capital gains in income, and to receive a corresponding credit or refund, as the case may be, for their share of the tax that the REIT paid. Unitholders would then increase their adjusted basis of their Units by the difference between (1) the amounts of capital gain dividends designated and that they include in their taxable income, minus (2) the tax that the REIT paid on their behalf with respect to that income.

To the extent that in the future the REIT may have available net operating losses carried forward from prior tax years, such losses may reduce the amount of distributions that the REIT must make in order to comply with the real estate investment trust distribution requirements. Such losses, however, will generally not affect the character, in the hands of Unitholders, of any distributions that are actually made as ordinary dividends or capital gains. The REIT's net operating loss carryover can only offset 80% of taxable income in future years, but can be carried forward indefinitely.

If the REIT fails to distribute during each calendar year at least the sum of (1) 85% of its REIT ordinary income for such year, (2) 95% of its real estate investment trust capital gain net income for such year, and (3) any undistributed taxable income from prior periods, the REIT will be subject to a non-deductible 4% excise tax on the excess of such required distribution over the sum of (a) the amounts actually distributed (taking into account excess distributions from prior periods), plus (b) the amounts of income the REIT retained and on which it has paid U.S. federal income tax. It is intended that timely distributions will be made so that the REIT is not subject to the 4% excise tax.

It is possible that, from time to time, the REIT may not have sufficient cash to meet the distribution requirements due to timing differences between its actual receipt of cash and its inclusion of items in income for U.S. federal income tax purposes. In the event that such timing differences occur, in order to meet the distribution requirements, it might be necessary for the REIT to arrange for short-term, or possibly long-term, borrowings, to use cash reserves, to liquidate non-cash assets at rates or times the REIT regards as unfavorable, or to pay dividends in the form of taxable in-kind distributions of property. Alternatively, the REIT may declare a taxable dividend payable in cash or Units at the election of each Unitholder, where the aggregate amount of cash to be distributed in such dividend may be subject to limitation. In such case, for U.S. federal income tax purposes, taxable Unitholders receiving such dividends will be required to include the full amount of the dividend as income and would be required to satisfy the tax liability associated with the dividend with cash from other sources including sales of Units. Both a taxable dividend and sale of Units resulting from such dividend could adversely affect the price of Units.

The REIT may be able to rectify a failure to meet the distribution requirements for a year by paying "deficiency dividends" to Unitholders in a later year, which may be included in its deduction for dividends paid for the earlier year. In this case, the REIT may be able to avoid losing real estate investment trust qualification or being taxed on amounts distributed as deficiency dividends. The REIT will be required to pay interest and a penalty based on the amount of any deduction taken for deficiency dividends. While the payment of a deficiency dividend will apply to a prior year for purposes of the REIT distribution requirements, it will be treated as an additional distribution to Unitholders in the year such dividend is paid.

Recordkeeping Requirements

The REIT is required to maintain records and request on an annual basis information from specified Unitholders. These requirements are designed to assist the REIT in determining the actual ownership of outstanding Units and maintaining its qualification as a real estate investment trust.

Prohibited Transactions

Net income that the REIT derives from a "prohibited transaction" is subject to a 100% tax. The term "prohibited transaction" generally includes a sale or other disposition of property (other than foreclosure property, as discussed below) that is held as inventory or primarily for sale to customers in the ordinary course of a trade or business by the REIT (or a lower tier partnership in which the REIT owns an equity interest) or by a borrower that has issued a shared appreciation mortgage or similar debt instrument to the REIT. It is intended that the operations of the REIT will be conducted so that no asset that it owns (or is treated as owning) will be treated as, or as having been, held as inventory or primarily for sale to customers, and that a sale of any such asset will not be treated as having been in the ordinary course of its business. Whether property is held as inventory or "primarily for sale to customers in the ordinary course of a trade or business" depends on the particular facts and circumstances. No assurance can be given that any property that the REIT sells will not be treated as property held as inventory or primarily for sale to customers, or that the REIT can comply with certain safe-harbor provisions of the Code that would prevent such treatment. The 100% tax does not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be subject to tax in the hands of such corporation at regular U.S. federal income tax rates. It is intended that the activities of the REIT will be structured to avoid prohibited transaction characterization.

Foreclosure Property

Foreclosure property is real property and any personal property incident to such real property (1) that the REIT acquires as the result of having bid on the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after a default (or upon imminent default) on a lease of the property or a mortgage loan held by the REIT and secured by the property, (2) for which it acquired the related loan or lease at a time when default was not imminent or anticipated, and (3) with respect to which the REIT made a proper election to treat the property as foreclosure property. The REIT generally will be subject to tax at the maximum U.S. federal corporate rate (currently 21%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property.

Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer if an extension is granted by the IRS. This grace period terminates, and foreclosure property ceases to be foreclosure property, on the first day occurring: (i) on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for the purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test; (ii) on which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or (iii) which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income or through a TRS.

Penalty Tax

Any redetermined rents, redetermined deductions, excess interest or redetermined service income the REIT generates will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of the REIT's tenants by a TRS of the REIT, redetermined

deductions and excess interest represent any amounts that are deducted by a TRS of the REIT for amounts paid to the REIT that are in excess of the amounts that would have been deducted based on arm's length negotiations, and redetermined service income is income of a TRS that is understated as a result of services provided to the REIT or on the REIT's behalf. Rents received by the REIT will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

Safe-harbor provisions are provided where: (1) amounts are excluded from the definition of impermissible tenant service income as a result of satisfying the 1% *de minimis* exception; (2) the TRS renders a significant amount of similar services to unrelated parties and the charges for such services are substantially comparable; (3) rents paid to the REIT by tenants who are not receiving services from the TRS are substantially comparable to the rents paid by the REIT's tenants leasing comparable space who are receiving such services from the TRS and the charge for the service is separately stated; and (4) the TRS's gross income from the service is not less than 150% of the subsidiary's direct cost of furnishing the service.

Management believes that the REIT's arrangements with its TRSs reflect arm's-length terms. However, these determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to accurately reflect their respective incomes.

Failure to Qualify

If the REIT fails to satisfy one or more requirements for real estate investment trust qualification other than the income or asset tests, the REIT could avoid disqualification if its failure is due to reasonable cause and not to willful neglect and the REIT pays a penalty of $50,000 for each such failure. Relief provisions are available for failures of the income tests and asset tests, as described above in "— Income tests" and "— Asset tests".

If the REIT fails to maintain its qualification for taxation as a real estate investment trust in any taxable year, and the relief provisions described above do not apply, the REIT would be subject to U.S. federal income tax on its taxable income at regular corporate rates. The REIT cannot deduct distributions to Unitholders in any year in which it does not qualify as a real estate investment trust, nor would the REIT be required to make distributions in such a year. Unless the REIT is entitled to relief under specific statutory provisions, the REIT would also be disqualified from re-electing to be taxed as a real estate investment trust for the four taxable years following the year during which it lost qualification. It is not possible to state whether, in all circumstances, the REIT would be entitled to this statutory relief.

Taxation of Non-U.S. Holders

The following is a summary of certain U.S. federal income tax consequences of the ownership and disposition of Units applicable to Non-U.S. Holders.

Ordinary dividends. The portion of dividends received by Non-U.S. Holders that is (1) payable out of the earnings and profits of the REIT, (2) not attributable to gains of the REIT from sales or exchanges of a U.S. real property interest, as defined under Section 897(c) of the Code (a "**USRPI**"), and (3) not effectively connected with a U.S. trade or business of the Non-U.S. Holder, will generally be subject to U.S. federal withholding tax at the rate of 30%, unless reduced or eliminated by treaty and the Non-U.S. Holder provides to the REIT an IRS Form W-8BEN (or other acceptable substitute or applicable form). A Non-U.S. Holder that is a qualified resident of Canada generally is entitled to a 15% withholding rate under the Treaty if: (i) the Non-U.S. Holder is an individual and holds no more than 10% of the outstanding Units, (ii) the Units are publicly traded and the Non-U.S. Holder owns no more than 5% of the outstanding Units or (iii) the Non-U.S. Holder (other than an individual) holds no more than 10% of the outstanding Units and the REIT is diversified. For this purpose, the REIT will be treated as diversified if the gross value of no single interest in real property of the REIT exceeds 10% of the gross value of the REIT's total interest in real property. Qualified residents of Canada that are tax-exempt entities established to provide pension, retirement or other employee benefits (including trusts governed by a RRSP, a RRIF or a DPSP) may be eligible for an exemption from U.S. federal tax withholding on dividends under Article XXI of the Treaty. A trust governed by a TFSA, a RESP or a RDSP is not entitled to benefits as an entity or arrangement under the Treaty. Instead, income received by a TFSA, a RESP or a RDSP is treated as received by the beneficiary of the TFSA RESP, or RDSP as the

case may be, and the TFSA, RESP, or RDSP, as the case may be, should be disregarded for U.S. federal income tax purposes. The beneficiary or annuitant of the TFSA RESP, or RDSP as the case may be, may, however, be eligible for reduced withholding tax rates under the Treaty. Unitholders that are Exempt Plans should consult their own tax advisors with respect to the Canadian and U.S. federal income tax considerations relevant to an investment in Units.

Under some treaties, however, lower rates generally applicable to dividends do not apply to dividends from real estate investment trusts. In the case of a taxable dividend payable in Units with respect to which any U.S. federal withholding tax is imposed on a Non-U.S. Holder, the REIT may have to withhold or dispose of part of the Units otherwise distributable in such dividend and use such withheld shares or the proceeds of such disposition to satisfy the U.S. federal withholding tax imposed.

It is expected that REIT distributions on the Units will exceed the REIT's current and accumulated earnings and profits as determined under the Code. For the purpose of determining the amount to withhold, management of the REIT will make a reasonable estimate of the portion of a distribution that is paid out of current and accumulated earnings and profits. The Non-U.S. Holder may seek a refund from the IRS of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of current and accumulated earnings and profits of the REIT.

In general, Non-U.S. Holders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of Units. In cases where the dividend income from a Non-U.S. Holder's investment in Units is, or is treated as, effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business, the Non-U.S. Holder generally will be subject to U.S. federal income tax at graduated rates, in the same manner as U.S. Holders are taxed with respect to such dividends. Such income must generally be reported on a U.S. income tax return filed by or on behalf of the Non-U.S. Holder. Such income may also be subject to the 30% branch profits tax in the case of a Non-U.S. Holder that is a corporation (subject to potential reduction under the Treaty).

Non-dividend distributions. A Non-U.S. Holder will not incur tax on a distribution in excess of the REIT's current and accumulated earnings and profits if the excess portion of the distribution does not exceed the Non-U.S. Holder's adjusted tax basis in its Units. Instead, the excess portion of the distribution would reduce the Non-U.S. Holder's adjusted tax basis in the Units. It is expected that the Units will constitute USRPIs, as described below, and thus, if the Non-U.S. Holder otherwise would be subject to tax on gain from the disposition of its Units as described herein, distributions that the REIT makes in excess of the sum of (x) the Non-U.S. Holder's proportionate share of the earnings and profits of the REIT, plus (y) the Non-U.S. Holder's tax basis in its Units, will be taxed under FIRPTA, at the rate of U.S. federal income tax, including any applicable capital gains rates, that would apply to a U.S. Holder of the same type (e.g., an individual or a corporation, as the case may be), and the collection of the tax will be enforced by a withholding at a rate of 15% of the amount by which the distribution exceeds the Unitholder's share of earnings and profits of the REIT.

Because management of the REIT expects that the Units will be considered to be regularly traded on an established securities market as described below under "Certain U.S. Federal Income Tax Considerations – Dispositions of Units", it does not expect to be required to withhold on distributions in excess of the REIT's current and accumulated earnings and profits that are distributed to Non-U.S. Holders that own 10% or less of the outstanding Units during the applicable testing period, although there can be no assurance that withholding on such amounts will not be required.

Capital gain dividends. Under FIRPTA, a distribution that the REIT makes to a Non-U.S. Holder, to the extent attributable to gains from dispositions of USRPIs that the REIT held directly or through pass-through subsidiaries, or USRPI capital gains, will, except as described below, be considered effectively connected with a U.S. trade or business of the Non-U.S. Holder and will be subject to U.S. federal income tax at the rates applicable to the U.S. Holders, without regard to whether the REIT designates the distribution as a capital gain dividend. See above under "— Taxation of Non-U.S. Holders — Ordinary dividends", for a discussion of the consequences of income that is effectively connected with a U.S. trade or business. In addition, the REIT will be required to withhold tax at the highest applicable corporate rate (currently 21%) of the maximum amount that could have been designated as USRPI capital gains dividends. Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a Non-U.S. Holder that is a corporation (subject to potential reduction under the Treaty).

A distribution is not attributable to USRPI capital gain if the REIT held an interest in the underlying asset solely as a creditor, although the holding of a shared appreciation mortgage loan would not be solely as a creditor. Capital gain dividends received by a Non-U.S. Holder that are attributable to dispositions of assets of the REIT other than USRPIs are not subject to U.S. federal income or withholding tax, unless (1) the gain is effectively connected with the Non-U.S. Holder's U.S. trade or business, in which case the Non-U.S. Holder would be subject to the same treatment as U.S. Holders with respect to such gain, or (2) the Non-U.S. Holder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States, in which case the Non-U.S. Holder will incur a 30% U.S. federal income tax on his capital gains.

A capital gain dividend that would otherwise have been treated as a USRPI capital gain will not be so treated or be subject to FIRPTA, and generally will not be treated as income that is effectively connected with a U.S. trade or business, and instead will be treated in the same manner as an ordinary dividend (see "— Taxation of Non-U.S. Holders—Ordinary dividends"), if (1) the capital gain dividend is received with respect to a class of Units that is regularly traded on an established securities market, and (2) the recipient Non-U.S. Holder is not treated for U.S. federal income taxes purposes as owning more than 10% of that class of Units at any time during the one-year period ending on the date on which the capital gain dividend is received. As discussed below, it is believed that the Units will be treated as "regularly traded on an established securities market", but no assurance can be given as to the current or future treatment of the Units as "regularly traded on an established securities market".

Dispositions of REIT Units. The Units will be treated as USRPIs if, 50% or more of the assets of the REIT throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor (but including interests in so-called "United States real property holding corporations" and interests in mortgages secured by real property bearing interest determined by reference to net or gross profits or gains of the obligor or changes in the value of the property securing the obligation in question). It is expected that the foregoing test will be met and the Units will be treated as USRPIs, absent the application of certain exceptions discussed below, because the REIT predominately holds hotel properties that constitute U.S. real property, but no assurance can be given that this always will be the case.

Even if the foregoing 50% test is met, the Units will not constitute USRPIs if the REIT is a "domestically controlled qualified investment entity". A domestically controlled qualified investment entity includes a REIT, if less than 50% of value of its outstanding shares of stock is held directly or indirectly by non-U.S. persons at all times during a specified testing period. It is not expected that the REIT will qualify as a domestically controlled qualified investment entity. In addition, a Non-U.S. Holder's sale of Units will not be subject to tax under FIRPTA as a sale of a USRPI provided that the Units are "regularly traded" on an "established securities market", both as defined by applicable Treasury Regulations and as discussed below, and the selling Non-U.S. Holder owned, actually and constructively, 10% or less of the outstanding Units at all times during the five-year period ending on the date of disposition or such shorter period that the Units were held.

An "established securities market" consists of any of the following: (a) a U.S. national securities exchange which is registered under Sec. 6 of the Securities Exchange Act of 1934; (b) a non-U.S. national securities exchange which is officially recognized, sanctioned, or supervised by a governmental authority; or (c) any over-the-counter market. An over-the-counter market is any market which has an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers which regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets which are prepared and distributed by a broker or dealer in the regular course of business and which contain only quotations of such broker or dealer.

For the purpose of (b), above, the TSXV is a non-U.S. national securities exchange which is officially recognized, sanctioned, or supervised by a governmental authority, and, accordingly, the TSXV is an established securities market. For so long as 100 or fewer persons do not own 50% or more of the Units, the Units should be treated as "regularly traded" on the TSXV for a calendar quarter if: (a) the Units trade, other than in *de minimis* quantities, on at least 15 days during the calendar quarter; (b) the aggregate number of Units traded during the calendar quarter is at least 7.5% of the average number of Units outstanding during such calendar quarter (reduced to 2.5% if there are 2,500 or more record holders of Units); and (c) the REIT attaches a statement to its U.S. federal income tax return that provides information relating to it, the Units, and beneficial owners of more than 5% of the

Units (the "**TSXV Publicly Traded Exception**"). However, the REIT is closely held as of the Offering. As a result, these requirements will not be satisfied as of the Offering with respect to the REIT. Although management intends to further diversify the REIT's ownership such that these requirements will be satisfied in the future, there can be no assurance that these requirements will be satisfied with respect to the REIT.

In addition, the Units would be considered "regularly traded" on an established securities market for a calendar quarter if the established securities market were located in the U.S. and the Units were regularly quoted by more than one broker or dealer making a market in the Units through an interdealer quotation system. The OTC Pink tier of OTC Markets Group Inc. ("**OTC Pink**") and the OTCQX are over-the-counter markets during a calendar quarter having an interdealer quotation system that should be treated as an "established securities market" located in the U.S. A broker or dealer makes a market in a class of stock only if the broker or dealer holds itself out to buy or sell shares of such class of stock at the quoted price. In this regard, the REIT has received indications that at least two brokers or dealers are willing to regularly quote and make a market in the Units on the OTC Pink and/or the OTCQX. For each calendar quarter during which the Units are regularly quoted on the OTC Pink and/or the OTCQX, the Units should be treated as "regularly traded" on an established securities market in the U.S. (the "**U.S. Publicly Traded Exception**") and, accordingly, gain on sales of Units by Non-U.S. Holders that own 10% or less of the outstanding Units during the applicable testing period would not be subject to U.S. federal income tax. Investors are cautioned that there can be no assurances that there will be at least two brokers or dealers regularly quoting the Units on the OTC Pink and/or the OTCQX in any particular calendar quarter. In addition, neither the Code, the applicable Treasury Regulations, administrative pronouncements nor judicial decisions provide guidance as to the frequency or duration with which the Units must be quoted during a calendar quarter to be "regularly quoted". U.S. tax counsel to the REIT believes that it is reasonable to interpret this exception to the effect that, so long as the brokers or dealers regularly quote the Units at any time during a calendar quarter, any gain from a sale at any time during the quarter would not be subject to U.S. federal income tax for Non-U.S. Holders that own 10% or less of the outstanding Units during the applicable testing period. Due to the lack of guidance from the IRS, however, investors are cautioned that there can be no assurance the IRS would concur in this interpretation.

Management believes that the Units may satisfy the U.S. Publicly Traded Exception and may satisfy the TSXV Publicly Traded Exception in the future. However, if neither the U.S. Publicly Traded Exception nor the TSXV Publicly Traded Exception is satisfied, the sale of Units by a Non-U.S. Holder may be subject to taxation under FIRPTA with the result that the Non-U.S. Holder would be required to file a U.S. federal income tax return and would be subject to the same treatment as a U.S. Holder with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals, and the purchaser of Units could be required to withhold 15% of the purchase price and remit such amount to the IRS.

Gain from the sale of Units that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a Non-U.S. Holder in two cases: (1) if the Non-U.S. Holder's investment in Units is effectively connected with a U.S. trade or business conducted by such Non-U.S. Holder, the Non-U.S. Holder will be subject to the same treatment as a U.S. Holder with respect to such gain, or (2) if the Non-U.S. Holder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States, the nonresident alien individual will be subject to a 30% U.S. federal income tax on the individual's capital gain. In addition, even if the REIT is a domestically controlled qualified investment entity, upon disposition of Units (subject to the 10% exception applicable to "regularly traded" stock described above), a Non-U.S. Holder may be treated as having gain from the sale or exchange of a USRPI if the Non-U.S. Holder (1) disposes of Units within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI, and (2) acquires, or enters into a contract or option to acquire, other Units within 30 days after such ex-dividend date.

Special FIRPTA Rules. Recently enacted amendments to FIRPTA create special rules that modify the application of the foregoing FIRPTA rules for particular types of Non-U.S. Holders, including "qualified foreign pension funds" and their wholly-owned non-U.S. subsidiaries and certain widely-held, publicly traded "qualified collective investment vehicles". Non-U.S. Holders are urged to consult their own tax advisors regarding the applicability of these or any other special FIRPTA rules to their particular investment in Units.

Non-U.S. Holders are urged to consult their tax advisors regarding the U.S. federal, state, local and non-U.S. income and other tax consequences of owning Units.

Backup Withholding and Information Reporting

The applicable withholding agent must report annually to the IRS and to each Non-U.S. Holder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the Non-U.S. Holder resides under the provisions of an applicable income tax treaty. A Non-U.S. Holder may be subject to backup withholding unless applicable certification requirements are met.

Payment of the proceeds of a sale of Units within the United States is subject to both backup withholding and information reporting unless the beneficial owner certifies under penalties of perjury that it is not a U.S. person for U.S. federal income tax purposes (and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person for U.S. federal income tax purposes) or the holder otherwise establishes an exemption. Payment of the proceeds of a sale of Units conducted through certain U.S. related financial intermediaries is subject to information reporting (but not backup withholding) unless the financial intermediary has documentary evidence in its records that the beneficial owner is not a U.S. person for U.S. federal income tax purposes and specified conditions are met or an exemption is otherwise established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against such holder's U.S. federal income tax liability provided the required information is timely furnished to the IRS.

Other Tax Considerations

Legislative or Other Actions Affecting Real Estate Investment Trusts

The present U.S. federal income tax treatment of real estate investment trusts may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time. In particular, on December 22, 2017 the Tax Cuts and Jobs Act was signed into law. The Tax Cuts and Jobs Act makes significant changes to the U.S. federal income tax rules for taxation of individuals and corporations, generally effective for taxable years beginning after December 31, 2017. In addition to reducing corporate and non-corporate tax rates, the Tax Cuts and Jobs Act eliminates or restricts various deductions. Most of the changes applicable to individuals are temporary and apply only to taxable years beginning after December 31, 2017 and before January 1, 2026. The Tax Cuts and Jobs Act makes numerous large and small changes to the tax rules that do not affect REITs directly but may affect the Unitholders and may indirectly affect the REIT. The real estate investment trust rules are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department which may result in statutory changes as well as revisions to the Treasury Regulations and interpretations thereof. Changes to the U.S. federal income tax laws and interpretations thereof could adversely affect an investment in Units.

Foreign Account Tax Compliance Act

Withholding generally is required, at a rate of 30%, on dividends in respect of Units, and on gross proceeds from the sale, after December 31, 2018, of Units, held by or through certain non-U.S. financial institutions (including investment funds), unless such institution either (1) enters into an agreement with the U.S. Treasury Department to report, on an annual basis, information with respect to shares in the institution held by certain U.S. persons and by certain non-U.S. entities that are wholly or partially owned by U.S. persons and to withhold on certain payments; or (2) operates in a jurisdiction that has entered into an agreement with the U.S. Treasury Department requiring similar reporting to such jurisdiction or to the U.S. Treasury Department and complies with such agreement. Accordingly, the entity through which Units are held will affect the determination of whether such withholding is required. Similarly, dividends in respect of, and gross proceeds from the sale (beginning after December 31, 2018) of, Units held by an investor that is a non-financial non-U.S. entity generally are (or will be) subject to withholding at a rate of 30%, unless such entity either (1) certifies to the REIT that such entity does not

have any "substantial United States owners"; or (2) provides certain information regarding the entity's "substantial United States owners", which the REIT will in turn provide to the IRS. The REIT will not pay any additional amounts to Unitholders in respect of any amounts withheld under the foregoing rules. Prospective Unitholders are encouraged to consult their tax advisors regarding the possible implications of the legislation imposing such withholding on their investment in Units.

State, Local and Non-U.S. Taxes

The REIT and its subsidiaries and Unitholders may be subject to state, local or non-U.S. taxation in various jurisdictions including those in which they transact business, own property or reside. The state, local or non-U.S. tax treatment of the REIT and that of the Unitholders may not conform to the U.S. federal income tax treatment discussed above. Any non-U.S. taxes that the REIT incurs do not pass through to Unitholders as a credit against their U.S. federal income tax liability. Prospective investors should consult their tax advisors regarding the application and effect of state, local and non-U.S. income and other tax laws on an investment in Units.

PLAN OF DISTRIBUTION

General

Pursuant to the terms and conditions of the agency agreement (the "**Agency Agreement**") entered into between the REIT, the Promoter and the Agent, the Agent has agreed to conditionally offer the Units to be issued under the Offering on a "best efforts basis" until April 12, 2019, but in any event not later than 90 days after a receipt for a final prospectus is issued. If one or more amendments to the final prospectus are filed and the principal securities regulatory authority has issued a receipt for any such amendment, the distribution under this prospectus will not continue for a period of more than 90 days after the latest date of a receipt for any such amendment. In any case, the total period of distribution under the Offering will not continue for a period of more than 180 days from the date of the receipt for the final prospectus. The Agent will not be acting as agent or receive any compensation for the distribution of 3,452,014 Units to certain persons in consideration for their indirect contribution of ownership interests in US Holdco.

The Offering Price of the Units has been determined by negotiation between the REIT, the Promoter and the Agent. In consideration for its services in connection with the Offering, the REIT has agreed to pay the Agent: (i) a fee equal to $0.50 per Unit issued under the Offering and (ii) a right of first refusal to act as lead agent/underwriter and lead bookrunner in relation to any and all future public equity or quasi-equity offerings by NREO and/or the REIT on any Canadian exchange for a period of 36 months from the time of Listing.

The Offering is being made in each of the provinces of Canada (other than Quebec). The Units to be issued under the Offering will be offered in each of the provinces of Canada (other than Quebec) through the Agent or its affiliates who are registered to offer the Units for sale in such provinces and such other registered dealers as may be designated by the Agent. Subject to applicable law, and residency restrictions under the Declaration of Trust, the Agent may offer the Units outside of Canada.

There is currently no market through which the Units may be sold and purchasers may not be able to resell Units purchased under this prospectus. This may affect the pricing of the Units in the secondary market, the transparency and availability of trading prices, the liquidity of the Units and the extent of issuer regulation (see "Risk Factors").

Closing is expected to occur on March 29, 2019 or such other date as the REIT and the Agent may agree, but in any event not later than April 12, 2019. The TSXV has conditionally approved the listing of the Units. Listing is subject to the REIT fulfilling all of the requirements of the TSXV, including the distribution of the Units to a minimum number of public securityholders.

As of the date of this prospectus, the REIT does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the

Toronto Stock Exchange, Aequitas NEO Exchange Inc., a U.S. marketplace (as defined in National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**"), or a marketplace outside Canada and the United States of America ("other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets opened by PLUS Markets Group plc.").

All of the Units qualified under this prospectus will be freely tradeable without restriction or further registration under applicable Canadian securities laws.

The obligations of the Agent under the Agency Agreement are subject to certain closing conditions and may be terminated at their discretion on the basis of their assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events.

Pursuant to the Agency Agreement, the REIT and the Promoter have agreed to indemnify the Agent and its directors, officers, employees and agents against certain liabilities, including, without limitation, civil liabilities under Canadian securities legislation, and to contribute to any payments the Agent may be required to make in respect thereof.

The Units have not been and will not be registered under the U.S. Securities Act or any U.S. state securities laws and may not be offered or sold in the United States except in transactions exempt from the registration requirements of the U.S. Securities Act and applicable state securities laws. Accordingly, except to the extent permitted by the Agency Agreement, the Units may not be offered or sold within the United States.

The Agent proposes to offer the Units to issued under the Offering to the public initially at the Offering Price. After the Agent has made a reasonable effort to sell all of such Units at the Offering Price, the Offering Price of the Units may be decreased and may be further changed from time to time to amounts not greater than the Offering Price, and the compensation realized by the Agent will be decreased by the amount that the aggregate price paid by the purchasers of the Units is less than the amount paid by the Agent to the REIT.

NCI System

Subscriptions for the Units will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Offering will be conducted under the NCI book-based system administered by CDS. Units registered in the name of CDS or its nominee will be deposited electronically with CDS on an NCI basis at the Closing. Units must be purchased or transferred through a CDS participant and all rights of holders of Units must be exercised through, and all payments or other property to which such holder is entitled will be made or delivered by, CDS or the CDS participant through which the holder of Units holds such Units. Beneficial owners of Units will not be entitled to receive physical certificates evidencing their ownership of Units.

USE OF PROCEEDS

The net proceeds of the Offering are estimated to be approximately $3,600,000 after deduction of the Agent's fee and will be used to fund a portion of the expenses of the Offering.

RISK FACTORS

The REIT faces a variety of significant and diverse risks, many of which are inherent in the business conducted by the REIT. Described below are certain risks that could materially affect the REIT and the value of the Units. Other risks and uncertainties that the REIT does not presently consider to be material, or of which the REIT is not presently aware, may become important factors that affect the REIT's future financial condition and results of operations. The occurrence of any of the risks discussed below could materially and adversely affect the business, prospects, financial condition, results of operations, cash flow or the ability of the REIT to make cash distributions to Unitholders or value of the Units of the REIT. Prospective purchasers of the Units should carefully consider these risks before investing in the Units.

Risk Factors Related to the Hotel and Lodging Industry

Operating Risks in the Hotel Industry

All real property investments are subject to a degree of risk and uncertainty and are affected by various factors, including general economic conditions and local real estate markets. The business of the REIT and the REIT's ability to make distributions to Unitholders may be adversely affected by various operating risks common to the hotel industry, including competition; over-building; dependence on business travel and tourism; changes in taxes and governmental regulations that influence or set wages, prices or interest rates; availability and cost of capital necessary to fund investments, capital expenditures and service interest, principal or other debt obligations; changes in operating costs, shortages of labour, risks of unionization of labour, increases in the costs of food and liquor; receipt and/or maintenance of licenses and permits with local authorities; relationships with brand franchisors; the ability of other lodging alternatives to attract and retain customers; changes in local market conditions due to changes in general or local economic conditions and neighbourhood characteristics, and building structure and building system, health, or hygiene issues rendering properties uninhabitable on a temporary or long term basis. Any of these factors could limit or reduce the prices charged for the REIT's products or services. As a result, any of these factors can reduce the REIT's profits and limit its opportunities for growth.

Exogenous Events

The hotel industry is subject to exogenous events outside the control of hotel owners, hotel managers, and hotel franchisors that can impact the financial performance of the industry. These factors include war; terrorist activities or threats and heightened travel security measures instituted in response to such events; outbreaks of pandemic or contagious diseases; natural disasters, such as earthquakes, gas leaks, fires, hurricanes and floods; and instability or perceived instability in domestic political and geo-political conditions. All of the above factors may adversely affect the REIT revenues and/or operating expenses and certain of these factors may increase the REIT's capital expenditure liabilities.

Cyclical Nature of the Hotel Industry

The hotel industry is cyclical. Macroeconomic and other factors beyond the REIT's control can reduce demand for lodging products and services, including demand for rooms at properties owned and managed by the REIT. These factors include changes and volatility in general economic conditions, including: the severity and duration of any downturn in the U.S. or global economy and financial markets; changes in the desirability of particular locations or travel patterns of customers; decreased corporate budgets and spending; low consumer confidence; depressed housing prices; financial condition of the airline and other transportation-related industries and its impact on travel; oil prices and travel costs; and cyclical over-building in the hotel ownership industry. These factors can adversely affect individual properties, particular regions or the REIT's business as a whole. Any one or more of these factors could limit or reduce the demand, or the rates the REIT's properties are able to charge for rooms or services or the prices at which the REIT is able to sell any property, which could adversely affect the REIT's business, results of operations and financial condition.

The Presence of Online Travel Agencies and Alternative Lodging Marketplaces

The hotel industry may be affected by advances in technology. Consumers' growing use of internet travel intermediaries ("**OTAs**") and alternative lodging marketplaces may adversely affect the REIT'S profitability. The REIT's hotel guest rooms may be booked through OTAs such as Expedia.com, Travelocity.com, Hotels.com, etc. As guest bookings through OTAs increase, these intermediaries may be able to obtain higher commissions, reduced room rates and other significant contract concessions from the REIT. Moreover, OTAs attempt to influence consumer choice behavior by increasing the visibility and importance of price, reviews and general indicators of quality (descriptors such as "four-star lakeside hotel") at the expense of brand identification on their websites and mobile applications. OTAs attract consumers by offering innovation, ease of use platforms, multiple travel products, membership programs, the ability to package travel products across different suppliers (such as car rental, guest room booking, activities tickets etc.) in one transaction, and other marketing techniques. OTAs hope that consumers will eventually develop loyalties to their online reservation system rather than to the brands under which hotel

properties are franchised. The increasing reliance of consumers on online intermediaries and the continued expansion in technologies may negatively impact the strength of the REIT's partner brands, traditional distribution platforms and profit margins.

Advances in technology have made alternative lodging accommodations a direct source of competition to the hotel industry. Alternative lodging marketplaces, such as Airbnb and HomeAway, operate websites and mobile applications that market available furnished, privately-owned residential properties, including homes, condominiums and vacation homes, that can be rented on a nightly, weekly or monthly basis. The influx of these lodging accommodations traditionally not available to consumers and the increased acceptance of these options by consumers may lead to a reduction in demand for conventional hotel guest rooms and to an increase in supply of lodging alternatives. If the use of alternative lodging marketplaces significantly increases, particularly among the REIT's key customer and location segments, its profitability may be adversely affected.

Competition

The lodging sector is highly competitive. The REIT faces competition from a number of sources, including from Airbnb and from other hotels located in the immediate vicinity of the properties comprising the Initial Portfolio and the broader geographic areas where the REIT's hotels are and will be located. The REIT's properties compete on the basis of location, room rates, quality, service levels, reputation and reservations systems, among many factors. The REIT also faces competition from alternative lodging options such as Airbnb that have and may continue to add guest accommodations that compete with hotel inventory. OTAs may capture a greater share of guest bookings, which would have a negative impact on the strength of brands and their distribution platforms, while also adding to the REIT's expenses in the form of fees to the OTAs. Such competition may reduce occupancy rates and revenues of the REIT and could have an adverse effect on the REIT's business, cash flows, financial condition and results of operations and the REIT's ability to make distributions to Unitholders. Increases in the cost to the REIT of acquiring hotel properties may adversely affect the ability of the REIT to acquire such properties on favourable terms and may otherwise have an adverse effect on the REIT's business.

Liquidity

Real property investments are relatively illiquid. This illiquidity will tend to limit the ability of the REIT to respond to changing economic or investment conditions. If the REIT were required to liquidate assets quickly, there is a risk the proceeds realized from such sale would be less than the book value of the assets or otherwise less than what would otherwise be expected to be realized under normal circumstances. By specializing in hotel properties, the REIT is exposed to adverse effects on that segment of the real estate market and does not benefit from a broader diversification of its portfolio by property class.

Economic and Demographic Environment

Consumer demand for the products and services offered by the REIT's portfolio is closely linked to the performance of the general economy and is sensitive to business and personal discretionary spending levels. Declines in consumer demand due to adverse general economic conditions, risks affecting or reducing travel patterns, lower consumer confidence or adverse political conditions can lower the revenues and profitability of the REIT's properties.

Concentration in Upper Upscale Segment

The REIT will primarily own interests in hotels in the upper upscale segment. The REIT will not seek to invest in assets selected to reduce the risks associated with an investment in this segment and will be subject to risks inherent in investing in a single sector of a market.

Seasonality of the Hotel Industry

The seasonality of the hotel industry could have a material adverse effect on the REIT. The hotel industry is seasonal in nature, which can be expected to cause quarterly fluctuations in revenues. The REIT's quarterly earnings may be adversely affected by factors outside the REIT's control, including weather conditions and poor economic factors in certain markets in which the REIT operates. This seasonality can be expected to cause periodic fluctuations in room revenues, occupancy levels, room rates and operating expenses in particular hotels. The REIT can provide no assurances that cash flows will be sufficient to offset any shortfalls that occur as a result of these fluctuations. As a result, the REIT may have to enter into short-term borrowings in certain quarters in order to make distributions to Unitholders and the REIT can provide no assurances that such borrowings will be available on favourable terms, if at all. Consequently, volatility in financial performance resulting from the seasonality of the hotel industry could have a material adverse effect on the REIT.

Risk Factors Related to the Business of the REIT

Acquisitions

The REIT's business plan includes, among other things, growth through identifying suitable acquisition opportunities and pursuing such opportunities. If the REIT is unable to manage its growth effectively, it could adversely impact the REIT's financial position and results of operations and decrease the amount of cash available for distribution. There can be no assurance as to the pace of growth through property acquisitions or that the REIT will be able to acquire assets on an accretive basis and, as such, there can be no assurance that distributions to Unitholders will increase in the future. Acquired properties may be subject to unknown, unexpected or undisclosed liabilities which could have a material adverse impact on the operations and financial results of the REIT. Representations and warranties given by third parties to the REIT may not adequately protect against these liabilities and any recourse against third parties may be limited by the financial capacity of such third parties. Furthermore, it is not always possible to obtain from the seller the records and documents that are required in order to fully verify that the buildings to be acquired are constructed in accordance, and that their use complies with, planning laws and building code requirements. Accordingly, in the course of acquiring a property, specific risks might not be or might not have been recognized or correctly evaluated. These circumstances could lead to additional costs and could have a material adverse effect on revenues from the relevant properties. The REIT's ability to acquire properties on satisfactory terms and successfully integrate and operate them is subject to the following additional risks: (a) the REIT may be unable to acquire desired properties because of competition from other real estate investors with more capital, including other real estate operating companies, real estate investment trusts and investment funds; (b) the REIT may acquire properties that are not accretive to results upon acquisition, and the REIT may not successfully manage and lease those properties to meet its expectations; (c) competition from other potential acquirers may significantly increase the purchase price of a desired property; (d) the REIT may be unable to generate sufficient cash from operations, or obtain the necessary debt or equity financing to consummate an acquisition or, if obtainable, financing may not be on satisfactory terms; (e) the REIT may need to spend more than budgeted amounts to make necessary improvements or renovations to acquired properties; (f) agreements for the acquisition of properties are typically subject to customary conditions to closing, including satisfactory completion of due diligence investigations, and the REIT may spend significant time and money on potential acquisitions that the REIT does not consummate; (g) the REIT may be unable to quickly and efficiently integrate new acquisitions, particularly acquisitions of portfolios of properties, into existing operations; (h) market conditions may result in lower than expected room revenues; and (i) the REIT may acquire properties without any recourse, or with only limited recourse, for liabilities, whether known or unknown, such as clean-up of environmental contamination, claims by tenants, vendors or other persons against the former owners of the properties and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties. The REIT will also be relying upon the Advisor as a source of potential acquisition opportunities and there is no certainty that suitable properties may be available to the REIT. If the REIT cannot complete property acquisitions on favourable terms, or operate acquired properties to meet the REIT's goals or expectations, the REIT's business, financial condition, results of operations and cash flow, the per Unit trading price and the REIT's ability to satisfy debt service obligations and to make distributions to the Unitholders could be materially and adversely affected.

Franchise Agreements and Concentrated Brand Family

The REIT (or subsidiaries thereof) will operate a significant portion of the hotels pursuant to franchise or license agreements with nationally recognized hotel brands. Management believes that building brand value is critical to increased demand and the strengthening of customer loyalty. All of the hotels in the REIT's Initial Portfolio utilize brands owned by Hilton, Marriott or InterContinental Hotels Group. Consequently, if market recognition or the positive perception of Hilton, Marriott or InterContinental Hotels Group is reduced or compromised, the goodwill associated with the Hilton, Marriott or InterContinental Hotels Group-branded hotels in the REIT's portfolio may be adversely affected. Franchise agreements contain specific standards for, and restrictions and limitations on, the operation and maintenance of the REIT's hotels in order to maintain uniformity within the franchisor system. The REIT may be required to incur costs to comply with these standards and these standards could potentially conflict with the REIT's ability to create specific business plans tailored to each property and to each market. Failure to comply with these brand standards may result in termination of the applicable franchise or license agreement. Upon any such termination, the REIT would be required to rebrand the hotel, which could result in substantial relicensing or rebranding costs, a decline in the value of the hotel, the loss of marketing support and participation in guest loyalty programs, and harm the REIT's relationship with the franchisor, impeding the REIT's ability to operate other hotels under the same brand. If any of the foregoing were to occur, it could have a material adverse effect on the REIT.

Regulation and Changes in Applicable Laws

The REIT's operations must comply with numerous federal, state and local laws and regulations, some of which may conflict with one another or be subject to limited judicial or regulatory interpretations. These laws and regulations may include zoning laws, building codes, environmental laws, health and food safety laws and regulations and other laws generally applicable to hotel business operations. Non-compliance with laws could expose the REIT to liability. Lower revenue growth or significant unanticipated expenditures may result from the REIT's need to comply with changes in applicable laws, including (i) laws imposing environmental remedial requirements and the potential liability for environmental conditions existing on properties or the restrictions on discharges or other conditions; or (ii) other governmental rules and regulations or enforcement policies affecting the development, use and operation of the REIT's properties, including changes to building codes and fire and safety codes.

Environmental Matters

The REIT is subject to various requirements (including federal, state and municipal laws, as applicable) relating to environmental matters. Such requirements provide that the REIT could be, or become, liable for environmental or other harm, damage or costs, including with respect to the release of hazardous, toxic or other regulated substances into the environment and/or affecting persons, and the removal or other remediation of hazardous, toxic or other regulated substances that may be present at or under its properties, including lead-based paint, asbestos, polychlorinated biphenyls, petroleum-based fuels, mercury, volatile organic compounds, underground storage tanks, pesticides and other miscellaneous materials. Such requirements often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release or presence of such materials. Additional liability may be incurred by the REIT with respect to the release of such substances from the REIT's properties to properties owned by third parties, including properties adjacent to the REIT's properties or with respect to the exposure of persons to regulated substances. The failure to remove or otherwise address such substances may materially adversely affect the REIT's ability to sell such property, maximize the value of such property or borrow using such property as collateral security, and could potentially result in claims or other proceedings against the REIT. It is the REIT's operating policy to obtain or be entitled to rely on an environmental site assessment prior to acquiring a property. Where an environmental site assessment warrants further investigation, it is the REIT's operating policy to conduct further environmental assessments. Although such environmental assessments provide the REIT with some level of assurance about the condition of the properties, the REIT may become subject to liability for undetected contamination or other environmental conditions of its properties against which it cannot insure, or against which the REIT may elect not to insure where insurance premium costs are considered to be disproportionate to the assessed risk, which could have a material adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to Unitholders.

Environmental laws and other requirements can change and the REIT may become subject to more stringent environmental laws and other requirements in the future. Compliance with more stringent environmental requirements, the identification of currently unknown environmental issues or an increase in the costs required to address a currently known condition may have an adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to Unitholders.

Fixed Costs and Capital Expenditures

As a matter of conducting business in the ordinary course, certain significant expenditures, including property taxes, maintenance costs, mortgage payments, insurance costs and related charges, must be made throughout the period of ownership of real property regardless of whether a property is producing sufficient income to pay such expenses. In order to retain desirable hotel destinations and to generate adequate revenue over the long-term, the REIT must maintain or, in some cases, improve a property's condition to meet market demand. These maintenance and improvement costs may be significant and may be costs the REIT is unable to pass on to its hotel guests. The REIT is also subject to utility and property tax risk relating to increased costs that the REIT may experience as a result of higher resource prices as well as its exposure to significant increases in property taxes. There is a risk that property taxes may be raised as a result of re-valuations of properties and their adherent tax rates. In some instances, enhancements to properties may result in significant increases in property assessments following a re-valuation. Additionally, utility expenses, mainly consisting of natural gas and electricity service charges, have been subject to considerable price fluctuations over the past several years. The REIT may incur general liability related to guests on its properties for which it is found negligent, or for claims that are otherwise not fully covered by insurance. Any significant increase in these resource costs may have an adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to Unitholders. The timing and amount of capital expenditures required by the REIT will indirectly affect the amount of cash available for distribution to Unitholders. Distributions may be reduced, or even eliminated, at times when the REIT deems it necessary to make significant capital or other expenditures.

Access to Capital

The real estate industry is highly capital intensive. The REIT will require access to capital to maintain its properties, as well as to fund its growth strategy and significant capital expenditures from time to time. There can be no assurance that the REIT will have access to sufficient capital or access to capital on terms favourable to the REIT for future property acquisitions, financing or refinancing of properties, funding operating expenses or other purposes. Further, in certain circumstances, the REIT may not be able to borrow adequate funds. Market conditions and unexpected volatility or illiquidity in financial markets may inhibit the REIT's access to long-term financing in the Canadian capital markets. As a result, it is possible that financing which the REIT may require in order to grow and expand its operations, upon the expiry of the term of financing, on refinancing any particular property owned by the REIT or otherwise, may not be available or, if it is available, may not be available on favourable terms to the REIT. Failure by the REIT to access required capital could have a material adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to holders of Units.

Financing Risks

The REIT estimates that its outstanding Debt at Closing will be approximately $257.5 million. There can be no assurance that the REIT will continue to generate sufficient cash flow from operations to meet required interest and principal payments. If the REIT is unable to meet interest or principal payments, it could be required to seek renegotiation of such payments or obtain additional equity, debt or other financing. The failure of the REIT to make or renegotiate interest or principal payments or obtain additional equity, debt or other financing could adversely impact the REIT's financial condition, liquidity and results of operations and decrease the amount of cash available for distribution to Unitholders. If the REIT defaults under a mortgage loan, it may lose the properties securing such loan.

The REIT will be subject to the risks associated with debt financing, including the risk that the mortgages and banking facilities secured by the REIT's properties will not be able to be refinanced or that the terms of such refinancing will not be as favourable as the terms of existing indebtedness, which may reduce Core FFO. There is a

risk that existing maturing mortgages will be subject to increased interest rates. To the extent that interest rates rise following Closing, the REIT's operating results and financial condition could be adversely affected and decrease the amount of cash available for distribution. The REIT's debt will also contain covenants that require it to maintain certain financial ratios on a consolidated basis. If the REIT does not maintain such ratios, its ability to make distributions will be limited. Additionally, to the extent that the REIT incurs variable rate indebtedness, such indebtedness will result in fluctuations in the REIT's cost of borrowing as interest rates change.

Privacy/Cybersecurity

The REIT, through the Manager, and its franchise partners are required to collect and maintain personal information about hotel employees and, through third-party providers, collect information about customers in connection with the processing of credit and debt transactions and as part of certain of the REIT's marketing programs. The collection and use of such information is regulation in the U.S. at the federal and state levels and in Canada at the federal and provincial levels, and the regulatory environment in these and other jurisdictions related to information security and privacy is increasingly demanding. At the same time, the REIT will rely increasingly on cloud computing and other technologies that result in third parties holding customer or hotel employee information on the REIT's behalf. If the security of the REIT's, its franchise partners' or third party providers' information systems used to store or process such information is compromised, or if the REIT or such third parties otherwise fail to comply with applicable laws and regulations, the REIT or its franchise partners could face litigation and the imposition of penalties that could adversely affect the REIT's financial performance. The brand reputations of the REIT's franchise partners could also be adversely affected from these types of security breaches or regulatory violations, which could impair revenues or the ability to attract and retain qualified hotel personnel.

Privacy and information security risks have generally increased in recent years because of the proliferation of new technologies, such as ransomware, and the increased sophistication and activities of perpetrators of cyber-attacks. On November 30, 2018, Marriott, one of the REIT's franchise partners and owner of Starwood Hotels & Resorts, disclosed that the guest reservation system of Starwood Hotels & Resorts had been breached, exposing personal and private information of millions of customers including names, phone numbers, e-mail addresses, passport numbers, dates of birth and credit card numbers and expiration dates. The security measures put in place by the REIT or its franchise partners cannot provide absolute security, and the REIT and its franchise partners' information technology infrastructure may be vulnerable to similar or other criminal cyber-attacks or data security incidents, including, ransom of data, such as, without limitation, resident and/or employee information, due to employee error, malfeasance, or other vulnerabilities. Any such incident could compromise the REIT's or such franchise partner's networks, and the information stored by the REIT or such franchise partner could be accessed, misused, publicly disclosed, corrupted, lost, or stolen, resulting in fraud, including wire fraud related to the REIT assets, or other harm. Moreover, if a data security incident or breach affects the REIT's systems or such franchise partner's systems or results in the unauthorized release of personally identifiable information, the REIT's or such franchise partner's reputation and brand could be materially damaged and the REIT may be exposed to a risk of loss or litigation and possible liability, including, without limitation, loss related to the fact that agreements with such franchise partners or such franchise partner's financial condition, may not allow the REIT to recover all costs related to a cyber breach for which they alone or they and the REIT should be jointly responsible for, which could result in a material adverse effect on the REIT's business, results of operations and financial condition.

In the future, the REIT and its franchise partners may expend additional resources to continue to enhance information security measures and/or to investigate and remediate any information security vulnerabilities. Despite these steps, there can be no assurance that the REIT or its franchise partners will not suffer a data security incident in the future, that unauthorized parties will not gain access to sensitive data stored on the REIT's systems or the systems of its franchise partners, or that any such incident will be discovered in a timely manner. Further, the techniques used by criminals to obtain unauthorized access to sensitive data, such as phishing and other forms of human engineering, are increasing in sophistication and are often novel or change frequently; accordingly, the REIT and its franchise partners may be unable to anticipate these techniques or implement adequate preventative measures.

Litigation Risks

In the normal course of the REIT's operations, whether directly or indirectly, it may become involved in, named as a party to or the subject of, various legal proceedings, including regulatory proceedings, tax proceedings and legal actions relating to personal injuries, property damage, property taxes, land rights, the environment and contract disputes. The outcome with respect to outstanding, pending or future proceedings cannot be predicted with certainty and may be determined in a manner adverse to the REIT and as a result, could have a material adverse effect on the REIT's assets, liabilities, business, financial condition and results of operations. Even if the REIT prevails in any such legal proceeding, the proceedings could be costly and time-consuming and may divert the attention of management and key personnel from the REIT's business operations, which could have a material adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to Unitholders.

Potential Conflicts of Interest

The Trustees will, from time to time, in their individual capacities, deal with parties with whom the REIT may be dealing, or may be seeking investments similar to those desired by the REIT. The interest of these persons could conflict with those of the REIT. The Declaration of Trust contains conflict of interest provisions requiring the Trustees to disclose their interests in certain contracts and transactions and to refrain from voting on those matters. In addition, certain decisions regarding matters that may give rise to a conflict of interest must be made by a majority of the independent Trustees only. See "Governance and Management of the REIT — Conflicts of Interest". Conflicts may also exist due to the fact that (i) certain Trustees of the REIT will be affiliated with the Advisor; (ii) the REIT and the Advisor will enter into certain arrangements; (iii) the Advisor and its affiliates are actively engaged in the ownership, development and management of hotel real estate properties; and (iv) the REIT may become involved in transactions that conflict with the interests of the foregoing. See "Arrangements with NexPoint".

Insurance Coverage May be Inadequate

The REIT will attempt to obtain adequate insurance of the type and coverage customarily obtained for properties similar to those owned by the REIT to cover significant areas of risk to it as an entity and to its properties. However, there are types of losses at the property level, generally catastrophic in nature, such as losses due to wars, acts of terrorism, earthquakes, floods, tornadoes, hurricanes, pollution or environmental matters, which are uninsurable or not economically insurable, or may be insured subject to limitations, such as large deductibles or co-payments. The REIT may not have adequate coverage for such losses. If any of the REIT's properties incurs a casualty loss that is not fully insured, the value of the REIT's assets will be reduced by any such uninsured loss. In addition, other than any working capital reserve or other reserves the REIT may establish, it has no source of funding to repair or reconstruct any uninsured damaged property. Further, to the extent the REIT must pay unexpectedly large amounts for insurance, it could suffer reduced earnings that would result in lower distributions to Unitholders.

Degree of Leverage

The REIT's degree of leverage could have important consequences to Unitholders. For example, the degree of leverage could affect the REIT's ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, development or other general trust purposes, making the REIT more vulnerable to a downturn in business or the economy in general.

Limitations on Sale

The REIT may be required to expend funds to correct defects or to make improvements before a property can be sold. No assurance can be given that the REIT will have funds available to correct such defects or to make such improvements. In acquiring a property, the REIT may agree to lock-out provisions that materially restrict it from selling that property for a period of time or impose other restrictions, such as a limitation on the amount of debt that can be placed or repaid on that property or debt or other contracts that are not prepayable or terminable and must be assumed by a buyer. These provisions would restrict the REIT's ability to sell a property. These factors and

any others that would impede the REIT's ability to respond to adverse changes in the performance of its properties could significantly affect the REIT's financial condition and operating results and decrease the amount of cash available for distribution to Unitholders. Additionally, franchisors need to approve replacement franchisees upon a sale and there is no assurance the REIT will be able to locate buyers who are approved franchisees.

Investments in Debt Instruments

The REIT may hold direct or indirect investments in mortgages and mortgage bonds (including participating or convertible mortgages). Adverse changes to the financial condition of a mortgagor with respect to a mortgage held directly or indirectly by the REIT could have an adverse impact on the REIT's ability to collect principal and interest payments from such mortgagor and therefore, cause a reduction in the REIT's ability to make distributions to Unitholders and in the value of that investment.

Based upon applicable laws governing the REIT's investment in debt instruments and the loans underlying the REIT's debt securities, the REIT's investments in debt may also be adversely affected by: (i) the operation of applicable laws regarding the ability to foreclose mortgage loans or to exercise other creditors' rights provided in the underlying loan documents; (ii) lender liability with respect to the negotiation, administration, collection or foreclosure of mortgage loans; (iii) penalties for violations of applicable usury limitations; and (iv) the impact of bankruptcy or insolvency laws.

Further, the REIT will not know whether the values of the properties securing the mortgage loans will remain at the levels existing on the dates of origination of those mortgage loans. If the values of the underlying properties fall, the risk to the REIT will increase because of the lower value of the security associated with such loans.

Laws Benefiting Disabled Persons

Laws benefiting disabled persons may result in unanticipated expenses being incurred by the REIT. Under the Americans with Disabilities Act of 1990 (the "**ADA**"), all places intended to be used by the public are required to meet certain federal requirements related to access and use by disabled persons. This and other federal, state and local laws may require modifications to the REIT's properties, or affect renovations of the properties. Non-compliance with these laws could result in the imposition of fines or an award of damages to private litigants and also could result in an order to correct any non-complying feature, which could result in substantial capital expenditures. Although the REIT believes the Initial Portfolio is in substantial compliance with the present requirements, the REIT may incur unanticipated expenses to comply with the ADA in connection with the ongoing operation or redevelopment of the REIT's properties.

Reliance on Key Personnel and Risk of Competing Demands

The management and governance of the REIT depends on the services of certain key personnel, including certain executive officers and the Trustees. The loss of the services of any key personnel and the inability of the REIT to attract and retain qualified and experienced personnel could have an adverse effect on the REIT and adversely impact the REIT's financial condition and results of operations and decrease the amount of cash available for distribution to Unitholders. The Advisor, Manager and their respective officers and certain key personnel will face competing demands relating to their time and service and may have conflicts in allocating their time to the REIT's business, which may cause operating results to suffer.

Reliance on the Manager

For the REIT and NHI to qualify as a real estate investment trust for U.S. federal income tax purposes, they are not permitted to operate or manage any of the hotel properties. As a result, the TRS Entities have entered into the Hotel Management Agreements with the Manager to operate the hotel properties. For this reason, the REIT and NHI are unable to directly implement strategic business decisions with respect to the daily operation and marketing of the

hotel properties, such as decisions with respect to the setting of room rates, food and beverage pricing, and certain similar matters.

Although the REIT and NHI plan to consult with the Manager with respect to strategic business plans, the Manager is under no obligation to implement any of the REIT's or NHI's recommendations with respect to these matters. The cash flow from the hotel properties may be adversely affected if the Manager fails to provide quality services and amenities or if it or its affiliates fail to maintain a quality brand name.

Restrictions on Certain Business Activities

As a real estate investment trust, the REIT and NHI are each subject to various restrictions on the types of income it can earn, assets it can own, and activities in which it can engage. Further, the REIT or NHI may not make otherwise attractive investments in order to maintain its qualification as a real estate investment trust under the Code. Business activities that could be restricted by applicable real estate investment trust rules under the Code include, but are not limited to, developing alternative uses of real estate and the ownership of hotels that are not leased to TRS Entities. Due to these restrictions, the REIT and NHI anticipate that the REIT and NHI will continue to conduct certain business activities, including, but not limited to, those mentioned above, in one or more TRS Entities. The TRS Entities are taxable as regular corporations under the Code and are subject to federal, state, and local taxation on their taxable income.

Litigation at the Property Level

The acquisition, ownership and disposition of real property carries certain specific litigation risks. Litigation may be commenced with respect to a property acquired by the REIT or its subsidiaries in relation to activities that took place prior to the REIT's acquisition of such property. In addition, at the time of disposition of an individual property, a potential buyer may claim that it should have been afforded the opportunity to purchase the asset or alternatively that such buyer should be awarded due diligence expenses incurred or damages for misrepresentation relating to disclosures made, if such buyer is passed over in favour of another as part of the REIT's efforts to maximize sale proceeds. Similarly, successful buyers may later sue the REIT under various damage theories, including those sounding in *tort*, for losses associated with latent defects or other problems not uncovered in due diligence.

New Markets

If the opportunity arises, the REIT may explore acquisitions of properties in new markets. Each of the risks applicable to the REIT's ability to acquire and successfully integrate and operate properties in its current markets is also applicable to its ability to acquire and successfully integrate and operate properties in new markets. In addition to these risks, the REIT may not possess the same level of familiarity with the dynamics and market conditions of any new markets, which could adversely affect its ability to expand into or operate in those markets. The REIT may be unable to achieve a desired return on its investments in new markets. If the REIT is unsuccessful in expanding into new markets, it could adversely affect its business, financial condition, results of operations and cash flow, the per Unit trading price and ability to satisfy debt service obligations and to make distributions to Unitholders.

Expanding Social Media Vehicles

The use of social media could cause the REIT to suffer brand damage or information leakage. Negative posts or comments about the REIT or its hotel properties on any social networking website could damage the REIT's reputation. In addition, employees or others might disclose non-public sensitive information relating to the REIT's business through external media channels. The continuing evolution of social media will present the REIT with new challenges and risks.

Employee Theft or Fraud

Certain of the REIT's employees have access to, or signature authority with respect to, bank accounts or other REIT assets, which exposes the REIT to the risk of fraud or theft. In addition, certain employees have access to key information technology ("**IT**") infrastructure and to hotel guest and other information that is commercially valuable. Should any employee compromise any of the REIT's IT systems, or misappropriate resident or other information, the REIT could incur losses, including significant financial or reputational harm, from which full recovery cannot be assured. The REIT may also not have insurance that covers any losses in full or that covers losses from particular criminal acts. Potential liabilities for theft or fraud are not quantifiable and an estimate of possible loss cannot be made.

Third-Party Approvals

While all consents of a material nature are expected to be obtained on or prior to Closing, certain consents or approvals deemed expedient in connection with Offering transactions may not yet have been obtained at the time of Closing and the consents obtained may be subject to conditions that are required to be fulfilled following Closing. Additionally, third-parties may request certain consents or approvals that were not considered to be necessary in connection with the Offering. To the extent that such approvals are not obtained or conditions relating thereto are not fulfilled, third-parties may claim for breach of contract or other damages. While management believes the risks related to third-party approvals are minimal, should any such claim be successful, an adverse impact could result to the REIT's financial condition and operating results, decreasing the amount of cash available for distribution.

Limited Operating History

The REIT was organized under the Declaration of Trust dated December 12, 2018 and NHI was organized under the Limited Liability Company Agreement dated as of January 8, 2019. Both the REIT and NHI have limited operating history. Their lack of operating history increases the risk and uncertainty for Unitholders.

Risk Factors Related to Real Estate Ownership

Interest Rate Risk

Changes in interest rates could adversely affect the REIT's cash flows and the REIT's ability to pay distributions and make interest payments. Interest rate risk is the combined risk that the REIT would experience a loss as a result of its exposure to a higher interest rate environment and the possibility that at the end of a mortgage term the REIT would be unable to renew the maturing debt either with the existing or a new lender ("**Interest Rate Risk**"). With the current uncertain world economic times, there is a heightened risk that not only will existing maturing mortgages be subject to increased interest rates, but the distinct possibility also exists that maturing mortgages will not be renewed or, if they are renewed, they will be renewed at significantly lower loan-to-value ratios. The REIT will seek to manage its Interest Rate Risk by negotiating, where possible, fixed interest rates on all of its mortgage debt.

Fluctuations in Capitalization Rates

As interest rates fluctuate in the lending market, generally so too do capitalization rates which affect the underlying value of real estate. As such, when interest rates rise, generally capitalization rates should be expected to rise. Over the period of investment, capital gains and losses at the time of disposition can occur due to the increase or decrease of these capitalization rates.

Risk Related to Insurance Renewals

Certain events could make it more difficult and expensive to obtain property and casualty insurance, including coverage for catastrophic risks. When the REIT's current insurance policies expire, the REIT may encounter difficulty in obtaining or renewing property or casualty insurance on its properties at the same levels of

coverage and under similar terms. Such insurance may be more limited and, for catastrophic risks (e.g., earthquake, hurricane, flood and terrorism), may not be generally available to fully cover potential losses. Even if the REIT is able to renew its policies at levels and with limitations consistent with its current policies, the REIT cannot be sure that it will be able to obtain such insurance at premiums that are reasonable. If the REIT were unable to obtain adequate insurance, and its properties experienced damages that would otherwise have been covered by insurance, it could have a material adverse effect on the REIT's business, cash flows, financial condition and results of operations and ability to make distributions to holders of Units.

Joint Ventures

The REIT may invest in or be a participant in joint ventures and partnerships with third parties in respect of its interests or investments in hotel properties. A joint venture or partnership involves certain additional risks which could result in additional financial demands, increased liability and a reduction in the REIT's control over hotel properties and its ability to sell their interests in a hotel property within a reasonable time frame.

Tax-Related Risk Factors

Canadian Tax Risks

(a) ***Residency of the REIT for Canadian and U.S. Tax Purposes*** — The REIT is resident in Canada for purposes of the Tax Act and is treated as a domestic corporation in the U.S. under the Code. As a result, the REIT is generally taxable on its worldwide income in both Canada and the U.S. However, in both jurisdictions, the REIT generally will not be subject to tax on the portion of its income that it distributes to Unitholders (subject to certain limitations and exceptions). Management of the REIT is of the view that the status of the REIT as taxable in both Canada and the U.S. is not likely to give rise to any material adverse consequences in the future as it is not anticipated that the REIT will be subject to material federal income tax in either Canada or the U.S. Nevertheless, the REIT's status as taxable on its worldwide income in both Canada and the U.S. could, in certain circumstances, have a material adverse effect on the REIT and the Unitholders. As a result of the REIT being resident in both Canada and the U.S., withholding taxes of both Canada and the U.S. will be relevant to distributions by the REIT and could result in double taxation to certain investors and other consequences. Accordingly, potential investors should carefully review both the "Certain Canadian Federal Income Tax Considerations" and the "Certain U.S. Federal Income Tax Considerations" sections.

(b) ***Mutual Fund Trust Status*** — The REIT intends to qualify as a "unit trust" and a "mutual fund trust" for purposes of the Tax Act. There can be no assurance that Canadian federal income tax laws and the administrative policies and practices of the CRA respecting the treatment of mutual fund trusts will not be changed in a manner that adversely affects the Unitholders. Should the REIT cease to qualify as a mutual fund trust under the Tax Act, the income tax considerations described under the heading "Certain Canadian Federal Income Tax Considerations" could be materially and adversely different in certain respects.

(c) ***Application of the SIFT Rules*** — The SIFT Rules will apply to a trust that is a SIFT trust. The REIT will not be considered to be a SIFT trust in respect of a particular taxation year and, accordingly, will not be subject to the SIFT Rules in that year, if it does not own any non-portfolio property and does not carry on business in Canada in that year. Management has advised counsel that the REIT has not and does not currently intend to own any non-portfolio property nor carry on a business in Canada.

If the SIFT Rules were to apply to the REIT, the impact to a Unitholder would depend on the status of the holder and, in part, on the amount of income distributed which would not be deductible by the REIT in computing its income in a particular year and what portions of the REIT's distributions constitute "non-portfolio earnings", other income and returns of capital. The likely effect of the SIFT Rules on the market for Units, and on the REIT's ability to finance future

acquisitions through the issue of Units or other securities is uncertain. If the SIFT Rules were to apply to the REIT, they could adversely affect the marketability of the Units, the amount of cash available for distribution and the after-tax return to investors.

(d) ***Foreign Tax Credits*** — The after-tax return from an investment in Units to a Unitholder resident in Canada for the purposes of the Tax Act will depend in part on the Unitholder's ability to recognize for purposes of the Tax Act U.S. taxes paid by the Unitholder through foreign tax credits or foreign tax deductions under the Tax Act (See "Certain Canadian Federal Income Tax Considerations"). A Unitholder's ability to recognize U.S. taxes through foreign tax credits or foreign tax deductions may be affected where the Unitholder does not have sufficient taxes otherwise payable under Part I of the Tax Act or sufficient U.S. source income in the taxation year the U.S. taxes are paid or where the Unitholder has other U.S. sources of income or losses, has paid other U.S. taxes or, in certain circumstances, has not filed a U.S. federal income tax return. Furthermore, foreign tax credits or foreign tax deductions will be dependent upon the Canadian federal and provincial tax rates and U.S. tax rates that will prevail in future years to apply to applicable sources of income. Unitholders are therefore advised to consult their own tax advisors in regards to foreign tax credits and foreign tax deductions.

A Unitholder that is an Exempt Plan will not be entitled to a foreign tax credit or deduction under the Tax Act in respect of any U.S. tax paid by the Exempt Plan (including any U.S. withholding tax imposed on distributions paid to the Exempt Plan). As a result, the after-tax return from an investment in Units to a Unitholder that is an Exempt Plan may be adversely affected. Such Unitholders should carefully review the "Certain U.S. Federal Income Tax Considerations" section, and consult with their own tax advisors in regards to U.S. tax payable in respect of an investment in Units.

If (i) a Unitholder holds, or has held, actually or constructively, more than 10% of the outstanding Units, as determined for U.S. federal income tax purposes, or (ii) the TSXV Publicly Traded Exception or the U.S. Publicly Traded Exception are not satisfied, a Unitholder may be subject to additional U.S. tax on a disposition of the Units and on certain distributions by the REIT. The proceeds receivable on a disposition of a Unit may not qualify as U.S. source income for purposes of the Tax Act (including for Canadian foreign tax credit purposes), and beneficiaries of certain Unitholders that are trusts may not be considered to have paid such tax for purposes of the Tax Act and, accordingly, may not be entitled to a foreign tax credit in respect of such U.S. tax for Canadian tax purposes.

(e) ***FAPI*** — FAPI earned directly or indirectly by US Holdco and any other controlled foreign affiliate of the REIT must be included in computing the income of the REIT for the fiscal year of the REIT in which the taxation year of US Holdco (or such other controlled foreign affiliate) ends, subject to a deduction for grossed-up FAT as computed in accordance with the Tax Act. It is not anticipated that the deduction for grossed-up FAT will materially offset any FAPI realized by the REIT, and accordingly any FAPI realized generally will increase the allocation of income by the REIT to Unitholders. In addition, as FAPI generally must be computed in accordance with Part I of the Tax Act as though the controlled foreign affiliate were a resident of Canada (subject to the detailed rules contained in the Tax Act), income or transactions may be taxed differently under foreign tax rules as compared to the FAPI rules and, accordingly, may result in additional income being allocated to Unitholders. For example, certain transactions that do not give rise to taxable income under the Code may still give rise to FAPI for purposes of the Tax Act.

(f) ***Non-Residents of Canada*** — The Tax Act may impose additional withholding or other taxes on distributions made by the REIT to Unitholders who are non-residents of Canada for the purposes of the Tax Act. These taxes and any reduction thereof under a tax treaty between Canada and another country may change from time to time. In addition, this Prospectus does not describe the tax consequences under the Tax Act to non-residents of Canada, which may be more adverse than the consequences to other Unitholders. Further, because the REIT is both resident in Canada for

purposes of the Tax Act and treated as a domestic corporation in the U.S. under the Code, withholding taxes of both Canada and the U.S. will be relevant to Unitholders who are both non-residents of Canada and Non-U.S. Holders and could, in certain circumstances, result in both Canadian and U.S. withholding tax applying to certain distributions to certain investors and other consequences. Prospective purchasers who are non-residents of Canada should consult their own tax advisors.

(g) ***Foreign Currency*** — For purposes of the Tax Act, the REIT generally is required to compute its Canadian tax results, including any FAPI earned, using Canadian currency. Where an amount that is relevant in computing a taxpayer's Canadian tax results is expressed in a currency other than Canadian currency, such amount must be converted into Canadian dollars using the appropriate exchange rate determined in accordance with the detailed rules in the Tax Act in that regard. As a result, the REIT may realize gains and losses for tax purposes and FAPI by virtue of the fluctuation of the value of foreign currencies relative to Canadian dollars.

(h) ***Changes in Law*** — There can be no assurance that Canadian federal income tax laws, the judicial interpretation thereof, the terms of the Treaty, or the administrative practices and policies of the CRA and the Department of Finance (Canada) will not be changed in a manner that adversely affects the REIT or Unitholders. Any such change could increase the amount of tax payable by the REIT or its affiliates or could otherwise adversely affect Unitholders by reducing the amount available to pay distributions or changing the tax treatment applicable to Unitholders in respect of such distributions.

U.S. Tax Risks

(a) ***The OP*** — All of the operations and assets of the REIT will be indirectly held through the OP. For so long as the OP is treated as a partnership for U.S. federal income tax purposes, the REIT will be treated as owning its proportionate share of the assets and income of the OP for the purposes of the REIT asset and income tests. An entity that would otherwise be treated as a partnership for U.S. federal income tax purposes may nonetheless be treated as a corporation for U.S. federal income tax purposes if it is a "publicly traded partnership" and certain other requirements are met. A partnership would be treated as a publicly traded partnership if its interests were traded on an established securities market or were readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. The LLC Agreement contains provisions intended to ensure that the OP is not considered a "publicly traded partnership". Accordingly, management does not anticipate that the OP will be treated as a publicly traded partnership that is taxable as a corporation. However, if the OP were classified as a "publicly traded partnership", the OP would be treated as a corporation rather than as a partnership for U.S. federal income tax purposes. In such case, the REIT would not be treated as owning its proportionate share of the assets and income of the OP for the purposes of the real estate investment trust asset and income test requirements (and, instead, would be treated as owning the stock of a corporation). This could cause the REIT to fail to qualify as a real estate investment trust. In addition, the income of the OP would become subject to U.S. federal corporate income tax.

(b) ***Qualification as a Real Estate Investment Trust*** — The REIT intends to operate in a manner that will allow it to qualify as a real estate investment trust for U.S. federal income tax purposes. Although the REIT does not intend to request a ruling from the IRS, as to its real estate investment trust qualification, it expects to receive an opinion of Baker & McKenzie LLP with respect to its qualification as a real estate investment trust in connection with the offering of its Units. Investors should be aware, however, that opinions of counsel are not binding on the IRS or any court. The opinion of Baker & McKenzie LLP will be based on Baker & McKenzie LLP's review and analysis of existing law and on certain representations as to factual matters made by the REIT, including representations relating to its assets and the sources of its income and its proposed method of operation. The opinion will be expressed as of the date issued and will not cover

subsequent periods and Baker & McKenzie LLP will have no obligation to advise the REIT or the holders of its Units of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in applicable law. Furthermore, both the validity of the opinion of Baker & McKenzie LLP, and the REIT's qualification as a real estate investment trust, will depend on the REIT's satisfaction of certain asset, income, organizational, distribution, Unitholder ownership and other requirements on a continuing basis, the results of which will not be monitored by Baker & McKenzie LLP. Accordingly, given the complex nature of the rules governing real estate investment trusts, the ongoing importance of factual determinations, including the potential tax treatment of investments the REIT makes, and the possibility of future changes in the REIT's circumstances, no assurance can be given that the REIT's actual results of operations for any particular taxable year will satisfy such requirements. Moreover, no assurance can be given that legislation, new regulations, administrative interpretations or court decisions will not change the tax laws with respect to qualification as a real estate investment trust or the U.S. federal income tax consequences of that qualification.

If the REIT fails to qualify as a real estate investment trust in any calendar year, it would be required to pay U.S. federal income tax (and any applicable state and local tax) on its taxable income at regular corporate rates, and dividends paid to the Unitholders would not be deductible by the REIT in computing its taxable income and would be taxable to the Unitholders under the rules generally applicable to corporate distributions.

A loss of real estate investment trust status would reduce the net earnings available for investment or distribution to Unitholders because of the additional tax liability which in turn could have an adverse impact on the value of the Units. Unless its failure to qualify as a real estate investment trust was subject to relief under U.S. federal tax laws, the REIT could not re-elect to qualify as a real estate investment trust until the fifth calendar year following the year in which it failed to qualify.

(c) ***Reliance on Section 7874 of the Code*** — The REIT intends to rely on Section 7874 of the Code to be classified as a domestic corporation for U.S. federal income tax purposes. For U.S. federal income tax purposes, an entity taxed as a corporation is generally considered to be a tax resident in the jurisdiction of its organization or incorporation. Under U.S. federal income tax law, an entity which is organized under the laws of Canada would generally be classified as a non-U.S. entity for U.S. federal income tax purposes. Section 7874 of the Code provides an exception to this general rule under which a non-U.S. incorporated entity may, in certain circumstances, be treated as a U.S. corporation for U.S. federal income tax purposes. These rules are complex and there is limited guidance regarding their application. Baker & McKenzie LLP, U.S. tax counsel to the REIT, will render an opinion in connection with the Offering in respect of the treatment of the REIT as a U.S. corporation under Section 7874, subject to certain representations, assumptions and factual matters.

If the REIT were deemed to be a non-U.S. corporation for U.S. federal income tax purposes, the REIT would fail to qualify as a real estate investment trust, and the intended benefits of the structure would not be achieved. This would result in adverse tax consequences. Additionally, the REIT could not re-elect to qualify as a real estate investment trust.

(d) ***Annual Distribution Requirement*** — To qualify as a real estate investment trust for U.S. federal income tax purposes, the REIT generally must distribute annually to its Unitholders a minimum of 90% of its net taxable income, determined without regard to the dividends-paid deduction and excluding net capital gains. The REIT will be subject to regular corporate income taxes on any undistributed real estate investment trust taxable income each year. Additionally, it will be subject to a 4% non-deductible excise tax on any amount by which distributions paid by the REIT in any calendar year are less than the sum of 85% of its ordinary income, 95% of its capital gain net income and 100% of its undistributed income from previous years. Payments the REIT makes to its Unitholders under Unitholders' rights of redemption will not be taken into account for purposes

of these distribution requirements. Compliance with the real estate investment trust distribution requirements may hinder the REIT's ability to grow, which could adversely affect the value of its Units. Furthermore, the REIT may find it difficult or impossible to meet distribution requirements in certain circumstances. The requirement to distribute most of its taxable income could cause the REIT to: (i) sell assets in adverse market conditions, (ii) borrow on unfavourable terms, (iii) distribute amounts that would otherwise be used to make future acquisitions or capital expenditures, or (iv) declare a taxable dividend in which Unitholders may elect to receive Units or cash (where the aggregate amount of cash to be distributed in such dividend may be subject to limitation), in each case, in order to comply with real estate investment trust requirements. These alternatives could adversely affect the REIT's economic performance.

Further, in order for distributions to satisfy the annual distribution requirements for real estate investments trusts and to provide the REIT and NHI with a real estate investment trust-level tax deduction, the dividends cannot be "preferential dividends." A distribution is not a preferential dividend if the distribution is pro rata among all outstanding shares of stock within a particular class and in accordance with the preferences among different classes of stock as set forth in a real estate investments trust's organizational documents. Because the REIT and NHI will not file annual and periodic reports under the U.S. Securities Act, certain exceptions to these rules may not apply to the REIT and NHI. The REIT and NHI intend to make distributions pro rata by class, as discussed under "Distribution Policy." Nevertheless, if the IRS were to take the position that the REIT or NHI paid a preferential dividend, the REIT or NHI may be deemed to have failed the 90% distribution test, and its status as a REIT could be terminated for the year in which such determination is made if the REIT or NHI were unable to cure such failure.

(e) ***Impact of Lease Characterization*** — To qualify as a real estate investment trust for U.S. federal income tax purposes, the REIT must satisfy two gross income tests, under which specified percentages of the REIT's gross income must be derived from certain sources, including "rents from real property". Rents paid by the TRS Entities to the OP and its subsidiaries pursuant to the leases of the REIT's hotel properties will constitute substantially all of the REIT's gross income. In order for such rent to qualify as "rents from real property" for purposes of the gross income tests, the leases must be respected as true leases for U.S. federal income tax purposes and not be treated as service contracts, joint ventures or some other type of arrangement. If the leases between the TRS Entities and the OP and its subsidiaries are not respected as true leases for U.S. federal income tax purposes, the REIT would fail to qualify as a real estate investment trust for U.S. federal income tax purposes.

(f) ***Impact of Real Estate Investment Trust Compliance on Performance*** — To qualify as a real estate investment trust for U.S. federal income tax purposes, the REIT must continually satisfy tests concerning, among other things, the sources of its income, the nature and diversification of its assets, the amounts that it distributes to the Unitholders and the ownership of the Units. The REIT may be required to make distributions to Unitholders at disadvantageous times or when it does not have funds readily available for distribution, and may be unable to pursue investments that would be otherwise advantageous to it in order to satisfy the source-of-income or asset diversification requirements for qualifying as a real estate investment trust. Thus, compliance with the real estate investment trust requirements may hinder the REIT's ability to operate solely on the basis of maximizing profits.

Additionally, at the close of each calendar quarter, the REIT must also satisfy five tests relating to the nature of its assets. First, at least 75% of the value of the REIT's total assets must be represented by some combination of designated real estate assets, cash, cash items, U.S. Government securities and, under some circumstances, stock or debt instruments purchased with new capital. Second, the value of any one issuer's securities that the REIT owns may not exceed 5% of the value of the REIT's total assets. Third, the REIT may not own more than 10% of any one issuer's outstanding securities, as measured by either value or voting power. The 5% and 10% asset tests do not apply to securities that qualify under the 75% asset test, or to securities of a

taxable REIT subsidiary and qualified REIT subsidiaries, and the 10% of value asset test does not apply to "straight debt" having specified characteristics and to certain other securities. Fourth, the aggregate value of all securities of taxable REIT subsidiaries that the REIT holds may not exceed 20% of the value of the REIT's total assets, with respect to taxable years beginning on and after January 1, 2018. Fifth, not more than 25% of the value of the REIT's assets may consist of certain debt instruments issued by publicly offered real estate investment trusts that are otherwise qualifying assets for purposes of the 75% test described above. If the REIT fails to comply with these requirements at the end of any calendar quarter, it must correct the failure within 30 days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing its real estate investment trust qualification and suffering adverse tax consequences.

(g) ***Ownership Limitations*** — In order for the REIT to qualify as a real estate investment trust for each taxable year under the Code (other than its first taxable year, during which this requirement is not yet applicable), no more than 50% in value of its outstanding Units may be owned, directly or indirectly, by five or fewer individuals during the last half of any taxable year. "Individuals" for this purpose include natural persons, private foundations, some employee benefit plans and trusts, and some charitable trusts. As of the Offering, the REIT does not satisfy this requirement.

The REIT has until the second half of its second taxable year (i.e., 2020) to satisfy this requirement. Management intends a subsequent equity offering prior to such time in order to sufficiently diversify the REIT's ownership in order to satisfy this requirement. However, there is no guarantee that this subsequent transaction will occur, or that it will sufficiently diversify the REIT's ownership in satisfaction of this requirement. Thus, there is no guarantee that this requirement will be timely satisfied.

If this requirement is not timely satisfied, then the REIT would fail to qualify as a real estate investment trust for U.S. federal income tax purposes. This would have detrimental tax consequences to the REIT and the holders of its Units. If the REIT fails to qualify as a real estate investment trust in any calendar year, it would be required to pay U.S. federal income tax (and any applicable state and local tax) on its taxable income at regular corporate rates, and dividends paid to the Unitholders would not be deductible by the REIT in computing its taxable income and would be taxable to the Unitholders under the rules generally applicable to corporate distributions. Further, a loss of real estate investment trust status would reduce the net earnings available for investment or distribution to Unitholders because of the additional tax liability which in turn could have an adverse impact on the value of the Units. In order to assist the REIT in qualifying as a real estate investment trust, ownership of its Units by any person is generally limited to 6.2% in value or number of Units, whichever is more restrictive, of any class or series of Units, except that certain exceptions will be made for certain owners of the REIT as of the Offering. In addition, these ownership limitations could have the effect of discouraging a takeover or other transaction in which holders of the Units might receive a premium for their Units over the then-prevailing market price or which holders might believe to be otherwise in their best interests.

(h) ***Other Taxes*** — Even if the REIT qualifies and maintains its status as a real estate investment trust, it may be subject to U.S. federal and state income taxes. The REIT may not be able to make sufficient distributions to avoid excise taxes applicable to real estate investment trusts. The REIT may also decide to retain income it earns from the sale or other disposition of its real estate assets and pay income tax directly on such income. In that event, the Unitholders would be treated as if they earned that income and paid the tax on it directly. The REIT may also be subject to state and local taxes on its income or property, either directly or at the level of the entities through which it indirectly owns its assets. Any U.S. federal or state taxes the REIT pays will reduce its cash available for distribution to the Unitholders.

In addition, in order to meet the real estate investment trust qualification requirements or to avert the imposition of the prohibited transactions tax discussed below, the REIT may hold some of its assets or conduct activities through subsidiary corporations (the taxable REIT subsidiaries) that

will be subject to corporate level income tax at regular rates. If the REIT lends money to a taxable REIT subsidiary, the taxable REIT subsidiary may be unable to deduct all or a portion of the interest paid to the REIT, which could result in an even higher corporate level tax liability. Furthermore, the Code imposes a 100% tax on certain transactions between a taxable REIT subsidiary and its parent real estate investment trust that are not conducted on an arm's length basis, including services provided by the taxable REIT subsidiary to such real estate investment trust or on behalf of such real estate investment trust. The REIT will structure transactions with any taxable REIT subsidiary on terms that it believes are arm's length to avoid incurring the 100% excise tax described above, but there can be no assurances that it will be able to avoid application of the 100% tax.

(i) ***Taxable REIT Subsidiaries*** — The REIT will hold some of its assets and conduct activities through the TRS Entities, which are taxable REIT subsidiaries. The REIT's taxable REIT subsidiaries will be subject to U.S. federal and state income tax on their taxable income, which consists of the revenues from the hotel properties leased by the TRS Entities, net of operating expenses (including management fees) for such hotel properties and rent paid to the OP and its subsidiaries. Accordingly, although the REIT's ownership of the TRS Entities allows it to participate in the operating income from the REIT's hotel properties in addition to receiving rent, that operating income is fully subject to income tax. The after-tax net income of the TRS Entities is available for distribution to the REIT.

(j) ***Impact of Management Arrangements on Qualification as a Real Estate Investment Trust*** — Rent paid by a lessee that is a "related party tenant" of the REIT will not be qualifying income for purposes of the two gross income tests applicable to real estate investment trusts. An exception is provided, however, for leases of "qualified lodging facilities" to a taxable REIT subsidiary so long as the hotels are managed by an "eligible independent contractor" and certain other requirements are satisfied. The REIT intends to take advantage of this exception. The REIT expects that the OP and its subsidiaries will lease all of the REIT's hotels to the TRS Entities, which are taxable REIT subsidiaries, and that the hotels will at all times be managed by "eligible independent contractors". Among other requirements, in order to qualify as an eligible independent contractor, the hotel manager must not own, directly or through its shareholders, more than 35% of the REIT's outstanding Units, and no person or group of persons can own more than 35% of the REIT's outstanding Units and the shares (or ownership interest) of the hotel management company (taking into account certain ownership attribution rules). The ownership attribution rules that apply for purposes of these 35% thresholds are complex, and monitoring actual and constructive ownership of the REIT's Units by the hotel management companies and their owners may not be practical. Accordingly, there can be no assurance that these ownership levels will not be exceeded.

In addition, for a hotel management company to qualify as an eligible independent contractor, such company or a related person must be actively engaged in the trade or business of operating "qualified lodging facilities" (as defined below) for one or more persons not related to the REIT or its taxable REIT subsidiaries at each time that such company enters into a hotel management contract with a taxable REIT subsidiary. The REIT believes the Manager operates qualified lodging facilities for certain persons who are not related to the REIT or its taxable REIT subsidiaries. However, no assurances can be provided that this will continue to be the case or that any other hotel management companies that the REIT may engage in the future will in fact comply with this requirement in the future. Failure to comply with this requirement would require the REIT to find other managers for future contracts, and, if the REIT hired a management company without knowledge of the failure, it could jeopardize the REIT's status as a real estate investment trust.

As noted above, each hotel with respect to which a TRS Entity pays rent must be a "qualified lodging facility". A "qualified lodging facility" is a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis, including customary amenities and facilities, provided that no wagering activities are conducted at or in connection

with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. The REIT believes that all of the hotels leased to the TRS Entities are qualified lodging facilities. Although the REIT intends to monitor future acquisitions and improvements of hotels, the real estate investment trust provisions of the Code provide only limited guidance for making determinations under the requirements for qualified lodging facilities, and there can be no assurance that these requirements will be satisfied in all cases.

(k) ***Prohibited Transactions Tax*** — The REIT's ability to dispose of property during its first few years of operations is restricted to a substantial extent as a result of its real estate investment trust status. Under applicable provisions of the Code regarding prohibited transactions by real estate investment trusts, the REIT will be subject to a 100% tax on any gain realized on the sale or other disposition of any property (other than foreclosure property) that it owns, directly or through any subsidiary entity, including the OP, but excluding any taxable REIT subsidiary, that is deemed to be inventory or property held primarily for sale to customers in the ordinary course of trade or business. The REIT intends to avoid the 100% prohibited transaction tax by (1) conducting activities that may otherwise be considered prohibited transactions through a taxable REIT subsidiary, (2) conducting operations in such a manner so that no sale or other disposition of an asset will be treated as a prohibited transaction, or (3) structuring certain dispositions of its properties to comply with certain safe harbours available under the Code for properties held at least two years. However, no assurance can be given that any particular property will not be treated as inventory or property held primarily for sale to customers in the ordinary course of a trade or business.

(l) ***Changes in Law*** — The present U.S. federal income tax treatment of real estate investment trusts may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time, which could affect the U.S. federal income tax treatment of an investment in the REIT. The U.S. federal income tax rules relating to real estate investment trusts constantly are under review by persons involved in the legislative process, the IRS and the U.S. Treasury Department, which results in frequent statutory changes and revisions to regulations and interpretations. Revisions in U.S. federal tax laws and interpretations thereof could adversely affect the REIT or cause it to change its investments and commitments and affect the tax considerations of an investment in it.

In particular, recently enacted legislation known as the Tax Cuts and Jobs Act makes wholesale changes to the Code. The effect of the many changes made in this legislation is highly uncertain, both in terms of direct effect on the taxation of an investment in Units and their indirect effect on the REIT's operations. As of the date of the Offering, changes made by the Tax Cuts and Jobs Act that could affect the REIT and Unitholders include, but are not limited to:

- temporarily reducing individual U.S. federal income tax rates on ordinary income (the highest individual U.S. federal income tax rate has been reduced from 39.6% to 37% for taxable years beginning after December 31, 2017 and before January 1, 2026);

- permanently eliminating the progressive corporate tax rate structure, which previously imposed a maximum corporate tax rate of 35%, and replacing it with a flat corporate tax rate of 21%;

- permitting a deduction for certain pass-through business income, including dividends received by certain Unitholders from the REIT that are not designated by the REIT as capital gain dividends or qualified dividend income, which will allow individuals, trusts, and estates to deduct up to 20% of such amounts for taxable years beginning after December 31, 2017 and before January 1, 2026;

- reducing the highest rate of withholding with respect to the REIT's distributions to non-U.S. Holders that are treated as attributable to gains from the sale or exchange of U.S. real property interests from 35% to 21%;

- limiting the REIT's deduction for net operating losses arising in taxable years beginning after December 31, 2017 to 80% of the REIT's taxable income (prior to the application of the dividends paid deduction);

- generally limiting the deduction for net business interest expense in excess of 30% of a business's "adjusted taxable income," except for taxpayers that engage in certain real estate businesses (including most equity real estate investment trusts) and elect out of this rule (provided that such electing taxpayers must use an alternative depreciation system with longer depreciation periods); and

- eliminating the corporate alternative minimum tax.

As of the date of the Offering, the principal direct tax effect of the legislation on U.S. Holders appears to be the allowance of a deduction of an amount equal to 20% of certain dividends from the REIT (subject to certain exceptions) that qualify under Section 199A of the Code. The complicated statutes, regulations, rulings and other administrative positions relating to the qualification of REITs and the taxation of them and their stockholders are subject to revision at any time.

The IRS has issued various Treasury Regulations, guidance, and rulings relating to the Tax Cuts and Jobs Act. Further, technical corrections legislation with respect to the Tax Cuts and Jobs Act has been proposed. The proposed legislation's final form and effect cannot be predicted and may be adverse. Many of the amendments will require further guidance through the issuance of Treasury Regulations in order to assess their effect. There may be substantial delay before such Treasury Regulations are promulgated, increasing the uncertainty as to the ultimate effect of the statutory amendments on the REIT.

There may also be future changes in U.S. federal tax laws, regulations, rules, and judicial and administrative interpretations applicable to the REIT and its business, the effect of which cannot be predicted. Prospective investors are urged to consult with their tax advisors regarding the possible effect of the Tax Cuts and Jobs Act on the REIT, its business, and its stockholders.

(m) ***FIRPTA*** — A non-U.S. person disposing of a U.S. real property interest, including shares of a U.S. corporation whose assets consist principally of U.S. real property interests, is generally subject to tax under FIRPTA on the gain recognized on the disposition and required to file a U.S. federal income tax return reporting this disposition. FIRPTA does not apply, however, to the disposition of stock in a real estate investment trust if the shares are considered "regularly traded on an established securities market" and the non-U.S. person does not hold, actually or constructively, more than 10% of the outstanding shares of the REIT at any time during the five-year period ending on the date of disposition or such shorter period that the shares were held.

For purposes of this exception, the TSXV is considered an "established securities market" and, as long as 100 or fewer persons do not own 50% or more of the Units, the Units should be treated as regularly traded on the TSXV if the TSXV Publicly Traded Exception is met. However, the REIT is closely held as of the Offering. As a result, these requirements will not be satisfied as of the Offering with respect to the REIT. Although management intends to further diversify the REIT's ownership such that these requirements will be satisfied in the future, there can be no assurance that these requirements will be satisfied with respect to the REIT.

The Units would be considered "regularly traded" on an established securities market for a calendar quarter if the established securities market is located in the United States and the Units are regularly quoted by more than one broker or dealer making a market in the Units through an interdealer quotation system in the United States. It is expected that the Units will be traded through an interdealer quotation system in the United States in a manner that would be considered "regularly traded on an established securities market" for purposes of this exception.

Investors are cautioned that there can be no assurances that there will be at least two brokers or dealers regularly quoting the Units on the OTC Pink or OTCQX in any particular calendar quarter. In addition, neither the Code, the applicable Treasury regulations, administrative pronouncements nor judicial decisions provide guidance as to the frequency or duration with which the Units must be quoted during a calendar quarter to be "regularly quoted". U.S. counsel to the REIT believes that it is reasonable to interpret this exception to the effect that, so long as the brokers or dealers quote the Units during a calendar quarter, any gain from a sale at any time during the quarter is not expected to be subject to U.S. federal income tax for Non-U.S. Holders that own 10% or less of all or a portion of the outstanding Units during the applicable testing period. Due to the lack of guidance from the IRS, however, investors are cautioned that there can be no assurance the IRS would concur in this interpretation.

However, if neither of these exceptions is satisfied, the sale of Units by a non-U.S. person would generally be subject to U.S. federal income tax at normal graduated rates with respect to gain recognized and the REIT would be required to withhold at a rate of 15% on distributions in excess of the REIT's current and accumulated earnings and profits. In addition, a purchaser of Units would be required to withhold tax at the rate of 15% of the amount realized from the sale and to report and to remit such tax to the IRS. Furthermore, under FIRPTA, if any non-U.S. person holds, actually or constructively, more than 10% of the outstanding Units, the REIT will be required to withhold 21% (or less to the extent provided in applicable Treasury Regulations) of any distribution to such Unitholder that could be designated by the REIT as a capital gain dividend. Any such withheld amount is creditable against such Unitholder's FIRPTA tax liability.

In order for the REIT to comply with its withholding obligations under FIRPTA, the Units are subject to notice requirements and transfer restrictions. Non-U.S. persons holding Units are required to provide the REIT with such information as the REIT may request. Furthermore, any non-U.S. person that would be treated as having acquired sufficient Units to be treated as owning more than 5% of the Units is required to notify the REIT by the close of the business day prior to the date of the transfer that would cause the non-U.S. person to own more than 5% of the Units. For the purpose of determining whether a non-U.S. person has acquired more than 5% of the Units, rules of constructive ownership apply which can attribute ownership of Units (i) among family members, (ii) to non-U.S. persons from entities that own Units, to the extent that such non-U.S. persons own interests in such entities, and (iii) to entities from non-U.S. persons that own interests in such entities. Under these attribution rules, Units of related entities (including related investment funds) may be aggregated to the extent of overlapping ownership. If any non-U.S. person that otherwise would be treated as having acquired sufficient Units to be treated as owning more than 5% of the Units fails to comply with the notice provisions described above, the excess Units (i.e., the excess of the number of Units they are treated as owning over an amount equal to 5% of the outstanding Units) will be sold, with such non-U.S. persons receiving the lesser of (i) its original purchase price for the excess Units, and (ii) the sale price of the excess Units (net of selling expenses). Any such non-U.S. person would also not have any economic entitlement to any distribution by the REIT on an excess Unit, and, if any such distributions are received by the non-U.S. person and are not repaid, the REIT is permitted to withhold from subsequent payments to the non-U.S. person up to the amount of such forfeited distributions. Non-U.S. persons holding Units are strongly advised to monitor their actual and constructive ownership of Units. See "Declaration of Trust — Restrictions on Ownership and Transfer — FIRPTA" for a more detailed discussion of these rules. Notwithstanding that a non-U.S. person may comply with the notice requirements and transfer restrictions described above, the REIT is entitled to withhold on

distributions as otherwise required by law, and, to the extent that the REIT has not sufficiently withheld on prior distributions, is entitled to withhold on subsequent distributions.

Risk Factors Related to the REIT's Relationship with the Advisor

Reliance on the Advisor and Manager

The REIT will rely on the Advisor's expertise in identifying acquisition opportunities, transaction execution, administrative services and asset management and hotel operations management capabilities. The REIT will also rely on the Advisor with respect to certain advisory services, including the services of the Chief Executive Officer, Chief Financial Officer and Chief Investment Officer. Consequently, the REIT's ability to achieve its investment objectives depends in large part on the Advisor and its ability to advise the REIT. This means that the REIT's investments are dependent upon the Advisor's business contacts within the U.S. lodging sector, its ability to successfully hire, train, supervise and manage personnel that have strong knowledge of real estate and the hotel industry in particular and its ability to operate its business in a manner that supports the REIT. If the REIT were to lose the services provided by the Advisor or its key personnel or if the Advisor or Manager fails to perform its obligations under its agreements with the REIT, the REIT's investments and growth prospects may decline. The REIT may be unable to duplicate the quality and depth of management available to it by becoming a self-managed company or by hiring another asset manager or hotel manager. Additionally, the Advisory Agreement and Hotel Management Agreement provide that, subject to certain exceptions, the REIT will not retain any other person to perform any asset management, hotel management or administrative services on its behalf. While the Trustees have oversight responsibility with respect to the services provided by the Advisor pursuant to the Advisory Agreement and the Manager pursuant to the Hotel Management Agreement, the services provided by the Advisor and the Manager will not be performed by employees of the REIT or its subsidiaries, but by the Advisor and Manager directly, and through entities to which it may subcontract its duties. See "Management and Franchise Agreements". As a result, the Advisor, directly and indirectly, will have the ability to influence many matters affecting the REIT and the performance of its properties now and in the foreseeable future. Furthermore, at any time, on 180 days' prior written notice following the date on which the Advisor ceases to be the Advisor of the REIT, the Advisor may terminate the license agreement with the REIT pursuant to which the REIT has the right to the use of the "NexPoint" name and trademark and related marks and designs. If the Advisor terminated the license agreement, the REIT would be required to change its name and this may adversely impact the REIT.

Risks Associated with External Advisory Agreement

The Advisory Agreement will have an initial term of two years, and upon completion of the initial term will continue in full force and effect, subject to early termination, so long as such continuance is approved at least annually by (i) the board of managers of NHI, and (ii) either (a) the Board or (b) a vote of the Unitholders. In the event that the REIT determines not to renew the Advisory Agreement, the REIT may be required to provide certain advance written notice and pay certain fees. Pursuant to the terms of the Advisory Agreement, there could be circumstances whereby the fees payable to the Advisor to carry out its duties thereunder are in excess of those expenses that would be incurred by the REIT on an annual basis if management of the REIT was performed by individuals employed directly by the REIT rather than by the Advisor. Furthermore, there is a risk that, because of the term and termination provisions of the Advisory Agreement, the termination of the Advisory Agreement may be uneconomical for the REIT and accordingly not in the best interest of the REIT. Therefore, there can be no assurance that the REIT will continue to have the benefit of the Advisor's services, including providing the REIT's executive officers, or that the Advisor will continue to be the REIT's advisor. If the Advisor should cease for whatever reason to be the advisor of the REIT, the REIT may be unable to engage an advisor on acceptable terms or the cost of obtaining substitute services, whether through an external advisor or by internalizing its management, may be greater than the fees the REIT pays the Advisor, and this may adversely impact the REIT's ability to meet its objectives and execute its strategy which could materially and adversely affect the REIT's cash flow, operating results and financial condition.

Past Performance not Predictor of Future Results

The past performance of the Advisor and the performance of the REIT are dependent on future events and are, therefore, inherently uncertain. The track records of the Advisor cannot be relied upon to predict future events due to a variety of factors, including, without limitation, varying business strategies, different local and national economic circumstances, different supply and demand characteristics, varying degrees of competition and varying circumstances pertaining to the real estate markets.

Risk Factors Related to the Offering and Structure of the REIT

Absence of a Prior Public Market

The TSXV has conditionally approved the listing of the Units. Listing is subject to the REIT fulfilling all of the requirements of the TSXV, including distribution of the Units to a minimum number of public securityholders.

There is currently no public market for the Units. The REIT cannot predict at what price the Units will trade and there can be no assurance that an active trading market will develop after the Closing.

A publicly traded real estate investment trust will not necessarily trade at values determined solely by reference to the underlying value of its real estate assets. Accordingly, the Units may trade at a premium or a discount to values implied by the Appraisal.

Potential Volatility of Unit Price

One of the factors that may influence the market price of the Units is the annual yield on the Units. An increase in market interest rates may lead purchasers of Units to demand a higher annual yield, which accordingly could adversely affect the market price of the Units. In addition, the market price of the Units may be affected by changes in general market conditions, fluctuations in the markets for equity securities and numerous other factors beyond the control of the REIT.

Restrictions on Redemption

It is anticipated that the redemption right attached to the Units will not be the primary mechanism by which holders of Units liquidate their investment. The entitlement of Unitholders to receive cash upon the redemption of their Units is subject to the following limitations: (i) the total amount payable by the REIT in respect of such Units and all other Units tendered for redemption in the same calendar month must not exceed $50,000 (provided that such limitation may be waived at the discretion of the Trustees); (ii) at the time such Units are tendered for redemption, the outstanding Units must be listed for trading on the TSXV or traded or quoted on another stock exchange or market which the Trustees consider, in their sole discretion, provides fair market value prices for the Units; (iii) the normal trading of Units is not suspended or halted on any stock exchange on which the Units are listed (or, if not listed on a stock exchange, on any market on which the Units are quoted for trading) on the Redemption Date or for more than five trading days during the 10-day trading period commencing immediately before the Redemption Date; and (iv) the redemption of the Units must not result in the delisting of the Units on the principal stock exchange on which the Units are listed.

Redemption Notes which may be distributed to holders of Units in connection with a redemption will not be listed on any exchange, no market is expected to develop in Redemption Notes and such securities may be subject to an indefinite "hold period" or other resale restrictions under applicable securities laws. Redemption Notes so distributed may not be qualified investments for Exempt Plans, depending on the circumstances at the time.

Appraisals

The Advisor retained the Appraiser to provide independent estimates of the fair market value range in respect of the properties comprising the Initial Portfolio (see "Assessment and Valuation of the Initial Portfolio —

Independent Appraisal"). Caution should be exercised in the evaluation and use of appraisal results, which are estimates of market value at a specific point in time. In general, appraisals such as the Appraisal represent only the analysis and opinion of qualified experts as of the effective date of such appraisals and are not guarantees of present or future value. There is no assurance that the assumptions employed in determining the appraised values of the properties comprising the Initial Portfolio are correct as of the date of the prospectus or that such valuations actually reflect an amount that would be realized upon a current or future sale of any of such properties or that any projections included in such appraisals will be attainable. As prices in the real estate market fluctuate over time in response to numerous factors, the fair market value of the Initial Portfolio shown on the Appraisal may be an unreliable indication of its current market value.

A publicly traded real estate investment trust will not necessarily trade at values determined solely by reference to the underlying value of its real estate assets. Accordingly, the Units may trade at a premium or a discount to values implied by the Appraisal.

Cash Distributions are Not Guaranteed

There can be no assurance regarding the amount of income to be generated by the REIT's properties. The ability of the REIT to make cash distributions, and the actual amount distributed, will be entirely dependent on the operations and assets of the REIT, and will be subject to various factors, including financial performance, obligations under applicable credit facilities, fluctuations in working capital, the sustainability of income derived from the REIT's properties and any capital expenditure requirements. Unlike fixed-income securities, there is no obligation of the REIT to distribute to Unitholders any fixed amount, and reductions in, or suspensions of, cash distributions may occur that would reduce the yield of the Units. The market value of the Units will deteriorate if the REIT is unable to meet its distribution targets in the future, and that deterioration may be significant. In addition, the composition of cash distributions for tax purposes may change over time and may affect the after-tax return for investors. See "Certain Canadian Federal Income Tax Considerations".

Core FFO may exceed actual cash available to the REIT from time to time because of items such as principal repayments and capital expenditures in excess of stipulated reserves identified by the REIT in its calculation of Core FFO and redemptions of Units, if any. The REIT may be required to use part of its debt capacity or to reduce distributions in order to accommodate such items. Credit and mortgage facility terms may prohibit payments or distributions from the REIT in default circumstances.

Non-IFRS Measures

The pro forma financial information set out in this prospectus includes certain measures which do not have standardized meanings prescribed by IFRS and are therefore unlikely to be comparable to similar measures presented by other issuers. There is no directly comparable measure calculated in accordance with IFRS, as such measures are based on investment which is external to the REIT.

Limited Control of Unitholders

Unitholders will have limited control over changes in the REIT's policies and operations, which increases the uncertainty and risks of an investment in the REIT. The Board will determine major policies, including policies regarding financing, growth, debt capitalization, REIT qualification and distributions. The Board may amend or revise these and other policies without a vote of Unitholders. Under the REIT's organizational documents, Unitholders have a right to vote only on limited matters. The Trustees' broad discretion in setting policies and Unitholders' inability to exert control over those policies increases the uncertainty and risks of an investment in the REIT. In addition, the Declaration of Trust will require that the Chief Executive Officer of the REIT be nominated to serve as a Trustee.

Dilution

The number of Units the REIT is authorized to issue is unlimited. Subject to the rules of any applicable stock exchange on which the Units are listed and applicable securities laws, the REIT may, in its sole discretion, issue additional Units from time to time (including pursuant to any employee incentive compensation plan that may be introduced in the future), and the interests of the holders of Units may be diluted thereby.

Unitholder Liability

The Declaration of Trust provides that no Unitholder will be subject to any liability whatsoever to any person in connection with the holding of a Unit. In addition, legislation has been enacted in the Province of Ontario and certain other provinces and territories that is intended to provide Unitholders in those provinces and territories with limited liability. However, there remains a risk, which is considered by the REIT to be remote in the circumstances, that a holder of Units could be held personally liable for the obligations of the REIT to the extent that claims are not satisfied out of the assets of the REIT. It is intended that the affairs of the REIT will be conducted to seek to minimize such risk wherever possible.

Nature of Investment

The Units represent a fractional interest in the REIT and do not represent a direct investment in the REIT's assets and should not be viewed by investors as direct securities of the REIT's assets. A holder of a Unit of the REIT does not hold a share of a body corporate. As holders of Units of the REIT, the Unitholders will not have statutory rights normally associated with ownership of shares of a corporation including, for example, the right to bring "oppression" or "derivative" actions. The rights of Unitholders are based primarily on the Declaration of Trust. There is no statute governing the affairs of the REIT equivalent to the *Business Corporations Act* (Ontario) or the CBCA which sets out the rights and entitlements of shareholders of corporations in various circumstances. As well, the REIT may not be a recognized entity under certain existing insolvency legislation such as the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors' Arrangement Act* (Canada), and thus the treatment of Unitholders upon an insolvency is uncertain.

Structural Subordination of Units

In the event of bankruptcy, liquidation or reorganization of the REIT's subsidiaries, holders of their indebtedness and their trade creditors will generally be entitled to payment of their claims from the assets of those subsidiaries before any assets are made available for distribution to the REIT or Unitholders. The Units are effectively subordinated to the debt and other obligations of the REIT's subsidiaries. The REIT's subsidiaries generate all of the REIT's cash available for distribution and hold substantially all of the REIT's assets.

Future Offerings of Debt or Equity Securities Ranking Senior to Units

If the REIT decides to issue debt or equity securities in the future ranking senior to the Units or otherwise incur additional indebtedness, it is possible that these securities or indebtedness will be governed by an indenture or other instrument containing covenants restricting the REIT's operating flexibility and limiting the REIT's ability to make distributions to Unitholders. Additionally, any convertible or exchangeable securities that the REIT issues in the future may have rights, preferences and privileges, including with respect to distributions, more favorable than those of Units and may result in dilution to Unitholders. Because the REIT's decision to issue debt or equity securities in any future offering or otherwise incur indebtedness will depend on market conditions and other factors beyond the REIT's control, the REIT cannot predict or estimate the amount, timing or nature of the REIT's future offerings or financings, any of which could reduce the market price of the Units and dilute the value of the Units.

Enforceability of Judgments

The Promoter is an entity organized under the laws of a foreign jurisdiction and resides outside Canada. All of the managers and officers of the Promoter and certain of the experts named elsewhere in this prospectus are

residents of countries other than Canada. Additionally, all of the Promoter's assets and the assets of these persons are located outside of Canada. As a result, although the Promoter, non-resident Trustees and non-resident persons executing a prospectus certificate will appoint GODA Incorporators, Inc. as its agent for service of process in Ontario, it may be difficult for Unitholders to initiate a lawsuit within Canada against these non-Canadian residents. In addition, it may not be possible for Unitholders to collect from the Promoter or other non-Canadian residents judgments obtained in courts in Canada predicated on the civil liability provisions of securities legislation of certain of the provinces and territories of Canada. It may also be difficult for Unitholders to succeed in a lawsuit in the United States, based solely on violations of Canadian securities laws.

Enforceability of Judgments Against Foreign Subsidiaries

NHI is organized under the laws of Delaware and the OP is organized under the laws of Delaware. All of the assets of NHI and the OP are located outside of Canada and the directors and officers, as well as certain of the experts retained by the REIT or its affiliates, are residents of countries other than Canada. As a result, it may be difficult or impossible for investors to effect service within Canada upon such persons, or to realize against them in Canada upon judgments of courts of Canada predicated upon the civil liability provisions of applicable Canadian provincial securities laws. There is some doubt as to the enforceability in the United States by a court in original actions, or in actions to enforce judgments of Canadian courts, of civil liabilities predicated upon such applicable Canadian provincial securities laws.

Financial Reporting and Other Public REIT Requirements

The REIT will become subject to reporting and other obligations under applicable Canadian securities laws and rules of any stock exchange on which the Units are listed, including National Instrument 52-109 — *Certification of Disclosure in Issuers' Annual and Interim Filings*. These reporting and other obligations will place significant demands on the REIT's management, administrative, operational and accounting resources. In order to meet such requirements, the REIT will need to establish systems, implement financial and management controls, reporting systems and procedures and hire accounting and finance staff. If the REIT is unable to accomplish any such necessary objectives in a timely and effective fashion, its ability to comply with its financial reporting requirements and other rules that apply to reporting issuers could be impaired. Moreover, any failure to maintain effective internal controls could cause the REIT to fail to meet its reporting obligations or result in material misstatements in its financial statements. If the REIT cannot provide reliable financial reports or prevent fraud, its reputation and operating results could be materially harmed which could also cause investors to lose confidence in the REIT's reported financial information, which could result in a lower trading price of Units.

Management does not expect that the REIT's disclosure controls and procedures and internal controls over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues are detected. The inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by individual acts of some persons, by collusion of two or more people or by management override of the controls. Due to the inherent limitations in a cost effective control system, misstatements due to error or fraud may occur and not be detected.

MATERIAL CONTRACTS

The following are the only material agreements of the REIT or its subsidiaries that will be in effect on closing of the Offering, other than contracts entered into in the ordinary course of business:

(a) the Declaration of Trust described under "Declaration of Trust";

(b) Advisory Agreement;

(c) LLC Agreement; and

(d) Investor Rights Agreement.

Copies of the foregoing documents will be available on SEDAR at www.sedar.com.

INTERESTS OF MANAGEMENT AND OTHERS IN MATERIAL TRANSACTIONS

Other than as disclosed in this prospectus (including, without limitation, those transactions with the Advisor, the Manager, NMCT Shareholder, HCREP and NREO described under "The Contribution of the Initial Portfolio", "Management and Franchise Agreements" and "Retained Interest") and in the notes to the unaudited pro forma consolidated financial statements of the REIT and audited combined financial statements of the REIT, there are no material interests, direct or indirect, of the Trustees or officers of the REIT, any Unitholder that beneficially owns more than 10% of the Units of the REIT or any associate or affiliate of any of the foregoing persons in any transaction within the last three years or any proposed transaction that has materially affected or would materially affect the REIT or any of its subsidiaries.

PROMOTERS

NexPoint Real Estate Advisors VI, L.P. and James Dondero have taken the initiative in founding and organizing the REIT and may therefore be considered promoters of the REIT for the purposes of applicable securities legislation.

PRINCIPAL UNITHOLDERS

Following Closing, the NexPoint Holders will own, in the aggregate, as of record and/or beneficially, 10,761,064 Units and 202,818 Class B OP Units, together representing an aggregate approximate 38.2% ownership interest in the REIT (determined as if all Class B OP Units are redeemed for Units). See "Retained Interest".

The following table sets out the Unitholders who, immediately following the Closing, will, to the REIT's knowledge, beneficially own, control or direct, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to any class of the REIT's voting securities.

	Immediately Following the Closing		
Name of Unitholder	**Number of Units Owned[(1)]**	**Number of Class B Units Owned**	**Percentage of Outstanding Units (determined as if all Class B Units are redeemed for Units)[(2)]**
James Dondero[(3)]	9,788,036	0	34.1%
NHT Holdco, LLC[(4)]	1,735,779	0	6.0%

Notes:

(1) The number of Units beneficially owned includes any Units over which the person has sole or shared voting power or investment power. No person has any right to acquire additional Units through the exercise of any stock option or other right. Unless otherwise indicated, each person has sole investment and voting power (or shares such power with his or her spouse) over the Units set forth in the table.

(2) The percentages shown are based on 15,130,777 Units and 13,576,170 Class B OP Units outstanding as of Closing.

(3) Includes 6,894,694 Units owned by The Dugaboy Investment Trust, 1,735,779 Units owned by NHT Holco, LLC, 1,068,519 Units owned by Governance RE Ltd. and 89,043 Units owned by NexPoint Real Estate Advisors, L.P.; each of which are directly or indirectly controlled by James Dondero.

(4) Highland Capital Management, L.P. is the sole principal securityholder of NHT Holdco, an entity which is ultimately controlled by James Dondero.

The NexPoint Holders will be party to the Investor Rights Agreement which, among other things, will give the NexPoint Holders certain nomination rights, piggy-back registration rights, demand registration rights, consent rights and tag-along rights. See “Investor Rights Agreement”.

To the knowledge of the REIT, 10,761,064 Units will be held by the NexPoint Holders and will be subject to the Investor Rights Agreement as of Closing.

PRIOR SALES

On December 12, 2018, the REIT was formed and one Unit was issued for $15.00 in cash. On January 8, 2019, the initial unitholder of the REIT sold the sole outstanding Unit to NHT Holdco, LLC for $15.00 in cash. This Unit will be repurchased by the REIT on Closing.

LEGAL PROCEEDINGS

None of the REIT or its subsidiaries are involved in any outstanding, threatened or pending litigation that would have a material adverse effect on the REIT.

EXPERTS

The matters referred to under “Eligibility for Investment” and “Certain Canadian Federal Income Tax Considerations”, as well as certain other legal matters relating thereto, will be passed upon on behalf of the REIT by Goodmans LLP.

Certain U.S. corporate law matters will be passed upon on behalf of the REIT by Winston & Strawn LLP.

The matters referred to under “Certain U.S. Federal Income Tax Considerations”, as well as certain other legal matters relating thereto, will be passed upon on behalf of the REIT by Baker & McKenzie LLP.

Certain information relating to the Appraisal has been based upon a report by JLL Valuation & Advisory Services, LLC.

As of the date of this prospectus, the partners and associates of Goodmans LLP, Winston & Strawn LLP and Baker & McKenzie LLP and the designated professionals of the Appraiser, beneficially owned, directly or indirectly, less than 1% of the outstanding securities of the REIT.

AUDITORS, TRANSFER AGENT AND REGISTRAR

The REIT’s auditors, KPMG, LLP, are located in Toronto, Ontario and are independent in accordance with the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario.

The historical auditors of the HGI Property, the DT Portfolio and the HWS Portfolio are Aprio LLP, located in Atlanta, Georgia.

The historical auditors of the St. Pete Property are Frazier & Deter LLP, located in Atlanta, Georgia;

The historical auditors of the Nashville Property are Gumbiner Savett, Inc., located in Los Angeles, California.

The transfer agent and registrar for the Units is AST Trust Company (Canada) at its principal office in Toronto, Ontario.

ENFORCEMENT OF JUDGMENTS AGAINST FOREIGN PERSONS

The Promoter is an entity organized under the laws of a foreign jurisdiction and resides outside Canada. All of the officers of the REIT and certain experts named elsewhere in this prospectus, together with certain Trustees, are residents of countries other than Canada. Additionally, all of the REIT's assets and the assets of these persons are located outside of Canada. As a result, although each of the Promoter, non-resident Trustees and non-resident persons executing a prospectus certificate have appointed GODA Incorporators, Inc. as agent for service of process in Ontario, it may be difficult for Unitholders to initiate a lawsuit within Canada against these non-Canadian residents. In addition, it may not be possible for Unitholders to enforce against the Promoter or other non-Canadian residents judgments obtained in courts in Canada predicated on the civil liability provisions of securities legislation of certain of the provinces and territories of Canada. It may also be difficult for Unitholders to succeed in a lawsuit in the U.S. based solely on violations of Canadian securities laws.

EXEMPTIONS FROM CERTAIN PROVISIONS OF NATIONAL INSTRUMENT 41-101

Pursuant to an application made to the Ontario Securities Commission, as principal regulator, the REIT has applied for an exemption as contemplated by Part 19 of NI 41-101, from:

- the requirements in Item 32.2(1) of Form 41-101F1—*Information required in a Prospectus* ("**Form 41-101F1**") in respect of HCBH 11611 Ferguson, LLC, the former owner of the HWS Portfolio, so that the REIT does not need to include financial statements for the HWS Portfolio for certain periods set forth below;

- the requirements in Item 4.2 of NI 41-101 and Item 3.10 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") with respect to the auditors' report on financial statements relating to Pallas, LLC; and

- the requirements in Item 5.11 of NI 41-101 and section 58(1) of the *Securities Act* (Ontario) with respect to James Dondero executing a Certificate of Promoter for this prospectus.

The REIT has been advised by the Ontario Securities Commission that the issuance of a receipt by or on behalf of the applicable Canadian Securities Administrators by the Ontario Securities Commission for this prospectus will evidence the granting of the foregoing exemptions and/or consent.

Financial Statement Relief

The HWS Portfolio will form part of the REIT's primary business pursuant to Section 32.1(1) and Section 32.4(1) of Form 41-101F1, requiring the REIT to include in this prospectus audited financial statements for the two most recently completed financial years prior to the date of this prospectus, together with unaudited interim financial statements for the relevant interim periods. Pursuant to the exemption sought, the REIT will not include certain financial statements for the HWS Portfolio, as more specifically set out in the table below:

Exempt Property	Period For Which Financial Statements Are Not Included In This Prospectus
Homewood Suites Addison	January 1, 2016 to May 3, 2017
Homewood Suites Las Colinas	January 1, 2016 to May 3, 2017
Homewood Suites Plano	January 1, 2016 to May 3, 2017

In the application for exemptive relief, the REIT made, among others, the following submissions:

- For the applicable periods set forth above (the "Exempt Periods"), the HWS Portfolio was owned and managed by an arm's length party. The REIT does not have access to and is not entitled to obtain access to sufficient financial information in respect of the HWS Portfolio during the Exempt Periods.

- Audited historical financial statements of the HWS Portfolio were not relevant to the REIT's decision to acquire the HWS Portfolio. Given that such audited financial statements were not considered relevant to the investment decision made to acquire the HWS Portfolio, the REIT does not believe that such financial statements are material to the investment decision to be made by a potential investor in the Offering, particularly when considered in light of the other financial information the REIT is providing in this prospectus.

- In determining that the missing financial information for the HWS Portfolio is not material to the investment decision to be made by a potential investor in the Offering, the REIT considered the period of time for which such financial information is not included in this prospectus, as well as the fact that the percentage of missing historical financial information weighted by (a) income, (b) NOI, (c) revenue, and (d) current asset value, represent an immaterial portion of the Initial Portfolio.

- Based on the foregoing, the REIT does not believe that the financial statements for the HWS Portfolio for the Exempt Periods are necessary or required for this prospectus to contain full, true and plain disclosure of all material facts with respect to the securities being offered.

Relief From Unmodified/Unqualified Auditors' Report

Item 4.2 of NI 41-101 requires all financial statements included in this prospectus (including those of Pallas, LLC) to be audited in accordance with NI 52-107. Item 3.10(1) of NI 52-107 permits financial statements included in a long form prospectus to be audited in accordance with International Standards on Auditing or U.S. PCAOB GAAS, provided that they are accompanied by an auditors' report that expresses and unmodified/unqualified opinion.

Consistent with the guidance in Section 3.4 of the companion policy to NI 52-107, the REIT made an application to the Ontario Securities Commission, as principal regulator, for exemptive relief from the requirement that the auditors' report relating to the financial statements of Pallas, LLC express an unmodified opinion.

In the application for exemptive relief, the REIT made, among others, the following submissions:

- The modification of the auditors' report relating to the financial statements of Pallas, LLC is not due to (i) a departure from accounting principles permitted by NI 52-107; or (ii) a limitation in scope of the auditors' examination that (a) results in the auditors being unable to form an opinion on the financial statements as a whole, (b) is imposed or could reasonably be eliminated by management, or (c) could reasonably be expected to be recurring.

- The REIT has obtained an independent appraisal of the St. Pete Property (the "**Marriott Appraisal**"), which provides disclosure on the current market value of the St. Pete Property.

- The financial statements of Pallas, LLC relating to the St. Pete Property, together with additional disclosure about the results of the Marriott Appraisal included in this prospectus provide comprehensive disclosure.

- The absence of an unmodified/unqualified opinion in respect of Pallas, LLC is not material to prospective investors.

Promoter Certificate Relief

Staff at the Ontario Securities Commission has notified the REIT that it is currently of the view that James Dondero is a promoter of the REIT within the meaning of applicable securities laws. The REIT made an application

to the Ontario Securities Commission, as principal regulator, for exemptive relief from the requirement that James Dondero sign a Certificate of Promoter for this prospectus on the basis that James Dondero is a Trustee and officer of the REIT and will sign the Certificate of the REIT for this prospectus in such capacities. Pursuant to section 58(5) of the *Securities Act* (Ontario), the Director has consented to James Dondero not signing a Certificate of Promoter for this prospectus in accordance with the requirement under section 58(1) of the *Securities Act* (Ontario) and section 5.11 of NI 41-101.

PURCHASERS' STATUTORY RIGHTS

Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. In several of the provinces and territories, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for the particulars of these rights or consult with a legal advisor.

GLOSSARY

"**10% of value asset test**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Asset Tests".

"**Acquired Issuer**" has the meaning ascribed thereto under "Investment Guidelines and Operating Policies – Investment Guidelines".

"**ADA**" means the Americans with *Disabilities Act of 1990*, as amended.

"**Advance Notice Provision**" has the meaning ascribed thereto under "Declaration of Trust – Advance Notice Provision".

"**Advisor**" means NexPoint Real Estate Advisors VI, L.P.

"**Advisory Agreement**" means the asset management agreement entered into between the REIT, NHI and the Advisor.

"**Advisory Fee**" has the meaning ascribed thereto under "Management and Franchise Agreements – Advisory Agreement".

"**Agent**" means Raymond James Ltd.

"**Agency Agreement**" has the meaning ascribed thereto under "Plan of Distribution".

"**allowable capital loss**" means one-half of any capital loss.

"**Appraisal**" has the meaning ascribed thereto under "Assessment and Valuation of the Initial Portfolio – Independent Appraisal".

"**Appraiser**" means JLL Valuation & Advisory Services, LLC.

"**Average Daily Rate**" or "**ADR**" has the meaning ascribed thereto under "Select Industry Terms".

"**Board**" means the board of trustees of the REIT.

"**CAGR**" means compound annual growth rate.

"**CBCA**" means the *Canada Business Corporations Act*.

"**CDS**" means CDS Clearing and Depository Services Inc.

"**CEO**" means Chief Executive Officer.

"**CFO**" means Chief Financial Officer.

"**Chair**" means the chair of the Board of Trustees.

"**CIO**" means Chief Investment Officer.

"**Class A OP Units**" means Class A units of the OP.

"**Class B OP Units**" means Class B units of the OP.

"**Closing**" means the closing of the Offering.

"**Closing Market Price**" has the meaning ascribed thereto under "Declaration of Trust – Redemption Right".

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Code of Conduct**" means the written code of conduct adopted by the REIT.

"**Contributor**" and "**Contributors**" have the meaning ascribed thereto under "The Contribution of the Initial Portfolio – Overview".

"**Contribution**" and "**Contributions**" have the meaning ascribed thereto under "The Contribution of the Initial Portfolio – Overview".

"**Core FFO**" has the meaning ascribed thereto under "Non-IFRS Measures".

"**CRA**" means Canada Revenue Agency.

"**CRECs**" means controlled recognized environmental conditions.

"**Debt**" means the total principal amounts outstanding by the REIT under mortgages payable, mezzanine debt and term preferred equity which under IFRS is accounted for as a liability, and for greater certainty excludes the Class B OP Units.

"**Debt to Gross Real Estate Value Ratio**" is calculated by dividing Debt, which consists of the total principal amounts outstanding under mortgages payable, mezzanine debt and term preferred equity which under IFRS is accounted for as a liability, by Gross Real Estate Value.

"**Declaration of Trust**" means the declaration of trust of the REIT.

"**Demand Distribution**" means the distribution of Units held by the NexPoint Holders pursuant to the Demand Registration Right, as more particularly described under "Investor Rights Agreement".

"**Demand Registration Right**" means the right granted to the NexPoint Holders pursuant to the Investor Rights Agreement to require the REIT to use reasonable commercial efforts to file a prospectus qualifying the Units held (or issuable upon the redemption of Class B OP Units) by the NexPoint Holders for distribution, as more particularly described under "Investor Rights Agreement".

"**DPSP**" has the meaning ascribed thereto under "Eligibility for Investment".

"**DT Beaverton**" means the DoubleTree Beaverton.

"**DT Bend**" means the DoubleTree Bend.

"**DT Olympia**" means the DoubleTree Olympia.

"**DT Portfolio**" means, collectively DT Beaverton, DT Bend, DT Olympia, DT Tigard and DT Vancouver.

"**DT Tigard**" means the DoubleTree Tigard.

"**DT Vancouver**" means the DoubleTree Vancouver.

"**EBITDA**" means earnings before interest, taxes, depreciation and amortization.

“**eligible independent contractor**” has the meaning ascribed thereto under “Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Effect of Subsidiary Entities”.

“**Exempt Periods**” has the meaning ascribed thereto under “Exemptions From Certain Provisions of National Instrument 41-101”

“**Exempt Plans**” has the meaning ascribed thereto under “Eligibility for Investment”.

“**FAT**” means foreign accrual tax.

“**FAPI**” means foreign accrual property income.

“**FFO**” has the meaning ascribed thereto under “Non-IFRS Measures”.

“**Financials**” has the meaning ascribed thereto under “Management’s Discussion and Analysis of Financial Condition and Results of Operations”.

“**FIRPTA**” means the *Foreign Investment in Real Property Tax Act of 1980*, as amended from time to time.

“**Form 41-101F1**” means Form 41-101F1—*Information required in a Prospectus*.

“**forward-looking statements**” has the meaning ascribed thereto under “Forward-Looking Statements”.

“**GDP**” means United States gross domestic product.

“**Gross Real Estate Value**” has the meaning ascribed thereto under “Non-IFRS Measures”.

“**HCBH**” means HCBH 11611 Ferguson, LLC.

“**HCRE Addision**” means HCRE Addision, LLC.

“**HCRE Las Colinas**” means HCRE Las Colinas, LLC.

“**HCRE Plano**” means HCRE Plano, LLC.

“**HGI Property**” means Hilton Garden Inn Dallas Market Center.

“**HS Addison**” means Homewood Suites Addison.

“**HS Las Colinas**” means Homewood Suites Las Colinas.

“**HS Plano**” means Homewood Suites Plano.

“**Hotel Management Agreements**” means the hotel management agreements to be entered into between the Manager and the TRS Entities.

“**Holder**” means a purchaser who acquires, as beneficial owner, Units pursuant to this Prospectus and who, for the purposes of the Tax Act and at all relevant times, is, or is deemed to be, resident in Canada, deals at arm’s length with the REIT and the Agent, and is not affiliated with the REIT or the Agent and holds the Units as capital property.

“**HRECs**” means historical recognized environmental conditions.

"**HWS Acquisition Date**" has the meaning ascribed thereto under "Management's Discussion and Analysis of Financial Condition and Results of Operations".

"**HWS Portfolio**" means, collectively HS Addison, HS Las Colinas and HS Plano.

"**IASB**" means the International Accounting Standards Board.

"**IFRS**" means International Financial Reporting Standards.

"**IFRS 16**" has the meaning ascribed thereto under "Management's Discussion and Analysis of Financial Condition and Results of Operations".

"**Independent Trustees**" means a Trustee who is "independent" pursuant to NI 58-101.

"**Initial Portfolio**" means the existing portfolio of 11 hospitality assets located in the United States.

"**Interest Rate Risk**" means the combined risk that the REIT would experience a loss as a result of its exposure to a higher interest rate environment and the possibility that at the end of a mortgage term the REIT would be unable to renew the maturing debt either with the existing or a new lender.

"**Interested Trustees**" means a Trustee who is appointed by the Advisor and is not considered independent pursuant to NI 58-101.

"**Investor Rights Agreement**" means the investor rights agreement between the REIT and the NexPoint Holders, as more particularly described under "Investor Rights Agreement".

"**IRS**" means the U.S. Internal Revenue Service.

"**IT**" means information technology.

"**Lead Trustee**" means the Board-designated trustee among the independent Trustees, who will provide leadership for the independent Trustees in certain circumstances if the Chair is not independent, as more particularly described under "Governance and Management of the REIT".

"**Listing**" means the listing of the Units on the TSXV.

"**LLC Agreement**" means the amended and restated limited liability company agreement of the OP, as amended and/or restated from time to time.

"**Manager**" has the meaning ascribed thereto on the cover page of this prospectus.

"**Marriott Appraisal**" has the meaning ascribed thereto under "Exemptions From Certain Provisions of National Instrument 41-101"

"**Market Price**" has the meaning ascribed thereto under "Declaration of Trust – Redemption Right".

"**MD&A**" has the meaning ascribed thereto under "Management's Discussion and Analysis of Financial Condition and Results of Operations".

"**Meritage**" means Meritage Residential Partners LLC.

"**MSA**" means metropolitan statistical area.

"**Mortgage Debt to Gross Real Estate Value Ratio**" is calculated by dividing principal amounts outstanding under mortgages payable by Gross Real Estate Value.

"**Nashville Property**" means Holiday Inn Express Nashville.

"**NCI**" means non-certificated inventory.

"**NexPoint**" means the Advisor and its affiliates and subsidiaries.

"**NexPoint Holders**" means certain unitholders of the REIT who are principals and affiliates of the Advisor.

"**NHI**" means NHT Holdings, LLC.

"**NHT Beaverton**" means NHT Beaverton, LLC.

"**NHT Bend**" means NHT Bend, LLC.

"**NHTDFW**" means NHT DFW Portfolio, LLC.

"**NHT Nashville**" means NHT Nashville, LLC.

"**NHT Olympia**" means NHT Olympia, LLC.

"**NHT SP**" means NHT SP, LLC.

"**NHT SP Parent**" means NHT SP Parent, LLC.

"**NHT Tigard**" means NHT Tigard, LLC.

"**NHT Vancouver**" means NHT Vancouver, LLC.

"**NI 41-101**" means National Instrument 41-101 – *General Prospectus Requirements*

"**NI 52-107**" means National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards*

"**NI 52-109**" means National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings.*

"**NI 52-110**" means National Instrument 52-110 – *Audit Committees*.

"**NI 58-101**" means National Instrument 58-101 – *Disclosure of Corporate Governance Practices*.

"**NMCT**" means NexPoint Multifamily Capital Trust, Inc.

"**NMCT Shareholders**" means the shareholders of NMCT.

"**NOI**" has the meaning ascribed thereto under "Non-IFRS Measures".

"**NOI Margin**" has the meaning ascribed thereto under "Non-IFRS Measures".

"**Nominating Unitholder**" has the meaning ascribed thereto under "Declaration of Trust – Advance Notice Provision".

"**Non-Room Revenues**" has the meaning ascribed thereto under "Non-IFRS Measures".

"**Non-U.S. Holders**" means a beneficial owner of Units that is an individual, corporation, estate or trust and is not a U.S. Holder.

"**NREO**" means NexPoint Real Estate Opportunities, LLC.

"**NREO NW**" means NREO NW Hospitality, LLC.

"**Occupancy**" has the meaning ascribed thereto under "Select Industry Terms".

"**Offering**" has the meaning ascribed thereto on the cover page of this prospectus.

"**Offering Price**" means the price of the Units.

"**Omnibus Plan**" means the omnibus equity incentive plan of the REIT, as more particularly described under "Incentive Compensation Plans".

"**OP**" means NHT Operating Partnership, LLC.

"**OTAs**" means internet travel intermediaries.

"**OTC Pink**" means the OTC Pink tier of OTC Markets Group Inc.

"**PCA Reports**" means property condition assessment reports.

"**personal property ratio**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Effect of Subsidiary Entities".

"**Phase I ESA Report**" means a Phase I environmental site assessment report.

"**Phase II ESA Report**" means a Phase II environmental site assessment report.

"**Piggy-Back Distribution**" means any future offering undertaken by the REIT by way of prospectus whereby NexPoint Holders have exercised their Piggy-Back Registration Right, as more particularly described under "Investor Rights Agreement".

"**Piggy-Back Registration Right**" means the right granted to the NexPoint Holders pursuant to the Investor Rights Agreement to require the REIT to include Units held by the NexPoint Holders in any future offering undertaken by the REIT, as more particularly described under "Investor Rights Agreement".

"**PIPs**" means property improvement plans.

"**Profits LTIP Units**" has the meaning ascribed thereto under "Management and Franchise Agreements".

"**Promoter**" means NexPoint Real Estate Advisors VI, L.P.

"**Proposed Amendments**" means all specific proposals to amend the Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) before the date hereof.

"**qualified lodging facility**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Effect of Subsidiary Entities".

"**real estate assets**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Asset Tests".

"**RECs**" means recognized environmental conditions.

"**Redemption Date**" means the date on which the Units were surrendered for redemption.

"**Redemption Notes**" means unsecured subordinated promissory notes of the REIT or a Subsidiary of the REIT having a maturity date and interest rate to be determined at the time of issuance by the Trustees, such promissory notes to provide that the REIT or such Subsidiary, as the case may be, shall at any time be allowed to prepay all or any part of the outstanding principal without notice or bonus.

"**Redemption Price**" shall have the meaning ascribed thereto under "Declaration of Trust – Redemption Right".

"**REIT**" means NexPoint Hospitality Trust.

"**REIT Asset Value**" means the value of the REIT's total assets, as determined in accordance with IFRS except that such value shall only consolidate the REIT and NHI (but otherwise be determined on an unconsolidated basis) plus the REIT's *pro rata* share of leverage at the OP.

"**related party tenant**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Real Estate Investment Trusts in General – Effect of Subsidiary Entities".

"**Revenue per Available Room**" or "**RevPAR**" has the meaning ascribed thereto under "Select Industry Terms".

"**RDSP**" has the meaning ascribed thereto under "Eligibility for Investment".

"**RESP**" has the meaning ascribed thereto under "Eligibility for Investment".

"**RRIF**" has the meaning ascribed thereto under "Eligibility for Investment".

"**RRSP**" has the meaning ascribed thereto under "Eligibility for Investment".

"**Securities Laws**" has the meaning ascribed to it in the Declaration of Trust.

"**SIFT Rules**" means the rules applicable to SIFT trusts and SIFT partnerships in the Tax Act.

"**Stemmons**" means Stemmons Hospitality, LLC.

"**St. Pete Property**" means Marriot St. Petersburg.

"**STR**" means Smith Travel Research, Inc.

"**Subsidiaries**" has the meaning ascribed to it in the *Securities Act* (Ontario), as amended from time to time.

"**Tax Act**" means the *Income Tax Act* (Canada) and the regulations thereunder, in each case as amended from time to time.

"**TFSA**" has the meaning ascribed thereto under "Eligibility for Investment".

"**Total G&A Cap**" has the meaning ascribed thereto under "Management and Franchise Agreement – Advisory Agreement".

"**Treasury Regulations**" means existing and proposed regulations promulgated under the Code by the U.S. Treasury Department.

"**Treaty**" means the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed September 26, 1980, as amended.

"**TRS**" means a taxable REIT subsidiary as defined under Section 856(1) of the Code.

"**TRS Entities**" means taxable subsidiaries of the REIT.

"**Trustees**" means the trustees of the REIT.

"**TSXV Publicly Traded Exception**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Non-U.S. Holders".

"**TSXV**" means the TSX Venture Exchange.

"**U.S. Holder**" means a holder of Units that is a beneficial owner of the Units and is (i) an individual citizen or resident of the United States for U.S. federal income tax purposes; (ii) a corporation (or other entity classified as a corporation for U.S. federal income tax purposes), created or organized in or under the laws of the United States, any state therein or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust if a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all substantial decisions of the trust (or otherwise if the trust has a valid election in effect under the Treasury Regulations to be treated as a domestic trust).

"**U.S. Publicly Traded Exception**" has the meaning ascribed thereto under "Certain U.S. Federal Income Tax Considerations – Taxation of Non-U.S. Holders".

"**U.S. Securities Act**" means the *Securities Act of 1933*, as amended.

"**Unit**" means trust units of the REIT.

"**Unitholders**" means unitholders of the REIT.

"**UPREIT**" means umbrella partnership real estate investment trust.

"**US Holdco**" means NHT Intermediary, LLC.

"**USRPI**" means a U.S. real property interest, as defined under Section 897(c) of the Code.

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Pro Forma Consolidated Financial Statements of

NEXPOINT HOSPITALITY TRUST

As at and for the nine months ended September 30, 2018 and for the year ended December 31, 2017

(Expressed in U.S. dollars)

(Unaudited)

NEXPOINT HOSPITALITY TRUST
PRO FORMA CONSOLIDATED STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	NexPoint Hospitality Trust	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Note 4	Pro Forma Adjustments	Pro Forma Consolidated
ASSETS									
Current assets									
Cash and cash equivalents	$ —	$ 1,355	$ 705	$ 3,803	$ 2,091	$ 4,717	(a)	$ 5,530	
							(c)	(5,139)	$ 13,062
Restricted cash	—	—	889	—	1,495	48	(c)	471	2,903
Trade and other receivables	—	138	242	146	676	507	(c)	(339)	1,370
Prepaid and other assets	—	79	187	453	484	1,080	(c)	(185)	2,098
Total current assets	—	1,572	2,023	4,402	4,746	6,352		338	19,433
Non-current assets									
Property and equipment, net	—	27,074	41,214	13,895	35,463	77,698	(b)	138,331	333,675
Intangible assets	—	—	—	—	—	—	(b)	1,428	1,428
Goodwill	—	—	—	—	—	—	(b)	11,600	11,600
Total non-current assets	—	27,074	41,214	13,895	35,463	77,698		151,359	346,703
TOTAL ASSETS	$ —	$ 28,646	$ 43,237	$ 18,297	$ 40,209	$ 84,050		$ 151,697	$ 366,136
LIABILITIES AND EQUITY									
Current liabilities									
Accounts payable and other accrued liabilities	$ —	$ 1,786	$ 1,657	$ 1,214	$ 2,697	$ 1,793	(e)	$ (3,161)	$ 5,986
Current portion of notes payable	—	307	158	580	1,104	—	(d)	(2,149)	—
Total current liabilities	—	2,093	1,815	1,794	3,801	1,793		(5,310)	5,986
Non-current liabilities									
Notes payable and other borrowings, net	—	20,662	31,641	21,830	68,639	53,624	(d)	(15,846)	180,550
Mezzanine	—	—	—	—	—	7,181	(d)	64,393	71,574
Class B redeemable units of OP	—	—	—	—	—	—	(e)	67,881	67,881
Total non-current liabilities	—	20,662	31,641	21,830	68,639	60,805		116,428	320,005
Total Liabilities	—	22,755	33,456	23,624	72,440	62,598		111,118	325,991
Equity									
Members' equity (deficit) / Net parent investment	—	5,891	9,781	(5,327)	(32,231)	21,452	(f)	434	
Unitholders' equity	—	—	—	—	—	—	(a)	5,530	
							(c)	(5,139)	
							(c)	471	
							(c)	(339)	
							(c)	(185)	
							(b)	139,759	
							(b)	11,600	
							(e)	3,161	
							(d)	2,149	
							(d)	15,846	
							(d)	(64,393)	
							(e)	(67,881)	
							(f)	(434)	40,145
Total Equity	—	5,891	9,781	(5,327)	(32,231)	21,452		40,579	40,145
TOTAL LIABILITIES AND EQUITY	$ —	$ 28,646	$ 43,237	$ 18,297	$ 40,209	$ 84,050		$ 151,697	$ 366,136

See accompanying notes to these unaudited pro forma consolidated financial statements

NEXPOINT HOSPITALITY TRUST
PRO FORMA CONSOLIDATED STATEMENT OF NET INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	NexPoint Hospitality Trust	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Note 4	Pro Forma Adjustments	Pro Forma Consolidated
Revenues									
Rooms	$ —	$ 6,019	$ 7,446	$ 6,273	$ 14,222	$ 10,153	(g)	$ 6,223	$ 50,336
Food and beverage	—	891	14	744	235	456	(g)	460	2,800
Other	—	114	87	1,503	1,605	93	(g)	28	3,430
Total revenues	—	7,024	7,547	8,520	16,062	10,702		6,711	56,566
Expenses									
Operating expenses	—	3,597	4,113	4,747	7,008	4,096	(h)	3,459	27,020
General and administrative expenses	—	1,504	1,818	1,421	1,831	2,026	(h)	1,537	10,137
Acquisition costs	—	—	—	—	—	852		—	852
Depreciation and amortization	—	1,094	597	305	1,188	1,333	(i)	9,883	14,400
Total expenses	—	6,195	6,528	6,473	10,027	8,307		14,879	52,409
Operating income (loss)	—	829	1,019	2,047	6,035	2,395		(8,168)	4,157
Corporate general and administrative expenses	—	—	—	—	—	—		—	—
Advisory fees	—	—	—	—	—	—	(j)	1,782	1,782
Income (loss) before net interest expense and income taxes	—	829	1,019	2,047	6,035	2,395		(9,950)	2,375
Interest expense, net	—	(1,001)	(1,680)	(670)	(2,793)	(1,331)	(k)	(5,421)	(12,896)
Other income (expense)	—	—	—	61	—	—		—	61
Income (loss) before income taxes	—	(172)	(661)	1,438	3,242	1,064		(15,371)	(10,460)
Income tax expense	—	(2)	—	—	—	(320)	(l)	(393)	(715)
Net income (loss) and comprehensive income (loss)	$ —	$ (174)	$ (661)	$ 1,438	$ 3,242	$ 744		$ (15,764)	$ (11,175)

See accompanying notes to these unaudited pro forma consolidated financial statements

NEXPOINT HOSPITALITY TRUST
PRO FORMA CONSOLIDATED STATEMENT OF NET INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
FOR THE YEAR ENDED DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	NexPoint Hospitality Trust	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Note 4	Pro Forma Adjustments	Pro Forma Consolidated
Revenues									
Rooms	$ —	$ 7,796	$ 7,538	$ 7,772	$ 18,171	$ 20,450	(g)	$ 3,831	$ 65,558
Food and beverage	—	1,276	14	1,007	187	1,428	(g)	7	3,919
Other	—	144	101	2,209	1,779	—	(g)	51	4,284
Total revenues	—	9,216	7,653	10,988	20,137	21,878		3,889	73,761
Expenses									
Operating expenses	—	4,703	3,755	5,968	9,138	10,180	(h)	1,909	35,653
General and administrative expenses	—	1,846	1,701	1,948	1,080	4,361	(h)	865	11,801
Depreciation and amortization	—	1,423	520	441	1,242	3,235	(i)	12,339	19,200
Total expenses	—	7,972	5,976	8,357	11,460	17,776		15,113	66,654
Operating income (loss)	—	1,244	1,677	2,631	8,677	4,103		(11,224)	7,108
Corporate general and administrative expenses	—	—	—	—	—	—		—	—
Advisory fees	—	—	—	—	—	—	(j)	2,376	2,376
Income (loss) before net interest expense and income taxes	—	1,244	1,677	2,631	8,677	4,103		(13,600)	4,732
Interest expense, net	—	(1,158)	(1,106)	(880)	(3,781)	(2,058)	(k)	(8,212)	(17,195)
Other income (expense)	—	—	—	73	—	—		—	73
Income (loss) before income taxes	—	86	571	1,824	4,896	2,045		(21,812)	(12,390)
Income tax expense	—	(30)	—	—	—	—	(l)	(524)	(554)
Net income (loss) and comprehensive income (loss)	$ —	$ 56	$ 571	$ 1,824	$ 4,896	$ 2,045		$ (22,336)	$ (12,944)

See accompanying notes to the unaudited pro forma consolidated financial statements

NEXPOINT HOSPITALITY TRUST
NOTES TO THE UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

1. Overview

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, open-ended real estate investment trust established pursuant to a declaration of trust (the "Declaration of Trust") under the laws of the Province of Ontario. The REIT has been created for the purpose of acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. The REIT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "Advisor"), which has been formed for the purpose of managing the REIT.

The REIT will wholly own NHT Holdings, LLC ("NHI"), a newly formed Delaware limited liability company that intends to elect to be treated as a real estate investment trust under U.S. tax laws. Substantially all of NHI's business will be conducted through NHT Operating Partnership, LLC (the "OP"), the REIT's operating partnership, which is a newly formed Delaware limited liability company. The REIT will own its properties through the OP and its subsidiaries. The OP and its subsidiaries will lease the properties to taxable subsidiaries of the REIT (the "TRS Entities"). For NHI, and thus the REIT, to qualify as a real estate investment trust under the Code, the REIT cannot operate directly or indirectly any of the hotels it acquires and owns. Therefore, the OP and its subsidiaries will lease the hotels to the TRS Entities who in turn will engage eligible independent contractors (as defined in the U.S. tax code), which we expect will be affiliates of Aimbridge Hospitality Holdings, LLC (collectively, the "Manager"), to manage the hotels.

The objectives of the REIT are to: (a) provide Unitholders with an opportunity to invest in an initial portfolio of extended-stay, select-service and efficient full service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide Unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of the REIT's assets and maximize the long-term value of the Units through active asset and property management programs and procedures; and (d) expand the asset base of the REIT and increase the REIT's Core FFO per Unit primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

These pro forma consolidated financial statements are prepared for inclusion in the prospectus filed with the Ontario Securities Commission on March 27, 2019 (the "Prospectus"), to effectuate the listing of the REIT's units on the TSX Venture Exchange (the "Listing"), and should be read in conjunction with the Prospectus and the financial statements contained therein. Capitalized terms not defined in these pro forma consolidated financial statements have the meanings as defined in the Prospectus.

Initial Portfolio

On January 8, 2019, three groups of investors (the "Contributors"), contributed their interests in various entities (the "Contribution Entities") to NHT Holdco LLC ("Holdco") in exchange for 100% of the units of Holdco. Holdco then contributed its interests in the Contribution Entities to a subsidiary of Holdco, NHT Intermediary, LLC ("Intermediary") in exchange for 100% of the common and preferred units of Intermediary. Intermediary then contributed its interests in the Contribution Entities to NHT Holdings, LLC ("Holdings") in exchange for 100% of the units of Holdings. Holdings then contributed its interests in the Contribution Entities to NHT Operating Partnership, LLC (the "OP") in exchange for 14,213,077 Class A OP Units (these transactions collectively are referred to as the "Class A Contributions"). Simultaneously with the Class A Contributions, NexPoint Real Estate Opportunities, LLC ("NREO") contributed its interests in two entities, to the OP in exchange for 13,573,391 Class B Units (the "Class B Contributions" and together with the Class A Contributions the "Initial Transaction"). The Initial Transaction completed the first step in a series of transactions in order to complete the Listing. The Class A Contributions are considered to be common-control transactions and are being accounted for using book value accounting. The Class B Contributions are considered to be a business combination and are being accounted for using the purchase method of accounting in accordance with IFRS 3, Business Combinations. Subsequent to the Initial Transaction, the OP owns a direct interest in the Initial Portfolio.

Prior to or concurrently with the Listing, Holdco will contribute its interests in Intermediary to the REIT in exchange for 14,213,077 Units. The transaction is considered to be a common-control transaction and is being accounted for using book value accounting. Subsequent to the Initial Transaction noted above, the REIT will indirectly own the Initial Portfolio.

The hotels in the Initial Portfolio are located across the U.S. All of the hotels in the Initial Portfolio are franchised with: Hilton Hotels under the following brands: (i) DoubleTree (five hotels) (the "DT Portfolio"); (ii) Homewood Suites (three hotels) (the "HWS Portfolio"); and (iii) Hilton Garden Inn (one hotel) (the "HGI Property"); Marriott under the Marriott brand (one hotel) (the "St. Pete Property"); and InterContinental Hotels Group under the Holiday Inn Express brand (one hotel) (the "Nashville Property").

NEXPOINT HOSPITALITY TRUST
NOTES TO THE UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

The following is a description of the principal transactions 1) that took place on January 8, 2019, in connection with the Initial Transaction between Holdco, Intermediary, Holdings and the OP and 2) that will take place prior to or at the Listing (the "Listing Transaction"):

Initial Transaction

(a) NHT Nashville, LLC ("NHT Nashville"), a Delaware limited liability company and an indirect subsidiary of NMCT, exercised its rights under the certain purchase and sale agreement to acquire the Nashville Property for $121,760, assumed debt of $70,000 and acquired new debt of $35,000 (the "Acquisition").

(b) Shareholders of NexPoint Multifamily Capital Trust, Inc. ("NMCT"), a Maryland corporation, which after completion of step (a) indirectly owned the Nashville Property, contributed 100% of their common equity in NMCT to the Holdco in exchange for 4,452,164 units of Holdco. In addition to the common equity owned by the shareholders of NMCT, an affiliate owned $11,500 of preferred equity issued by NMCT. Prior to the contribution of the common equity, the affiliate converted their NMCT preferred equity to common equity, and they contributed their common equity to Holdco in exchange for 2,304,200 units of Holdco.

Upon Contribution, NMCT became a wholly owned subsidiary of Holdco. Upon completion of this step (b), the shareholders of NMCT owned 6,756,364 units of Holdco.

(c) HCBH 11611 Ferguson, LLC ("HCBH"), which owned the HWS Portfolio, contributed 100% of its LLC interests in NHT DFW Portfolio ("DFW") to Holdco in exchange for 3,843,184 units of Holdco.

(d) Meritage Residential Partners, LLC ("Meritage"), which owned the St. Pete Property, contributed 100% of its LLC interests in NHT SP Parent ("SP"), LLC to Holdco in exchange for 3,613,498 units of Holdco.

(e) Holdco contributed its interests in NMCT, DFW and SP to Intermediary in exchange for 2,842,577 common units of Intermediary and 76,239 preferred units of Intermediary.

(f) Intermediary contributed its interests in NMCT, DFW and SP to Holdings in exchange for 14,038,047 common units of Holdings and 875 preferred units of Holdings.

(g) Holdings contributed its interests in NMCT, DFW and SP to the OP in exchange for 14,213,077 Class A OP units.

After the series of transactions described in (a) – (g) above, Holdings owns 14,213,077 Class A OP Units, Intermediary owned 14,038,047 common units of Holdings and 875 preferred units of Holdings and Holdco owned 2,842,577 common units of Intermediary and 76,239 preferred units of Intermediary. As of January 8, 2019, the equity value of Holdco was $71,065.

(h) The members of NHT 2325 Stemmons LLC ("Stemmons") contributed 100% of their LLC interests to the OP in exchange for 3,944,221 Class B OP Units.

(i) The members of NREO NW Hospitality, LLC ("NREO NW") contributed 100% of their LLC interests to the OP in exchange for 9,629,170 Class B OP Units.

(j) OP GP, LLC ("GP") was granted 2,779 Class B OP Units and became the managing member of the GP, which is the managing member of the OP.

After the series of transactions described in (h) – (j) above, members of Stemmons and NREO NW owned 13,573,391 Class B OP Units and GP owned 2,779 Class B OP Units. As of January 8, 2019, the equity value of the OP was $67,867 and the combined value of Holdco and the OP was $138,932.

Listing Transactions

(k) Holdco will contribute its 2,842,577 common units of Intermediary and 76,239 preferred units of Intermediary to the REIT in exchange for 14,213,077 Units.

(l) The REIT will issue 917,700 Units to investors for $4,589 in cash and the Units will be listed on the TSXV under the ticker NHT.

Retained Interest

Immediately following Closing, principals, affiliates of the Advisor, trustees and officers will own or indirectly or directly exercise control or direction over approximately 71.6% of the REIT and 38.3% of the combined equity of the REIT and OP (determined as if all Class B OP Units are redeemed for Units).

2. Basis of Presentation

These pro forma consolidated financial statements of the REIT have been prepared by management in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") and incorporate the principal accounting policies expected to be used to prepare the REIT's financial statements.

These pro forma consolidated financial statements have been prepared from:

i) **NHT** - The audited financial statements of the REIT as at December 31, 2018 and for the period from December 12, 2018 (date of formation) to December 31, 2018.

ii) **HGI Property -** The following financial statements of 2325 Stemmons Hotel Partners, LLC: the unaudited consolidated statement of financial position as at September 30, 2018, the unaudited consolidated statement of comprehensive income (loss) for the nine months ended September 30, 2018 and the audited consolidated statement of comprehensive income (loss) for the year ended December 31, 2017.

iii) **DT Portfolio -** The following financial statements of NREO NW Hospitality, LLC: the unaudited consolidated statement of financial position as at September 30, 2018 and the unaudited consolidated statement of comprehensive income (loss) for the period from May 3, 2018 (date of formation) to September 30, 2018.

iv) **DT Portfolio -** The following financial statements of five properties in BRE GM JV Holdings, LLC: the unaudited consolidated statement of comprehensive income (loss) for the period from January 1, 2018 to May 3, 2018 and the audited consolidated statement of comprehensive income (loss) for the year ended December 31, 2017.

v) **HWS Portfolio -** The following financial statements of HCBH 11611 Ferguson, LLC: the unaudited consolidated statement of financial position as at September 30, 2018, the unaudited consolidated statement of comprehensive income (loss) for the nine months ended September 30, 2018 and the audited consolidated statement of comprehensive income (loss) for the period from May 4, 2017 (date of formation) to December 31, 2017.

vi) **St. Pete Property -** The following financial statements of Pallas, LLC: the unaudited statement of financial position as at September 24, 2018, the unaudited statement of comprehensive income (loss) for the period from January 1, 2018 to September 24, 2018 and the audited statement of comprehensive income (loss) for the year ended December 31, 2017.

vii) **Nashville Property -** The following financial statements of Birchmont H.I. Nashville partners, LLC: the unaudited consolidated statement of financial position as at September 30, 2018, the unaudited consolidated statement of comprehensive income (loss) for the nine months ended September 30, 2018 and the audited consolidated statement of comprehensive income (loss) for the year ended December 31, 2017.

The pro forma consolidated statement of financial position gives effect to the transactions in note 4 as if they had occurred on September 30, 2018. The pro forma consolidated statements of comprehensive income (loss) for the nine months ended September 30, 2018 and for the year ended December 31, 2017 give effect to the transactions in note 4 as if they had occurred on January 1, 2017.

These pro forma consolidated financial statements are not necessarily indicative of the results that would have actually occurred had these transactions been consummated at the dates indicated, nor are they necessarily indicative of future operating results or the financial position of the REIT.

3. Significant Accounting Policies

The significant accounting policies used in the preparation of these pro forma consolidated financial statements are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

These consolidated financial statements comprise the financial statements of the REIT and its subsidiaries, including NHT Intermediary, NHI, the OP and the subsidiaries of the OP, including the TRS Entities. The financial statements of the subsidiaries are prepared for the same reporting periods as the REIT using consistent accounting policies. All intercompany balances, transactions and unrealized gains and losses arising from intercompany transactions are eliminated upon consolidation.

(b) Business combinations

At the time of acquisition of a property, whether through a controlling share investment or directly, the REIT considers whether the acquisition represents the acquisition of a business. The REIT accounts for an acquisition as a business combination where an integrated set of activities is acquired in addition to the property. More specifically, consideration is made of the extent to which significant processes are acquired. If no significant processes, or only insignificant processes, are acquired, the acquisition is treated as an asset acquisition rather than a business combination.

The cost of a business combination is measured as the fair value of the assets given, equity instruments issued and liabilities incurred or assumed at the acquisition date. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at fair value at the date of acquisition. The REIT recognizes assets or liabilities, if any, resulting from a contingent consideration arrangement at their acquisition date fair value and such amounts form part of the cost of the business combination. Subsequent changes in the fair value of contingent consideration arrangements are recognized in net income. The difference between the purchase price and the REIT's net fair value of the acquired identifiable net assets and liabilities is goodwill. On the date of acquisition, positive goodwill is recorded as an asset. Negative goodwill is immediately recognized in the consolidated statement of income. The REIT expenses transaction costs associated with business combinations in the period incurred. When an acquisition does not meet the criteria for business combination accounting treatment, it is accounted for as an acquisition of a group of assets and liabilities, the cost of which includes transaction costs that are allocated to the assets and liabilities acquired based upon their relative fair values. No goodwill is recognized for asset acquisitions.

(c) Functional currency

The functional and presentation currency of the REIT and its subsidiaries is the U.S. dollar.

(d) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the REIT and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed

annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(e) Impairment of non-financial assets

The carrying amounts of the REIT's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(f) Financial instruments

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The REIT has made the following classifications for its financial instruments:

Asset/Liability	**Classification**
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Notes payable	Amortized cost
Credit facility	Amortized cost
Class B redeemable units of OP	fair value through profit and loss

The REIT derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The REIT derecognizes a financial liability when, and only when, the REIT's obligations are discharged, cancelled or they expire. The difference

between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

Units are redeemable at the option of the holder and, therefore, are considered puttable instruments in accordance with International Accounting Standards 32, Financial Instruments – Presentation ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32; in which case, the puttable instruments may be presented as equity. Units meet the exemption conditions of IAS 32 and are, therefore, presented as equity.

The Class B OP Units are redeemable for cash or Units on a one-for-one basis subject to customary anti-dilution adjustments at the option of the REIT and, therefore, the Class B OP Units meet the definition of a financial liability under IAS 32. Further, the Class B OP Units are designated as fair value through profit and loss financial liabilities and are measured at fair value at each reporting period with any changes in fair value recorded in profit or loss. The Class B OP Units are, in all material aspects, economically equivalent to Units on a per unit basis. The distributions paid on Class B OP Units are accounted for as finance costs.

Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the REIT applies a forward-looking 'expected credit loss' ("ECL") model. The REIT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(g) Cash and cash equivalents

The REIT considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(h) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(i) Provisions

A provision is recognized if, as a result of a past event, the REIT has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(j) Revenue recognition

Revenue is generated primarily from the operation of the REIT's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The REIT may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(k) Interest expense, net

Net interest expense primarily consists of interest expense on outstanding debt, the amortization of deferred financing costs, distributions on Class B OP Units classified as liabilities, gain (loss) on change in fair value of Class B OP Units and accrued dividend

payments on the preferred shares issued by NHI. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the pro forma consolidated statement of financial position.

(l) Income taxes

(i) Canadian mutual fund status

The REIT intends to make an election to be treated as a mutual fund trust pursuant to the Income Tax Act (Canada). Under current tax legislation, a mutual fund trust that is not a Specified Investment Flow-Through Trust ("SIFT") pursuant to the Income Tax Act (Canada) is entitled to deduct distributions of taxable income such that it is not liable to pay income taxes provided that its taxable income is fully distributed to unitholders. The REIT intends to qualify as a mutual fund trust that is not a SIFT trust and to make distributions not less than the amount necessary to ensure that the REIT will not be liable to pay income taxes.

(ii) U.S REIT Status

The REIT expects to be classified as a corporation for U.S. federal income tax purposes under current Treasury Regulations. Further, pursuant to section 7874 of the United States Internal Revenue Code of 1986, as amended (the "Code") the REIT expects to be treated as a U.S. corporation for all purposes under the Code and, as a result, it would be permitted to elect to be treated as a real estate investment trust under the Code, notwithstanding it will be organized as a Canadian entity. In general, a company that elects real estate investment trust status, distributes at least 90% of its real estate investment trust taxable income to its shareholders in any taxable year, and complies with certain other requirements is not subject to U.S. federal income taxation to the extent of the income it distributes. If it fails to qualify as a real estate investment trust in any taxable year, it will be subject to U.S. federal income tax at regular corporate income tax rates on its taxable income. Even if it qualifies for taxation as a real estate investment trust, it may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed income. The REIT has reviewed the real estate investment trust requirements and expects that it will qualify as a real estate investment trust under the Code. Accordingly, no provision for U.S. federal income or excise taxes has been made with respect to the income of the REIT.

The REIT, through wholly owned subsidiaries, intends to lease the Initial Portfolio to the TRS Entities, which are taxable in the U.S. A TRS is a corporation that has not elected REIT status and has made a joint election with a real estate investment trust to be treated as a TRS. As such, it is subject to U.S. federal and state corporate income tax. The income tax effects on the results of the TRS Entities accrue directly to the members of the REIT.

For these entities, income tax expense comprises current and deferred taxes. Current tax and deferred tax are recognized in earnings except to the extent that they relate to a business combination, or to items recognized directly in equity or in other comprehensive income.

(iii) Current taxes

Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years.

(iv) Deferred taxes

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: (a) the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, and (b) differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future. In addition, deferred tax is not recognized for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date.

(v) 2017 Tax Act

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The REIT does not expect the 2017 Tax Act to have a significant impact on its pro forma consolidated financial statements.

(m) Operating segments

The REIT expects to operate in one business segment, owning and operating hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the REIT's chief operating decision-maker.

(n) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the REIT recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(o) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(p) Critical judgments

Management must assess whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The REIT's acquisitions are generally determined to be business combinations as the REIT acquires an integrated set of processes as part of the acquisition transaction.

Management must assess whether or not it controls entities in which it has an interest. This involves evaluating the REIT's ability to make decisions over the relevant activities of such entities and to determine to what extent the REIT is exposed to the variable returns of the entities. This assessment impacts the identification of the REIT's subsidiaries and as a result which entities it consolidates.

(q) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The REIT implemented the amendments to IAS 7 on January 1, 2017 and there was no material impact on its pro forma consolidated financial statements.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods

beginning on or after January 1, 2018 with early adoption permitted. The REIT adopted IFRS 9 on January 1, 2018 and there was no material impact on its pro forma consolidated financial statements.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The REIT adopted IFRS 15 on January 1, 2018, using the modified retrospective method, and there was no material impact on its pro forma consolidated financial statements.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the REIT has adopted IFRS 15. The REIT intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

(v) Definition of a business (Amendments to IFRS 3, Business combinations)

On October 22, 2018, the IASB issued amendments to IFRS 3 *Business Combinations* that seek to clarify whether a transaction results in an asset or a business acquisition. The amendments apply to businesses acquired in annual reporting periods beginning on or after January 1, 2020. Earlier application is permitted.

The amendments include an election to use a concentration test. This is a simplified assessment that results in an asset acquisition if substantially all of the fair value of the gross assets is concentrated in a single identifiable asset or a group of similar identifiable assets. If a preparer chooses not to apply the concentration test, or the test is failed, then the assessment focuses on the existence of a substantive process.

The REIT intends to adopt the amendments in its consolidated financial statements beginning on January 1, 2020, when the standard becomes effective.

4. Pro Forma Adjustments

The pro forma adjustments to these pro forma consolidated financial statements have been prepared to account for the impact of the transactions contemplated by the prospectus, as described below:

(a) The Offering

These pro forma consolidated financial statements include the subscription for one Unit of the REIT for $15.00 by the initial unitholder of the REIT, made on December 12, 2018.

These pro forma consolidated financial statements assume the REIT will raise gross proceeds pursuant to the Offering of approximately $4,589 through the issuance of 917,700 Units at $5.00 per Unit. Underwriters' fees and other offering expenses are assumed to be $4,059 and are charged directly to Unitholders' capital for net cash of $530. Additionally, NREO contributed $5,000 in cash as part of the Initial Transaction (see Note 4c and Note 5 - Sources and uses of cash).

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(Amounts in thousands of U.S. dollars except unit counts)

(b) Contributions of Property and Equipment

These pro forma consolidated financial statements also assume that at Listing the REIT issues 14,213,077 Units to Holdco in exchange for 100% of the common and preferred units of Intermediary. This transaction is considered to be a common-control transaction and is being accounted for using book value accounting.

The values at which the entities were contributed to Holdco on January 8, 2019 were negotiated between Holdco and the Contributors but are supported by third-party appraisals. The contributions were accounted for using book value accounting as they are considered to be under common control with Holdco. The Class B Contributions are considered a business combination and are accounted for using the purchase method of accounting. The pro forma balance sheet has been adjusted to reflect the changes in book value or fair value of property and equipment acquired, as they case may be, as shown below:

	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Total
	Purchase Accounting[1]	Book Value Accounting[2]	Book Value Accounting[3]	Book Value Accounting[4]	Purchase Accounting[5]	
Value of property and equipment acquired	$ 37,000	$ 40,861	$ 39,942	$ 120,500	$ 96,800	$ 335,103
Carrying value of property and equipment on September 30, 2018 financials	27,074	41,214	13,895	35,463	77,698	195,344
Increase to property and equipment, net	$ 9,926	$ (353)	$ 26,047	$ 85,037	$ 19,102	$ 139,759

[1] The contribution of 2325 Stemmons Hotel Partners, LLC, the owner of the HGI Property, to the OP is accounted for as a business combination using the purchase method of accounting. The fair value of the property contributed was $37,000 as compared to the historical value on the pro forma balance sheet of $27.074, resulting in an adjustment of $9,926.

[2] The contribution of NHT DFW Portfolio, LLC, the owner of the HWS Portfolio, to the REIT, to the REIT through Holdco's contribution of Intermediary is accounted for using book value accounting as Holdco and the REIT are considered to be under common control. The book value of the property contributed was $40,861 as compared to the historical value on the pro forma balance sheet of $41,214, resulting in an adjustment of $(353).

[3] The contribution of Meritage Residential Partners, LLC, the owner of the HWS Portfolio, to the REIT through Holdco's contribution of Intermediary is accounted for using book value accounting as Holdco and the REIT are considered to be under common control. The book value of the property contributed was $39,942 as compared to the historical value on the pro forma balance sheet of $13,895, resulting in an adjustment of $26,047.

[4] The contribution of NMCT, the owner of the Nashville Property, to the REIT through Holdco's contribution of Intermediary is accounted for using book value accounting as Holdco and the REIT are considered to be under common control. The book value of the property contributed was $120,500 as compared to the historical value on the pro forma balance sheet of $35,463, resulting in an adjustment of $85,037.As Nashville was newly acquired, a portion of the purchase price ($1,428) was allocated to intangible assets, which is included in the purchase price of $120,500.

[5] The contribution of NREO NW Hospitality, LLC, the owner of the DT Portfolio, to the OP is accounted for as a business combination using the purchase method of accounting. The fair value of the property contributed was $96,800 as compared to the historical value on the pro forma balance sheet of $77,698, resulting in an adjustment of $19,102.

The HGI Property and DT Portfolio were contributed at values higher than their fair values on the acquisition date as determined in accordance with IFRS. Because the HGI Property and DT Portfolio are accounted for as a business combination and thus using the purchase method of accounting, the value of the net assets contributed in excess of the fair value is treated as goodwill. As a result, the REIT has recorded goodwill as shown in the below table:

	HGI Property	DT Portfolio	Total
Fair value (stabilized appraisal)	$ 37,200	$ 108,200	$ 145,400
Value as recorded on the balance sheet	37,000	96,800	133,800
Goodwill recorded	$ 200	$ 11,400	$ 11,600

(c) Contributions of Other Assets

Other assets contributed to the REIT on March 27, 2019, are recorded at book value. The pro forma balance sheet has been adjusted to reflect the changes in book value of the other assets contributed as compared to the valued presented on the September 30, 2018 financials, as shown below:

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(Amounts in thousands of U.S. dollars except unit counts)

	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Total
	Purchase Accounting	Book Value Accounting	Book Value Accounting	Book Value Accounting	Purchase Accounting	
Value of other assets acquired						
Cash	$ 1,332	$ 905	$ 413	$ 1,685	$ 3,197	7,532
Restricted cash	-	712	-	1,721	470	2,903
Trade and other receivables	(56)	517	199	266	443	1,370
Prepaid and other assets	(310)	637	231	489	1,051	2,098
Carrying value of other assets on September 30, 2018 financials	1,572	2,023	4,402	4,746	6,352	19,095
Decrease to other assets	$ (606)	$ 747	$ (3,559)	$ (584)	$ (1,191)	$ (5,192)

The pro forma balance sheet has been adjusted to reflect an additional $5,000 of cash contributed by NREO such that the pro forma unrestricted cash balance is $13,062.

(d) Contributions of Mortgages and Mezzanine Debt

Mortgages and mezzanine contributed to the REIT on March 27, 2019, are recorded at book value. The pro forma balance sheet has been adjusted to reflect the changes in book value of the other assets contributed as shown below:

	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Total
	Purchase Accounting	Book Value Accounting	Book Value Accounting	Book Value Accounting	Purchase Accounting	
Value of mortgages and other indebtedness acquired	$ 120,108	$ -	$ -	$ 69,392	$ 62,624	252,124
Carrying value of mortgages and other indebtedness on September 30, 2018 financials	$ 20,662	$ 31,641	$ 21,830	$ 68,639	$ 60,805	203,577
Increase to mortgages and other indebtedness	$ 99,446	$ (31,641)	$ (21,830)	$ 753	$ 1,819	$ 48,547

Additionally, as none of the indebtedness has a near term payment due, the $2,149 of principal payments payable in the next twelve months, as presented in the current portion of notes payable, this amount has been moved to notes payable and other borrowings, net.

(e) Contributions of Other Liabilities

Other liabilities contributed to the REIT on March 27, 2019, are recorded at book value. The pro forma balance sheet has been adjusted to reflect the changes in book value of the other liabilities contributed as shown below:

	HGI Property	HWS Portfolio	St. Pete Property	Nashville Property	DT Portfolio	Total
	Purchase Accounting	Book Value Accounting	Book Value Accounting	Book Value Accounting	Purchase Accounting	
Value of other liabilities	$ 700	$ 1,978	$ 727	$ 1,011	$ 1,571	5,986
Carrying value of other liabilities on September 30, 2018 financials	1,786	1,657	1,214	2,697	1,793	9,147
Decrease to other liabilities	$ (1,086)	$ 321	$ (487)	$ (1,686)	$ (222)	$ (3,161)

The pro forma balance sheet has also been adjusted to reflect the issuance of 13,573,391 Class B OP Units with a value of $67,881 issued to settle the Class B Contributions.

The actual amount recorded for each of these assets and liabilities may vary from the pro forma amounts disclosed above as the transactions described in the Prospectus will take place after September 30, 2018, and the variations may be material.

(f) Historical accounts

Elimination of the historical members' equity accounts relating to the Contributors.

(g) Hotel revenues

The pro forma statement of net income (loss) and comprehensive income (loss) for the nine months ended September 30, 2018 has been adjusted to increase room, food and beverage, and other revenues:

(i) by $117, $14 and $28, respectively, to reflect adjustments to the St. Pete Property to add results for the property from September 24, 2018 to September 30, 2018; and

(ii) by $6,106, $446 and $NIL, respectively, to reflect adjustments to the DT Portfolio to add results for the properties from January 1, 2018 to May 3, 2018.

The pro forma statement of net income (loss) and comprehensive income (loss) for the year ended December 31, 2017 has been adjusted to increase room, food and beverage, and other revenue by $3,831, $7, and $51, respectively, to reflect adjustments to the HWS Portfolio to add results for the property from January 1, 2017 to May 4, 2017.

(h) Hotel operating expenses

The pro forma statement of net income (loss) and comprehensive income (loss) for the nine months ended September 30, 2018 has been adjusted to increase operating expenses and general and administrative expenses:

(i) by $89 and $27 respectively, to reflect adjustments to the St. Pete Property to add results for the property from September 24, 2018 to September 30, 2018; and

(ii) by $3,370 and $1,510, respectively, to reflect adjustments to the DT Portfolio to add results for the properties from January 1, 2018 to May 3, 2018.

The pro forma statement of net income (loss) and comprehensive income (loss) for the year ended December 31, 2017 has been adjusted to increase operating expenses and general and administrative expenses by $1,909 and $865, respectively, to reflect adjustments to the HWS Portfolio to add results for the property from January 1, 2017 to May 4, 2017.

(i) Depreciation

The pro forma statement of net income (loss) and comprehensive income (loss) for the nine months ended September 30, 2018 and the year ended December 31, 2017 have been adjusted to increase depreciation expense by $9,883 and $12,339, respectively. The adjustments reflect the increase in depreciation resulting from the increase in the cost basis of the contributed properties.

(j) Advisory fees

To compensate for the Advisor's services, the REIT will pay a monthly advisory fee at an annualized rate of 1.00% of total assets of the REIT (but not on the total assets of the OP, which includes the total assets of the HGI Property and DT Portfolio) to the Advisor. The pro forma statements of net income (loss) and comprehensive income (loss) for the nine months ended September 30, 2018 and the year ended December 31, 2017 have been adjusted to increase advisory expense by $1,782 and $2,376, respectively, to reflect the expected level of advisory fees.

(k) Interest expense, net

The pro forma statements of net income (loss) and comprehensive income (loss) for the nine months ended September 30, 2018 and the year ended December 31, 2017 have been adjusted to increase interest expense, net by $5,421 and $8,212, respectively. The adjustments reflect the new capital structure that will be in place once the Listing is completed and the revised interest expense thereon.

(l) Income tax expense

After Listing, the operations of each hotel will be conducted through taxable REIT subsidiaries. Therefore, it is anticipated that the REIT will have an income tax expense each year. The REIT assumes that on Listing it will qualify as a REIT and it will meet the required REIT conditions thereafter. Income tax expense has been increased to reflect the estimated income tax expense for the nine months ended September 30, 2018 and for the year ended December 31, 2017, by $393 and $524, respectively.

5. Sources and uses of cash

The REIT's sources and uses of cash after the completion of the transactions contemplated in Note 4 are as follows:

Sources:		
Gross proceeds from the Offering	$	4,589
Cash contributed by NREO as part of Initial Transaction		5,000
Uses:		
Offering costs and expenses		(4,059)
Increase in cash at the REIT	$	5,530

6. Unitholders' capital

The REIT is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the REIT. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the REIT; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders.

On Closing, the REIT anticipates raising gross proceeds pursuant to the Offering of approximately $4,589 through the issuance of 917,700 Units (excluding any over-allotment option). Costs relating to the Offering, including underwriters' fees, are assumed to be $4,059 and are charged directly to unitholders' capital.

On Closing, the REIT also anticipates issuing 14,213,077 Units at $5.00 per unit for a total value of $71,065. Through a series of transactions as described in Note 1, the REIT will indirectly own 14,213,077 Class A OP Units issued by the OP with a total value equal to the value of the REIT Units. The Class A OP Units are eliminated through consolidation of the OP into the REIT (see Note 3(a)).

7. Related party transactions

These pro forma consolidated financial statements include the following transactions with related parties:

The issuance of 8,758,122 Units of the REIT with a value of $43,800 to affiliates of the chief executive officer of the REIT and other officers in connection with the contribution of the HWS Portfolio, the St. Pete Property and the Nashville Property.

8. Commitments and Contingencies

In connection with the Offering, the REIT has agreed to indemnify the underwriters against certain liabilities, including liabilities under applicable securities legislation, or to contribute to payments the underwriters may be required to make in respect of those liabilities. The REIT has agreed to indemnify, in certain circumstances, the Trustees and the officers of the REIT.

NEXPOINT HOSPITALITY TRUST

Financial Statements

(Expressed in U.S. Dollars)

As at December 31, 2018 and for the period from December 12, 2018 (date of formation) to December 31, 2018

(With Independent Auditors' Report Thereon)

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INDEPENDENT AUDITORS' REPORT

To the Unitholder of NexPoint Hospitality Trust:

Opinion

We have audited the financial statements of NexPoint Hospitality Trust (the "Entity"), which comprise:

- the statement of financial position as at December 31, 2018;
- the statement of unitholder's capital for the period from December 12, 2018 (date of formation) to December 31, 2018;
- the statement of cash flows for the period from December 12, 2018 (date of formation) to December 31, 2018; and
- notes to the financial statements, including a summary of significant accounting policies.

(Hereinafter referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Entity at December 31, 2018 and its cash flows for the period from December 12, 2018 (date of formation) to December 31, 2018 in accordance with International Financial Reporting Standards (IFRS).

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the "***Auditors' Responsibilities for the Audit of the Financial Statements***" section of our auditors' report.

We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada and we have fulfilled our other responsibilities in accordance with these requirements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with International Financial Reporting Standards (IFRS), and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Entity's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Entity's financial reporting process.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit.

We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.

  The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management;

- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditors' report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditors' report. However, future events or conditions may cause the Entity to cease to continue as a going concern;
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation; and
- Communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

KPMG LLP

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Canada
March 27, 2019

NEXPOINT HOSPITALITY TRUST
STATEMENT OF FINANCIAL POSITION AS OF DECEMBER 31, 2018
(Amounts in U.S. dollars)

	December 31, 2018
ASSETS	
Cash	$ 15
UNITHOLDER'S CAPITAL	
Unitholder's capital	$ 15

See accompanying notes to these audited financial statements

NEXPOINT HOSPITALITY TRUST
STATEMENT OF UNITHOLDER'S CAPITAL
FOR THE PERIOD FROM DECEMBER 12, 2018 TO DECEMBER 31, 2018
(Amounts in U.S. dollars)

Period from December 12, 2018 (date of formation) to December 31, 2018

Issuance of unit on formation	$	15
Unitholder's capital, end of period	$	15

See accompanying notes to these audited financial statements

NEXPOINT HOSPITALITY TRUST
STATEMENT OF CASH FLOWS
FOR THE PERIOD FROM DECEMBER 12, 2018 TO DECEMBER 31, 2018
(Amounts in U.S. dollars)

	Period from December 12, 2018 (date of formation) to December 31, 2018	
Cash flows from financing activities		
Issuance of unit	$	15
Increase in cash, being cash, end of period	$	15

See accompanying notes to these audited financial statements

Note 1. General Information

NexPoint Hospitality Trust (the "REIT") is an unincorporated, open-ended real estate investment trust established pursuant to the Declaration of Trust dated December 12, 2018 (the "Date of Formation"), and is governed by the laws of the Province of Ontario. To date, there have been no operations and the REIT's financial reporting year end will be December 31. The registered office of the REIT is at 333 Bay Street, Suite 3400, Toronto, Ontario. The REIT has been created for the purpose of acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to list its shares on the TSX Venture Exchange (the "Listing"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. The REIT is externally managed by NexPoint Real Estate Advisors VI, L.P., which has been formed for the purpose of managing the REIT.

The financial statements of the REIT (the "Financials") have been prepared for the specific purpose of reporting on the historical assets, liabilities and unitholders' equity of the REIT included in, and for the inclusion in, the prospectus to be filed by the REIT. The Financials present the financial position and cash flows of the REIT for the period presented. The Financials are not necessarily indicative of future operating results.

Note 2. Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). The Financials were authorized for issue by the Board of Trustees of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below:

(a) Cash and cash equivalents

Cash and cash equivalents include cash on hand, unrestricted cash and short-term investments. Short-term investments, comprising money market instruments, have an initial maturity of 90 days or less at their date of purchase and are stated at cost, which approximates net realizable value. As of December 12, 2018, there were no cash equivalents.

(b) Unitholder's capital

The REIT Unit is redeemable at the option of the holder and, therefore, is considered a puttable instrument in accordance with International Accounting Standard ("IAS") 32, Financial Instruments – Presentation ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32, in which case, the puttable instruments may be presented as equity. The REIT Unit meets the exemption conditions of IAS 32 and is, therefore, presented as equity. The REIT is authorized to issue an unlimited number of REIT Units. On December 12, 2018, the REIT issued one REIT Unit for cash proceeds of $15.

(c) IFRS Standards and amendments issued but not yet effective:

(i) IFRS 16 – Leases

On January 13, 2016, the IASB issued IFRS 16. IFRS 16 will replace IAS 17, Leases ("IAS 17"). The new standard introduces a single lessee accounting model and requires a lessee to recognize assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value. A lessee is required to recognize a right-of-use asset, representing its right to use the underlying asset and a lease liability, representing its obligation to make lease payments. This standard substantially carries forward the lessor accounting requirements of IAS 17, while requiring enhanced disclosures to be provided by lessors. Other areas of the lease accounting model have been impacted, including the definition of a lease. Transitional provisions have been provided. The new standard is effective for annual periods beginning on or after January 1, 2019. The REIT intends to adopt these amendments for the annual year beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

(ii) IFRIC Interpretation 23, Uncertainty over Income Tax Treatments

On June 7, 2017, the IASB issued IFRIC Interpretation 23, Uncertainty over Income Tax Treatments ("IFRIC 23"), which provides guidance on the accounting for current and deferred tax liabilities and assets in circumstances in which there is uncertainty over income tax treatments. IFRIC 23 is applicable for annual periods beginning on or after January 1, 2019. IFRIC 23 requires (i) an entity to contemplate whether uncertain tax treatments should be considered separately, or together as a group, based on which approach provides better predictions of the resolution; (ii) an entity to determine if it is probable that the tax authorities will accept the uncertain tax treatment; and (iii) if it is not probable that the uncertain tax treatment will be accepted, measure the tax uncertainty based on the most likely amount or expected value, depending on whichever method better predicts the resolution of the uncertainty. The REIT intends to adopt the Interpretation for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

(iii) Definition of a Business

On October 22, 2018, the IASB issued amendments to IFRS 3 *Business Combinations*, that seek to clarify whether a transaction results in an asset or a business acquisition. The amendments apply to businesses acquired in annual reporting periods beginning on or after January 1, 2020. Earlier application is permitted. The amendments include an election to use a concentration test. This is a simplified assessment that results in an asset acquisition if substantially all of the fair value of the gross assets is concentrated in a single identifiable asset or a group of similar identifiable assets. If a preparer chooses not to apply the concentration test, or the test is failed, then the assessment focuses on the existence of a substantive process. The REIT intends to adopt these amendments for the annual period beginning on January 1, 2020. The extent of the impact of adoption of the amendments has not yet been determined.

Note 4. Subsequent Events

The REIT evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these Financials and noted the following:

(i) On January 8, 2019, four groups of investors (the "**Contributors**"), contributed their interests in various entities to (i) NHT Holdco LLC ("Holdco") in exchange for 100% of the units of Holdco; and (ii) to a subsidiary of Holdco, NHT Operating Partnership, LLC (the "**OP**") in exchange for 100% of the Class A OP Units of the OP. The closing of these contributions completed the first step in a series of transactions in order to complete the Listing.

(ii) On March 27, 2019 the REIT entered into an agency agreement, whereby the REIT expects to raise gross proceeds of $4,589 pursuant to an initial public offering (the "Offering") through the issuance of 917,700 REIT Units at a price of $5.00 per REIT unit. Costs relating to the Offering, including agency fees, are estimated to be $4,059 and will be charged directly to unitholders' capital.

Subsequent to the transactions noted above, the REIT will indirectly own the Initial Portfolio, which is comprised of eleven hospitality properties located in the U.S.

2325 STEMMONS HOTEL PARTNERS, LLC

Consolidated Financial Statements

As at September 30, 2018 and December 31, 2017 and
for the nine and three months ended September 30, 2018 and 2017

(Unaudited)

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	September 30, 2018 (Unaudited)	September 30, 2017 (Unaudited)	December 31, 2017	December 31, 2016
ASSETS					
Current assets					
Cash and cash equivalents		$ 1,355	$ 2,763	$ 2,969	$ 1,957
Restricted cash		(347)	(314)	—	—
Trade and other receivables		138	170	113	456
Prepaid and other assets		79	97	58	93
Total current assets		1,225	2,716	3,140	2,506
Non-current assets					
Property and equipment, net	4	27,074	28,173	28,025	29,104
Total non-current assets		27,074	28,173	28,025	29,104
TOTAL ASSETS		$ 28,299	$ 30,889	$ 31,165	$ 31,610
LIABILITIES AND MEMBERS' EQUITY					
Current liabilities					
Accounts payable and other accrued liabilities	8	$ 1,438	$ 1,475	$ 1,854	$ 2,154
Current portion of note payable	9	307	294	294	273
Total current liabilities		1,745	1,769	2,148	2,427
Non-current liabilities					
Note payable, net	9	20,662	20,948	20,922	21,144
Total non-current liabilities		20,662	20,948	20,922	21,144
Total Liabilities		22,408	22,717	23,070	23,571
Members' Equity		5,891	8,172	8,095	8,039
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ 28,299	$ 30,889	$ 31,165	$ 31,610

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF NET INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
FOR THE NINE AND THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

		For the Nine Months Ended September 30,		For the Three Months Ended September 30,	
	Notes	2018	2017	2018	2017
Revenues					
Rooms		$ 6,019	$ 5,970	$ 1,897	$ 1,863
Food and beverage		891	991	308	313
Other		114	108	34	35
Total revenues		7,024	7,069	2,239	2,211
Expenses					
Operating expenses	6	3,597	3,498	1,183	1,172
General and administrative expenses	7	1,504	1,495	525	492
Depreciation		1,094	1,063	365	356
Total expenses		6,195	6,056	2,073	2,020
Operating income		829	1,013	166	191
Interest expense, net	10	(1,001)	(858)	(345)	(295)
Income (loss) before income taxes		(172)	155	(179)	(104)
Income tax expense		(2)	(22)	-	(22)
Net income (loss) and comprehensive income (loss)		$ (174)	$ 133	$ (179)	$ (126)

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY
AS OF SEPTEMBER 30, 2018, DECEMBER 31, 2017, SEPTEMBER 30, 2017 AND DECEMBER 31, 2016
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Members' Equity
Balances, December 31, 2016	$ 8,039
Net income and comprehensive income (unaudited)	133
Balances, September 30, 2017	8,172
Balances, December 31, 2017	8,095
Net loss and comprehensive loss (unaudited)	(174)
Distributions (unaudited)	(2,030)
Balances, September 30, 2018	$ 5,891

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE AND THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Nine Months Ended September 30, 2018	For the Nine Months Ended September 30, 2017	For the Three Months Ended September 30, 2018	For the Three Months Ended September 30, 2017
Cash flows from operating activities					
Net income (loss)		$ (174)	$ 133	$ (179)	$ (126)
Adjustments to reconcile net income (loss) to net cash provided by operating activities					
Depreciation		1,094	1,063	365	356
Interest expense, net	10	1,001	858	345	295
Changes in operating assets and liabilities:					
Operating assets		(46)	282	1	(58)
Operating liabilities		(416)	(679)	55	267
Net cash provided by operating activities		1,459	1,657	587	734
Cash flows from investing activities					
Additions to property and equipment	4	(143)	(132)	(25)	(89)
Change in restricted cash		347	314	—	—
Net cash provided by investing activities		204	182	(25)	(89)
Cash flows from financing activities					
Principal payments on note payable	9	(301)	(228)	(85)	(67)
Contributions		—	—	—	—
Distributions		(2,030)	—	—	(42)
Interest paid		(947)	(805)	(327)	(277)
Net cash used in financing activities		(3,278)	(1,033)	(411)	(386)
Net increase (decrease) in cash and cash equivalents		(1,615)	806	151	259
Cash and cash equivalents, beginning of period		2,969	1,957	1,204	2,504
Cash and cash equivalents, end of period		$ 1,354	$ 2,763	$ 1,355	$ 2,763
Supplemental Disclosure of Cash Flow Information					
Income taxes paid		$ 2	$ 22	$ -	$ 22

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

2325 Stemmons Hotel Partners, LLC (the "Company") is a limited liability company registered in Delaware, United States of America, and was established on September 11, 2014. The Company was formed to invest in a Hilton Garden Inn hotel property located in Dallas, Texas (the "Property"). The Company is owned by NexPoint Real Estate Opportunities, LLC ("NREO"), through a wholly owned subsidiary, NHT 2325 Stemmons, LLC. NREO owns 95% of the Company. Stemmons Hospitality, LLC ("Stemmons") owns 5% of the Company. The Company is operated by 2325 Stemmons TRS, Inc. (the "Operating Company"), a Delaware corporation and a wholly owned subsidiary of the Company.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Transaction and Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These consolidated financial statements of the Company consist of the Property and the Operating Company (the "Financials"). The Financials have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company and the Operating Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(i) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(ii) Basis of Measurement

These consolidated financial statements have been prepared on a historical cost basis.

(iii) Basis of Presentation

The Financials have been prepared in accordance with IFRS as issued by the IASB. These consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, the Operating Company. All significant intercompany accounts and transactions have been eliminated in consolidation. These consolidated financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(iv) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

These consolidated financial statements were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these consolidated financial statements are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The consolidated financial statements comprise the financial statements of the Company and the Operating Company. Intra-company transactions and balances are eliminated in preparing the consolidated financial statements. The consolidated financial statements reflect the consolidated financial position, results of operations and cash flows of the Company and the Operating Company.

(b) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than

goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	**Classification**
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Notes payable	Amortized cost

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The REIT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

(i) The Company

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income (see "The Operating Company" below), as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 30, 2018 and

December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 30, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its consolidated financial statements.

(ii) The Operating Company

The Operating Company is a taxable REIT subsidiary ("TRS") of the U.S. TRS companies are treated as U.S. corporations subject to U.S federal and state income tax on their taxable income. The income tax effects on the results of the Operating Company accrue directly to the members of the Company. Income tax expense for the nine months ended September 30, 2018 and 2017 was $2 and $22, respectively, which is included in the consolidated statements of comprehensive income.

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date. Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset current tax liabilities and assets, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized for unused tax losses, tax credits and deductible temporary differences, to the extent that it is probable that future taxable profits will be available against which they can be utilized. Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

(k) Operating segments

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 on January 1, 2018 and there was no material impact on its consolidated financial statements.

(ii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company adopted IFRS 15 on January 1, 2018, using the modified retrospective method, and there was no material impact on its Financials.

(iii) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, December 31, 2017	$ 2,555	$ 25,922	$ 3,101	$ 31,578
Additions	—	96	47	143
Disposals	—	—	—	—
Balance, September 30, 2018	$ 2,555	$ 26,018	$ 3,148	$ 31,721
Accumulated depreciation:				
Balance, December 31, 2017	$ —	$ 3,176	$ 377	$ 3,553
Depreciation	—	976	118	1,094
Disposals	—	—	—	—
Balance, September 30, 2018	$ —	$ 4,152	$ 495	$ 4,647
Carrying amount, December 31, 2017	$ 2,555	$ 22,746	$ 2,724	$ 28,025
Carrying amount, September 30, 2018	2,555	21,866	2,653	27,074

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement in 2014. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of the year ended December 31, 2017 and the period ended September 30, 2018, the Company had no restricted cash.

Note 6. Operating Expenses

	For the Nine Months Ended September 30,	
	2018	2017
Payroll	$ 1,614	$ 1,573
Repairs and maintenance	293	293
Utilities	211	205
Property taxes and insurance	420	358
Cost of goods sold	396	444
Franchise fees	332	330
Other operating expenses	331	295
Operating expenses	$ 3,597	$ 3,498

Note 7. General and Administrative Expenses

	For the Nine Months Ended September 30,	
	2018	2017
Property management fees	$ 210	$ 326
Office operations	291	327
Marketing	817	726
Other administrative expenses	186	116
General and administrative expenses	$ 1,504	$ 1,495

Note 8. Accounts Payable and Other Accrued Liabilities

	September 30, 2018	December 31, 2017
Trade payables	$ 373	$ 500
Payroll and payroll taxes	175	108
Property taxes	396	491
Property management fees	—	68
Sales and occupancy taxes	123	64
Franchise fees	114	73
Deposits	373	373
Other payables	232	177
Accounts payable and other accrued liabilities	$ 1,786	$ 1,854

Note 9. Note Payable, Net

	September 30, 2018	December 31, 2017
Note payable	$ 21,058	$ 21,359
Less: current maturities	(307)	(294)
Less: unamortized portion of deferred financing costs	(89)	(143)
Note payable, net	$ 20,662	$ 20,922

On December 30, 2014, in connection with the acquisition of the Property, the Company entered into a $24,000 term loan (the "Loan") with a large financial institution and immediately drew $21,632. The Loan is secured by the Property and bears interest at a variable rate equal to the 90-day London InterBank Offered Rate ("LIBOR") plus 3.76%. As of September 30, 2018 and December 31, 2017, the Loan's effective interest rates were 6.16% and 5.25%, respectively. The Loan's first 24 monthly payments were interest only. The Loan matures on January 1, 2020.

The Company's loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of September 30, 2018 and December 31, 2017, the Company was in compliance with all covenants of its loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to September 30, 2018 are as follows:

	Note payable
2018	$ 66
2019	271
2020	20,721
2021	—
2022	—
Thereafter	—
Total	$ 21,058

Note 10. Interest Expense, Net

	For the Nine Months Ended September 30,	
	2018	2017
Interest on debt	$ 947	$ 804
Amortization of deferred financing costs	54	54
Interest expense, net	$ 1,001	$ 858

Note 11. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of September 30, 2018, cash contributions totaled $9,740 and cash distributions totaled $4,637. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

As of September 30, 2018 and December 31, 2017, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets and accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of September 30, 2018 and December 31, 2017, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of September 30, 2018, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $211 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the nine months ended September 30, 2018 and 2017, bad debt expense was $0 and $2, respectively. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of September 30, 2018 and December 31, 2017, the Company had cash and cash equivalents of $1,355 and $2,969, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 90-day LIBOR rate of 2.40% as of September 30, 2018:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 21,058	$ 21,058	$ 307	$ 20,751
Interest payable on note	—	1,636	1,312	324
Accounts payable and other accrued liabilities	1,786	1,786	1,786	—
Total	$ 22,844	$ 24,480	$ 3,405	$ 21,075

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Hilton Worldwide (the "Franchisor"). The Franchise Agreement was executed on October 22, 2014 and has a 15-year term. The Franchise Agreement requires the payment of a monthly royalty fee of 5.5% and a monthly program fee of 4.3% of the Property's gross room revenue. For the nine months ended September 30, 2018 and 2017, franchise fees were $332 and $330, respectively, and are included in operating expenses in the consolidated statements of comprehensive income. For the nine months ended September 30, 2018 and 2017, program fees were $260 and $258, respectively, and are included in general and administrative expenses in the consolidated statements of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

Note 16. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the period ended September 30, 2018 were as follows:

	Liabilities			
	Current portion of note payable	Note payable, net	Members' equity	Total
Balance January 1, 2018	$ 294	$ 20,922	$ 8,095	$ 29,311
Changes from financing cash flows:				
Amortization of deferred financing costs	-	54	-	54
Reclass from note payable, net to current portion	13	(13)	-	-
Principal payments on notes payable	-	(301)	-	(301)
Distributions	-	-	(2,030)	(2,030)
Total changes from financing cash flows	13	(260)	(2,030)	(2,277)
Comprehensive Income (loss)	-	-	(174)	(174)
Balance September 30, 2018	$ 307	$ 20,662	$ 5,891	$ 26,860

Note 17. Subsequent Events

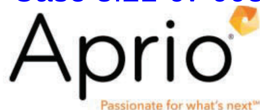
The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT 2325 Stemmons, LLC, which was immediately contributed to the OP in exchange for 3,944,221 Class B Units of the OP.

2325 STEMMONS HOTEL PARTNERS, LLC

Consolidated Financial Statements

As at December 31, 2017, December 31, 2016, December 31, 2015 and January 1, 2015 and for the years ended December 31, 2017, December 31, 2016 and December 31, 2015

(With Independent Auditors' Report Thereon)



INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
Nexpoint Hospitality Trust

We have audited the accompanying consolidated financial statements of 2325 Stemmons Hotel Partners, LLC, which comprise the consolidated statements of financial position as of December 31, 2017, December 31, 2016, December 31, 2015, and January 1, 2015 and the related consolidated statements of net income and comprehensive income, members' equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

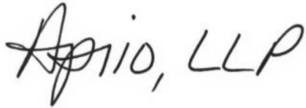
Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and in accordance with International Standards on Auditing. Those standards require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

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

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of 2325 Stemmons Hotel Partners, LLC as of December 31, 2017, December 31, 2016, December 31, 2015, and January 1, 2015 and the results of its consolidated net income and comprehensive income, changes in equity and its cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.



Atlanta, Georgia

March 27, 2019

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016, DECEMBER 31, 2015 AND JANUARY 1, 2015
(Amounts in thousands of U.S. dollars)

	Notes	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
ASSETS					
Current assets					
Cash		$ 2,969	$ 1,957	$ 737	$ 409
Restricted cash		—	—	148	—
Trade and other receivables		113	456	36	229
Prepaid and other assets		58	93	138	64
Total current assets		3,140	2,506	1,059	702
Non-current assets					
Property and equipment, net	4	28,025	29,104	29,857	25,480
Total non-current assets		28,025	29,104	29,857	25,480
TOTAL ASSETS		$ 31,165	$ 31,610	$ 30,916	$ 26,182
LIABILITIES AND MEMBERS' EQUITY					
Current liabilities					
Accounts payable and other accrued liabilities	8	$ 1,854	$ 2,154	$ 602	$ 105
Current portion of note payable	9	294	273	—	—
Total current liabilities		2,148	2,427	602	105
Non-current liabilities					
Note payable, net	9	20,922	21,144	21,345	21,273
Total non-current liabilities		20,922	21,144	21,345	21,273
Total Liabilities		23,070	23,571	21,947	21,378
Members' Equity		8,095	8,039	8,969	4,604
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ 31,165	$ 31,610	$ 30,916	$ 25,982

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF NET INCOME AND COMPREHENSIVE INCOME
FOR THE YEARS ENDED DECEMBER 31, 2017, 2016 AND 2015
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016	2015
Revenues				
Rooms		$ 7,796	$ 8,020	$ 6,817
Food and beverage		1,276	1,272	1,198
Other		144	156	194
Total revenues		9,216	9,448	8,209
Expenses				
Operating expenses	6	4,703	4,630	4,356
General and administrative expenses	7	1,846	1,965	1,397
Depreciation		1,423	1,378	752
Total expenses		7,972	7,973	6,505
Operating income		1,244	1,475	1,704
Interest expense, net	10	(1,158)	(1,059)	(962)
Income before income taxes		86	416	742
Income tax expense		(30)	(41)	(120)
Net income and comprehensive income		$ 56	$ 375	$ 622

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016, DECEMBER 31, 2015 AND JANUARY 1, 2015
(Amounts in thousands of U.S. dollars)

		Members' Equity
Balances, January 1, 2015	$	4,604
Net income and comprehensive income		622
Contributions		4,950
Distributions		(1,207)
Balances, December 31, 2015		8,969
Net income and comprehensive income		375
Contributions		95
Distributions		(1,400)
Balances, December 31, 2016		8,039
Net income and comprehensive income		56
Balances, December 31, 2017	$	8,095

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2017, 2016 AND 2015
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016	2015
Cash flows from operating activities				
Net income		$ 56	$ 375	$ 622
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation		1,423	1,378	752
Interest expense, net	10	1,158	1,059	962
Changes in operating assets and liabilities:				
Operating assets		378	(375)	(81)
Operating liabilities		(300)	1,552	497
Net cash provided by operating activities		2,715	3,989	2,752
Cash flows from investing activities				
Additions to property and equipment	4	(344)	(625)	(5,129)
Change in restricted cash		—	148	(148)
Net cash used in investing activities		(344)	(477)	(5,277)
Cash flows from financing activities				
Principal payments on note payable	9	(273)	—	—
Contributions		—	95	4,950
Distributions		—	(1,400)	(1,207)
Interest paid		(1,086)	(987)	(890)
Net cash provided by (used in) financing activities		(1,359)	(2,292)	2,853
Net increase in cash		1,012	1,220	328
Cash, beginning of period		1,957	737	409
Cash end of period		$ 2,969	$ 1,957	$ 737
Supplemental Disclosure of Cash Flow Information				
Income taxes paid		$ 30	$ 41	$ 120

See accompanying notes to these consolidated financial statements

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

2325 Stemmons Hotel Partners, LLC (the "Company") is a limited liability company registered in Delaware, United States of America, and was established on September 11, 2014. The Company was formed to invest in a Hilton Garden Inn hotel property located in Dallas, Texas (the "Property"). The Company is owned by NexPoint Real Estate Opportunities, LLC ("NREO"), through a wholly owned subsidiary, NHT 2325 Stemmons, LLC. NREO owns 95% of the Company. Stemmons Hospitality, LLC ("Stemmons") owns 5% of the Company. The Company is operated by 2325 Stemmons TRS, Inc. (the "Operating Company"), a Delaware corporation and a wholly owned subsidiary of the Company.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These consolidated financial statements of the Company consist of the Property and the Operating Company (the "Financials"). The Financials have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company and the Operating Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). These are the Company's first consolidated financial statements prepared in accordance with IFRS; the Company adopted IFRS in accordance with IFRS 1, *First-Time Adoption of International Reporting Standards*. An explanation or reconciliation of how the transition to IFRS has affected the Company's consolidated financial position, results of operations and cash flows has not been presented as the Company has not presented consolidated financial statements in previous years. The date of transition to IFRS was January 1, 2015.

(b) Basis of Measurement

These consolidated financial statements have been prepared on a historical cost basis.

(c) Basis of Presentation

These consolidated financial statements have been prepared in accordance with IFRS as issued by the IASB. These consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, the Operating Company. All significant intercompany accounts and transactions have been eliminated in consolidation. These consolidated financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

These consolidated financial statements were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these consolidated financial statements are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The consolidated financial statements comprise the financial statements of the Company and the Operating Company. Intra-company transactions and balances are eliminated in preparing the consolidated financial statements. The consolidated financial statements reflect the consolidated financial position, results of operations and cash flows of the Company and the Operating Company.

(b) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year-end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing.

Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Financial assets

The Company's financial assets are comprised of cash and cash equivalents, restricted cash, trade and other receivables and prepaid and other assets. The Company classifies these financial assets as loans and receivables. The Company initially recognizes loans and receivables on the date that they are originated. Loans and receivables are financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are recognized initially at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, loans and receivables are measured at amortized cost using the effective interest method, less any impairment losses.

(ii) Financial liabilities

The Company has the following non-derivative financial liabilities: accounts payable and other accrued liabilities and note payable. The Company classifies each of its non-derivative financial liabilities as other financial liabilities. Initial measurement is at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, these non-derivative financial liabilities are measured at amortized cost using the effective interest method. All non-derivative financial liabilities are initially recognized on the date that the Company becomes a party to the contractual provisions of the instrument. The Company derecognizes a financial liability when its contractual obligations are discharged or cancelled or expire.

(iii) Impairment of financial assets

Loans and receivables are assessed at each reporting date to determine whether there is objective evidence that they are impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably. Objective evidence that financial assets are impaired can include default or delinquency by a debtor, restructuring of an amount due to the Company on terms that the Company would not consider otherwise, or indications that a debtor or issuer will enter bankruptcy.

The Company considers evidence of impairment for loans and receivables at both a specific asset and collective level. All individually significant loans and receivables are assessed for specific impairment. All individually significant loans and receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Loans and receivables that are not individually significant are collectively assessed for impairment by grouping together loans and receivables with similar risk characteristics.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows, discounted using the instrument's original effective interest rate. Losses are recognized in profit or loss and reflected in an allowance account against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss.

(e) Cash

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash consists of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

Revenue is generated primarily from the operation of the Company's hotel, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

(i) The Company

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income (see "The Operating Company" below), as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of December 31, 2017, 2016 and 2015 and January 1, 2015.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its consolidated financial statements.

(ii) The Operating Company

The Operating Company is a taxable REIT subsidiary ("TRS") of the U.S. TRS companies are treated as U.S. corporations subject to U.S federal and state income tax on their taxable income. The income tax effects on the results of the Operating Company accrue directly to the members of the Company. Income tax expense for the years ended December 31, 2017,

2016 and 2015 was $30, $41 and $120, respectively, which is included in the consolidated statements of comprehensive income.

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date. Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset current tax liabilities and assets, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized for unused tax losses, tax credits and deductible temporary differences, to the extent that it is probable that future taxable profits will be available against which they can be utilized. Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

(k) Operating segments

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The Company implemented the amendments to IAS 7 on January 1, 2017 and there was no material impact on its consolidated financial statements.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company intends to adopt IFRS 9 in its

consolidated financial statements for the annual period beginning on January 1, 2018 and does not expect the new standard to have a material impact on its consolidated financial statements.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company intends to adopt IFRS 15 in its consolidated financial statements for the annual period beginning on January 1, 2018. The Company has performed an in-depth assessment of IFRS 15 to determine what the impact of the adoption of the new standard will have on the Company's consolidated financial statements. Based on the nature of the Company's operations to own and operate a hotel, the Company does not expect there to be a material impact on the timing and measurement of revenue recognized as compared to the previous standard. Additional disclosures will be required to comply with IFRS 15.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, January 1, 2015	$ 2,525	$ 20,329	$ 2,626	$ 25,480
Additions	30	4,839	260	5,129
Disposals	—	—	—	—
Balance, December 31, 2015	2,555	25,168	2,886	30,609
Additions	—	432	193	625
Disposals	—	—	—	—
Balance, December 31, 2016	2,555	25,600	3,079	31,234
Additions	—	322	22	344
Disposals	—	—	—	—
Balance, December 31, 2017	$ 2,555	$ 25,922	$ 3,101	$ 31,578
Accumulated depreciation:				
Balance, January 1, 2015	$ —	$ —	$ —	$ —
Depreciation	—	675	77	752
Disposals	—	—	—	—
Balance, December 31, 2015	—	675	77	752
Depreciation	—	1,230	148	1,378
Disposals	—	—	—	—
Balance, December 31, 2016	—	1,905	225	2,130
Depreciation	—	1,271	152	1,423
Disposals	—	—	—	—
Balance, December 31, 2017	$ —	$ 3,176	$ 377	$ 3,553
Carrying amount, January 1, 2015	$ 2,525	$ 20,329	$ 2,626	$ 25,480
Carrying amount, December 31, 2015	$ 2,555	$ 24,493	$ 2,809	$ 29,857
Carrying amount, December 31, 2016	$ 2,555	$ 23,695	$ 2,854	$ 29,104
Carrying amount, December 31, 2017	$ 2,555	$ 22,746	$ 2,724	$ 28,025

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement in 2014. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of the years ended December 31, 2017, December 31, 2016, and December 31, 2015 and as of January 1, 2015, the Company had $0, $0, $148 and $0 of restricted cash, respectively.

2325 STEMMONS HOTEL PARTNERS, LLC
NOTES TO THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 6. Operating Expenses

	For the Year Ended December 31,		
	2017	2016	2015
Payroll	$ 2,085	$ 1,978	$ 1,748
Repairs and maintenance	384	499	326
Utilities	270	274	262
Property taxes and insurance	545	489	526
Cost of goods sold	588	548	468
Franchise fees	431	449	390
Other operating expenses	400	393	636
Operating expenses	$ 4,703	$ 4,630	$ 4,356

Note 7. General and Administrative Expenses

	For the Year Ended December 31,		
	2017	2016	2015
Property management fees	$ 329	$ 337	$ 245
Office operations	425	420	417
Marketing	943	1,098	625
Other administrative expenses	149	110	110
General and administrative expenses	$ 1,846	$ 1,965	$ 1,397

Note 8. Accounts Payable and Other Accrued Liabilities

	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
Trade payables	$ 500	$ 333	$ 8	$ —
Payroll and payroll taxes	108	94	80	5
Property taxes	491	417	—	—
Property management fees	68	75	17	1
Sales and occupancy taxes	64	75	51	4
Franchise fees	73	85	57	4
Deposits	373	373	95	—
Other payables	177	702	294	91
Accounts payable and other accrued liabilities	$ 1,854	$ 2,154	$ 602	$ 105

Note 9. Note Payable, Net

	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
Note payable	$ 21,359	$ 21,632	$ 21,632	$ 21,632
Less: current maturities	(294)	(273)	—	—
Less: unamortized portion of deferred financing costs	(143)	(215)	(287)	(359)
Note payable, net	$ 20,922	$ 21,144	$ 21,345	$ 21,273

On December 30, 2014, in connection with the acquisition of the Property, the Company entered into a $24,000 term loan (the "Loan") with a large financial institution and immediately drew $21,632. The Loan is secured by the Property and bears interest at a variable rate equal to the 90-day London InterBank Offered Rate ("LIBOR") plus 3.76%. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Loan's effective interest rates were 5.25%, 4.69%, 4.37% and 4.02%, respectively. The Loan's first 24 monthly payments were interest only. The Loan matures on January 1, 2020.

The Company's loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company was in compliance with all covenants of its loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to December 31, 2017 are as follows:

	Note payable
2018	$ 294
2019	310
2020	20,755
2021	—
2022	—
Thereafter	—
Total	$ 21,359

Note 10. Interest Expense, Net

	For the Year Ended December 31,		
	2017	**2016**	**2015**
Interest on debt	$ 1,086	$ 987	$ 890
Amortization of deferred financing costs	72	72	72
Interest expense, net	$ 1,158	$ 1,059	$ 962

Note 11. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of December 31, 2017, cash contributions totaled $9,740 and cash distributions totaled $2,607. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2017, 2016 and 2015 and January 1, 2015, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the

open market. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of December 31, 2017, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $214 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the years ended December 31, 2017, 2016 and 2015, bad debt expense was $2, $0, and $0, respectively. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company had cash and cash equivalents of $2,969, $1,957, $737 and $409, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 90-day LIBOR rate of 1.69% as of December 31, 2017:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 21,359	$ 21,359	$ 294	$ 21,065
Interest payable on note	—	2,327	1,172	1,155
Accounts payable and other accrued liabilities	1,854	1,854	1,854	—
Total	$ 23,213	$ 25,540	$ 3,320	$ 22,220

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating

agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Hilton Worldwide (the "Franchisor"). The Franchise Agreement was executed on October 22, 2014 and has a 15-year term. The Franchise Agreement requires the payment of a monthly royalty fee of 5.5% and a monthly program fee of 4.3% of the Property's gross room revenue. For the years ended December 31, 2017, 2016 and 2015, franchise fees were $431, $449 and $390, respectively, and are included in operating expenses in the consolidated statements of comprehensive income. For the years ended December 31, 2017, 2016 and 2015, program fees were $337, $340 and $269, respectively, and are included in general and administrative expenses in the consolidated statements of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

Note 16. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2017 was as follows:

	Liabilities				
	Accounts payable	Current portion of note payable	Note payable, net	Members' equity	Total
Balance January 1, 2017	$ 1,854	$ 273	$ 21,144	$ 8,039	$ 29,456
Changes from financing cash flows:	$ 294				
Amortization of deferred financing costs	$ 2,148	-	72	-	72
Reclass from note payable, net to current portion	$ -	21	(21)	-	-
Principal payments on notes payable	$ 20,922	-	(273)	-	(273)
Total changes from financing cash flows	$ -	21	(222)	-	(201)
Comprehensive Income (loss)	$ -	-	-	56	56
Balance December 31, 2017	$ 20,922	$ 294	$ 20,922	$ 8,095	$ 29,311

Note 17. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT 2325 Stemmons, LLC, which was immediately contributed to the OP in exchange for 3,944,221 Class B Units of the OP.

NREO NW HOSPITALITY, LLC

Consolidated Financial Statements

As at September 30, 2018 and
for the period from May 3, 2018 (date of formation) through September 30, 2018 and
for the three months ended September 30, 2018

(Unaudited)

NREO NW HOSPITALITY, LLC
CONSOLIDATED STATEMENT OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes		September 30, 2018
ASSETS			
Current assets			
Cash		$	4,717
Restricted cash			48
Trade and other receivables			507
Prepaid and other assets			1,080
Total current assets			6,352
Non-current assets			
Property and equipment, net	4		77,698
Total non-current assets			77,698
TOTAL ASSETS		$	84,050
LIABILITIES AND MEMBERS' EQUITY			
Current liabilities			
Accounts payable and other accrued liabilities	9	$	1,793
Current portion of note payable	10		—
Total current liabilities			1,793
Non-current liabilities			
Note payable, net	10		53,624
Mezzanine note, net	10		7,181
Total non-current liabilities			60,805
Total Liabilities			62,598
Members' Equity			21,452
TOTAL LIABILITIES AND MEMBERS' EQUITY		$	84,050

See accompanying notes to these consolidated financial statements

NREO NW HOSPITALITY, LLC
CONSOLIDATED STATEMENTS OF NET INCOME AND COMPREHENSIVE INCOME
FOR THE PERIOD FROM MAY 3, 2018 (DATE OF FORMATION) TO SEPTEMBER 30, 2018 AND THE THREE MONTHS ENDED SEPTEMBER 30, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from May 3, 2018 (date of formation) to September 30, 2018	For the Three Months Ended September 30, 2018
Revenues			
Rooms		$ 10,153	$ 6,442
Food and beverage		456	278
Other		93	37
Total revenues		10,702	6,757
Expenses			
Operating expenses	7	4,096	2,609
General and administrative expenses	8	2,026	1,241
Acquisition Costs	6	852	-
Depreciation		1,333	800
Total expenses		8,307	4,650
Operating income		2,395	2,107
Interest expense, net	11	(1,331)	(806)
Net income and comprehensive income		$ 1,064	$ 1,301
Income tax expense		(320)	(126)
Deferred income tax (expense) recovery		—	—
Net income		$ 744	$ 1,175

See accompanying notes to these consolidated financial statements

NREO NW HOSPITALITY, LLC
CONSOLIDATED STATEMENT OF MEMBERS' EQUITY
AS OF SEPTEMBER 30, 2018 AND MAY 3, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	For the period from May 3, 2018 (date of formation) to September 30, 2018
Balance, May 3, 2018	$ -
Net income and comprehensive income	744
Contributions	21,427
Distributions	(719)
Balance, September 30, 2018	$ 21,452

See accompanying notes to these consolidated financial statements

NREO NW HOSPITALITY, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE PERIOD FROM MAY 3, 2018 (DATE OF FORMATION) TO SEPTEMBER 30, 2018 AND THE THREE MONTHS ENDED SEPTEMBER 30, 2018
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from May 3, 2018 (date of formation) to September 30, 2018	For the Three Months Ended September 30, 2018
Cash flows from operating activities			
Net income		$ 744	$ 1,175
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation		1,333	800
Interest expense, net	11	1,331	806
Changes in operating assets and liabilities:			
Operating assets		(1,522)	149
Operating liabilities		1,591	294
Net cash provided by operating activities		3,477	3,224
Cash flows from investing activities			
Acquisitions of property and equipment		(79,100)	(12)
Additions to property and equipment	4	-	-
Change in restricted cash		(48)	(48)
Net cash used in investing activities		(79,148)	(60)
Cash flows from financing activities			
Proceeds from note payable	10	55,000	-
Proceeds from mezzanine debt	10	7,365	-
Contributions		21,427	—
Distributions		(719)	(553)
Deferred financing costs paid		(1,807)	—
Interest paid		(877)	(651)
Net cash provided by financing activities		80,389	(1,204)
Net increase in cash		4,717	1,960
Cash, beginning of period		—	2,757
Cash, end of period		$ 4,717	$ 4,717
Supplemental Disclosure of Noncash Activities			
Other assets acquired from acquisitions		$ 65	$ -

See accompanying notes to these consolidated financial statements

NREO NW HOSPITALITY, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

NREO NW Hospitality, LLC (the "Company") is a Delaware, United States of America, limited liability company established on May 3, 2018. The Company was formed to acquire five hospitality properties (the "DT Portfolio" or "Properties," see table below) on May 3, 2018 from an independent third party, BRE GM Hotel JV Holdings, LLC.

The accompanying combined financial statements of the Company consists of the DT Portfolio with Hilton Franchise Holding LLC, a subsidiary of Hilton Worldwide (the "Franchisor"). The Properties are wholly-owned by various subsidiaries of the Company and the operations of the Company are conducted through taxable REIT subsidiaries (the "Operating Companies"). The Company and its subsidiaries were formed on May 3, 2018, under the laws of the state of Delaware.

Property Name	Location
DoubleTree Beaverton	Beaverton, OR
DoubleTree Bend	Bend, OR
DoubleTree Tigard	Tigard, OR
DoubleTree Olympia	Olympia, WA
DoubleTree Vancouver	Vancouver, WA

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Transaction and Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These consolidated financial statements of the Company consist of the Property and the Operating Company (the "Financials"). The Financials have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company and the Operating Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

The Financials have been prepared on a historical cost basis.

(c) Basis of Presentation

The Financials have been prepared in accordance with IFRS as issued by the IASB. The Financials include the accounts of the Company and its wholly-owned subsidiaries and the Operating Companies. All significant intercompany accounts and transactions have been eliminated in consolidation. The Financials are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The Financials comprise the financial statements of the Company and the Operating Companies. Intra-company transactions and balances are eliminated in preparing the Financials. The Financials reflect the consolidated financial position, results of operations and cash flows of the Company and the Operating Companies.

(b) Properties and equipment

(i) Recognition and measurement

Properties and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the estimated useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	**Classification**
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Note payable	Amortized cost
Mezzanine note	Amortized cost

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The Company adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(e) Cash

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash consists of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense primarily consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

(i) The Company

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income (see "The Operating Company" below), as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 30, 2018 and December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 30, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its consolidated financial statements.

(ii) The Operating Companies

The Operating Companies are a taxable REIT subsidiary ("TRS") of the U.S. TRS companies are treated as U.S. corporations subject to U.S federal and state income tax on their taxable income. The income tax effects on the results of the Operating Companies accrues directly to the members of the Company. Income tax expense for the nine months ended September 30, 2018 was $2, which is included in the consolidated statements of comprehensive income.

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date. Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset current tax liabilities and assets, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized for unused tax losses, tax credits and deductible temporary differences, to the extent that it is probable that future taxable profits will be available against which they can be utilized. Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

(k) Operating segments

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its Financials for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, May 3, 2018	10,415	60,756	7,846	79,017
Additions	—	4	10	14
Disposals	—	—	—	—
Balance, September 30, 2018	$ 10,415	$ 60,760	$ 7,856	$ 79,031
Accumulated depreciation:				
Balance, May 3, 2018	—	—	—	—
Depreciation	—	673	660	1,333
Disposals	—	—	—	—
Balance, September 30, 2018	$ —	$ 673	$ 660	$ 1,333
Carrying amount, May 3, 2018	-	-	-	-
Carrying amount, September 30, 2018	10,415	60,087	7,196	77,698

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement. Shortly after acquisition of the properties, the Company began an extensive renovation program on the Properties.

NREO NW HOSPITALITY, LLC
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(Amounts in thousands of U.S. dollars except unit counts)

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement in 2008. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of September 30, 2018 the Company had $48 of restricted cash.

Note 6. Business Combinations

The table below summarizes the fair values of the assets acquired and liabilities assumed for acquisitions in 2017:

	DoubleTree Beaverton	DoubleTree Bend	DoubleTree Olympia	DoubleTree Tigard	DoubleTree Vancouver	Total
Fair value of consideration transferred:						
Cash	$ 5,860	$ 6,653	$ 4,159	$ 34	$ 30	$ 16,735
Notes payable	10,437	15,793	10,025	9,407	9,338	55,000
Mezzanine debt	1,673	2,304	1,456	969	962	7,365
	$ 17,970	$ 24,750	$ 15,640	$ 10,410	$ 10,330	$ 79,100
Property and equipment	17,970	24,750	15,640	10,410	10,330	79,100
Fair value of net identifiable assets acquired and liabilities assumed	$ 17,970	$ 24,750	$ 15,640	$ 10,410	$ 10,330	$ 79,100

On May 3, 2018, the Company completed the acquisition of five DoubleTree properties located in: Beaverton, Oregon; Bend, Oregon; Olympia, Washington; Tigard, Oregon; and Vancouver, Washington; for a purchase price of $79,100. Acquisition costs of $852 were expensed as incurred. In conjunction with the purchase, the Company incurred a new mortgage in the amount of $55,000 and incurred a mezzanine debt in the amount of $13,065, of which $7,365 was drawn immediately to close the acquisitions. In securing the mortgage and mezzanine debt, the Company incurred $1,807 in deferred financing costs and purchased an interest rate cap for $338. (see Note 10. Note Payable and Mezzanine Note, Net for more information related to the mortgage and mezzanine debt).

Note 7. Operating Expense

	For the Period from May 3, 2018 (date of formation) to September 30, 2018
Payroll	$ 2,054
Repairs and maintenance	215
Utilities	271
Property taxes and insurance	271
Cost of goods sold	157
Franchise fees	534
Other operating expenses	594
Operating expenses	$ 4,096

NREO NW HOSPITALITY, LLC
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Note 8. General and Administrative Expenses

	For the Period from May 3, 2018 (Inception) to September 30, 2018	
Property management fees	$	323
Office operations		489
Marketing		875
Other administrative expenses		339
General and administrative expenses	$	2,026

Note 9. Accounts Payable and Other Accrued Liabilities

	September 30, 2018	
Trade payables	$	59
Payroll and payroll taxes		173
Property taxes		102
Property management fees		80
Sales and occupancy taxes		198
Interest on note payable		207
Franchise fees		326
Other payables		648
Accounts payable and other accrued liabilities	$	1,793

Note 10. Note Payable and Mezzanine Note, Net

	September 30, 2018	
Note payable	$	55,000
Less: current maturities		—
Less: unamortized portion of deferred financing costs		(1,376)
Note payable, net	$	53,624

	September 30, 2018	
Mezzanine note	$	7,365
Less: current maturities		—
Less: unamortized portion of deferred financing costs		(184)
Mezzanine note, net	$	7,181

On May 3, 2018, in connection with the acquisition of the Properties, the Company entered into a $55,000 term loan (the "Loan"), a $7,365 mezzanine A loan (the "Mezz A Note") and a $5,700 mezzanine B loan (the "Mezz B Note"), with large financial institutions. The Mezz B Note serves as a PIP holdback and is available to the Company for future PIP expenditures. The Loan is secured by the Properties and bears interest at a variable rate equal to the 30-day London InterBank Offered Rate plus 2.35%. As of September 30, 2018 the Loan's effective interest rate was 4.87%. The Loan matures on May 3, 2021. The Mezz A note bears interest at a fixed rate of 11.66% and matures May 9, 2021. The Mezz B Note bears interest at a variable rate equal to the 30-day London InterBank Offered Rate plus 3.45%. As of September 30, 2018 Mezz B Note's effective interest rate was 5.97% and the drawn balance was $0. The Mezz B Note also matures May 3, 2021.

The Company's loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of September 30, 2018 and December 31, 2017, the Company was in compliance with all covenants of its loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to September 30, 2018 are as follows:

	Note payable
2018	$ —
2019	277
2020	62,088
2021	—
2022	—
Thereafter	—
Total	$ 62,365

Note 11. Interest Expense, Net

	For the Period from May 3, 2018 (date of formation) to September 30, 2018
Interest on debt	$ 1,084
Amortization of deferred financing costs	247
Interest expense, net	$ 1,331

Note 12. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of September 30, 2018, cash contributions totaled $21,427 and cash distributions totaled $719. All income or loss allocations are based on the member's respective ownership percentage.

Note 13. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of September 30, 2018, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable and mezzanine note is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of September 30, 2018, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of September 30, 2018, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $624 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the period from May 3, 2018 to September 30, 2018 bad debt expense was $609. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of September 30, 2018, the Company had cash and cash equivalents of $4,717.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 2.26% as of September 30, 2018:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 55,000	$ 55,000	$ —	$ 55,000
Mezzanine note	7,365			
Interest payable on note	207	5,981	3,492	2,489
Accounts payable and other accrued liabilities	1,586	1,586	1,586	—
Total	$ 64,158	$ 62,567	$ 5,078	$ 57,489

Note 14. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 15. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 16. Commitments and Contingencies

(a) Franchise agreement

The Properties are operated under a franchise agreements with the Franchisor (the "Franchise Agreement"). The Franchise Agreements were executed on the dates in the table below and had 15-year terms. The Franchise Agreement requires the payment of a monthly royalty fee of 5.5% and a monthly program fee of 4.3% of the Properties' gross room revenue. For the period from May 3, 2018 to September 30, 2018, franchise fees were $513, and are included in operating expenses in the consolidated statements of comprehensive income.

Property Name	Date of Agreement
DoubleTree Beaverton	October 16, 2012
DoubleTree Bend	September 18, 2013
DoubleTree Tigard	June 4, 2014
DoubleTree Olympia	September 18, 2013
DoubleTree Vancouver	February 4, 2014

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the period from May 3, 2018 to September 30, 2018 was as follows:

NREO NW HOSPITALITY, LLC
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(Amounts in thousands of U.S. dollars except unit counts)

	Liabilities				
	Accounts payable and other accrued liabilities	Note payable, net	Mezzanine note, net	Members' equity	Total
Balance May 3, 2018	$ -	$ -	$ -	$ -	$ -
Changes from financing cash flows:					
Proceeds from notes payable	-	55,000	7,365	-	62,365
Deferred financing costs paid	-	(1,623)	(205)	-	(1,828)
Amortization of deferred financing costs		247	21		268
Interest accrual	207	-	-	-	207
Contributions	-	-	-	21,427	21,427
Distributions	-	-	-	(719)	(719)
Total changes from financing cash flows	207	53,624	7,181	20,708	81,719
Liability related:					
Other payable increases	1,586	-	-	-	1,586
Members' equity related:					
Comprehensive Income (loss)	-	-	-	744	744
Balance September 30, 2018	$ 1,793	$ 53,624	$ 7,181	$ 21,452	$ 84,050

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to the OP in exchange for 9,629,170 Class B Units of the OP.

DOUBLETREE PORTFOLIO

Combined Financial Statements

As at May 3, 2018 and December 31, 2017 and
for the period from January 1 to May 3, 2018

(Unaudited)

DOUBLETREE PORTFOLIO
COMBINED STATEMENT OF FINANCIAL POSITION
AS OF MAY 3, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	May 3, 2018	December 31, 2017
ASSETS			
Current assets			
Cash and cash equivalents		$ -	$ 580
Restricted cash		-	—
Trade and other receivables		-	2,087
Prepaid and other assets		-	455
Total current assets		-	3,122
Non-current assets			
Property and equipment, net	4	-	39,260
Total non-current assets		-	39,260
TOTAL ASSETS		$ -	$ 42,382
LIABILITIES AND MEMBERS' EQUITY			
Current liabilities			
Accounts payable and other accrued liabilities	8	$ -	$ 938
Due to related party		-	239
Current portion of note payable	9	-	—
Total current liabilities		-	1,177
Non-current liabilities			
Note payable, net	9	-	49,031
Mezzanine note, net	9	-	16,588
Related party mezzanine loan payable, net	9	-	3,594
Total non-current liabilities		-	69,213
Total Liabilities		-	70,390
Members' Equity		-	(28,008)
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ -	$ 42,382

See accompanying notes to these combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENTS OF NET INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
FOR THE PERIOD FROM JANUARY 1, 2018 TO MAY 3, 2018 AND FOR THE YEAR ENDED DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from January 1, 2018 to May 3, 2018	For the Year Ended December 31, 2017
Revenues			
Rooms		$ 6,106	$ 20,450
Food and beverage		446	1,428
Total revenues		6,552	21,878
Expenses			
Operating expenses	6	3,370	10,180
General and administrative expenses	7	1,510	4,361
Depreciation		1,998	3,235
Total expenses		6,878	17,776
Operating income		(326)	4,103
Interest expense, net	9	(1,208)	(2,058)
Net income and comprehensive income		$ (1,534)	$ 2,045
Gain on sale		39,693	—
Net income		$ 38,159	$ 2,045

See accompanying notes to these combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENT OF MEMBERS' DEFICIT
AS OF MAY 3, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

		Members' Deficit
Balances, December 31, 2016	$	(28,506)
Net income and comprehensive income		2,045
Contributions		—
Distributions		(1,546)
Balance, December 31, 2017	$	(28,008)
Net income and comprehensive income		38,159
Distributions		(10,151)
Balance, May 3, 2018	$	-

See accompanying notes to these combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENT OF CASH FLOWS
FOR THE PERIOD FROM JANUARY 1, 2018 TO MAY 3, 2018 AND FOR THE YEAR ENDED DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from January 1, 2018 to May 3, 2018	For the Year Ended December 31, 2017
Cash flows from operating activities			
Net income		$ 38,159	$ 2,045
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation		1,998	3,235
Gain on sale		(39,693)	-
Changes in operating assets and liabilities:			
Operating assets		2,542	(1,805)
Operating liabilities		(1,177)	(129)
Net cash provided by operating activities		1,829	3,346
Cash flows from investing activities			
Dispositions of property and equipment	4	78,501	(1,534)
Net cash provided by (used in) investing activities		78,501	(1,534)
Cash flows from financing activities			
Principal payments on note payable	9	(69,213)	—
Distributions		(10,151)	(1,546)
Net cash used in financing activities		(80,910)	(1,546)
Net increase (decrease) in cash and cash equivalents		(580)	265
Cash and cash equivalents, beginning of period		580	315
Cash and cash equivalents, end of period		$ 0	$ 580

See accompanying notes to these combined financial statements

Note 1. General Information

The accompanying financial statements are the combined financial statements of the DoubleTree Portfolio (the "Company"). The Company is composed of five properties that are owned indirectly or directly by BRE GM Hotel JV Holdings, LLC ("BRE"). BRE was formed on November 14, 2011, under the laws of the State of Delaware and is owned, managed and advised by various Blackstone funds and entities (collectively the "Fund") and their affiliates. . The accompanying combined financial statements include the following hotels (the "Properties").

Property Name	Location
DoubleTree Beaverton	Beaverton, OR
DoubleTree Bend	Bend, OR
DoubleTree Tigard	Tigard, OR
DoubleTree Olympia	Olympia, WA
DoubleTree Vancouver	Vancouver, WA

On May 3, the Properties were sold to NREO NW Hospitality, LLC for a sales price of $71,900. The proceeds of the sale were used to pay down all of the outstanding debt and remaining liabilities.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Transaction and Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These combined financial statements of the Company consist of the Properties (the "Financials"). The Financials have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company and the Operating Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

The Financials have been prepared on a historical cost basis.

(c) Basis of Presentation

The Financials include the accounts of the Company on a consolidated basis. The Financials are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The Financials comprise the financial statements of the Company and its single-asset limited liability company subsidiaries. Intra-company transactions and balances are eliminated in preparing the Financials. The Financials reflect the consolidated financial position, results of operations and cash flows of the Company and its subsidiaries.

(b) Properties and equipment

(i) Recognition and measurement

Properties and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	Classification
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued	Amortized cost
liabilities	Amortized cost
Notes payable	Amortized cost
Mezzanine note	

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The Company adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense primarily consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company that indirectly owns the Properties through single-asset limited liability companies. The Company is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 30, 2018 and December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 30, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its Financials.

(k) Operating segments

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 on January 1, 2018 and there was no material impact on its Financials.

(ii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company adopted IFRS 15 on January 1, 2018, using the modified retrospective method, and there was no material impact on its Financials.

(iii) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its Financials for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, December 31, 2017	$ 5,024	$ 43,374	$ 17,615	$ 66,013
Additions	—	—	—	—
Disposals	(5,024)	(43,374)	(17,615)	(66,013)
Balance, May 3, 2018	$ -	$ -	$ -	$ -
Accumulated depreciation:				
Balance, December 31, 2017	$ -	$ 19,026	$ 7,727	$ 26,753
Depreciation	-	530	1,468	1,998
Disposals	-	(9,151)	(20,216)	(29,367)
Balance, May 3, 2018	$ -	$ -	$ -	$ -
Carrying amount, December 31, 2016	$ 5,010	$ 25,535	$ 10,378	$ 40,923
Carrying amount, December 31, 2017	$ 5,024	$ 24,348	$ 9,888	$ 39,260
Carrying amount, May 3, 2018	$ -	$ -	$ -	$ -

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement. Shortly after acquisition of the properties, the Company began an extensive renovation program on the Properties.

On May 3, 2018, the Company sold the Properties to NREO NW Hospitality, LLC for gross proceeds of $76,955, resulting in a gain on sale of $39,693, which is recognized in the Financials.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the Company's franchise agreement. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of May 3, 2018 and December 31, 2017 the Company had no restricted cash.

Note 6. Operating Expenses

	For the Period from January 1, 2018 to May 3, 2018	For the Year Ended December 31, 2017
Payroll	$ 1,798	$ 5,223
Repairs and maintenance	99	293
Utilities	207	588
Property taxes and insurance	253	735
Cost of goods sold	127	350
Franchise fees	299	1,033
Other operating expenses	587	1,959
Operating expenses	$ 3,370	$ 10,180

Note 7. General and Administrative Expenses

	For the Period from January 1, 2018 to May 3, 2018	For the Year Ended December 31, 2017
Property management fees	$ 213	$ 656
Office operations	430	827
Marketing	494	1,590
Other administrative expenses	373	1,288
General and administrative expenses	$ 1,510	$ 4,361

Note 8. Note Payable, Net

On December 3, 2014, the Company, along with three affiliates of the Fund (the Co-borrowers") (collectively the "Borrower"), were obligated under the loan agreements totaling $862,500 (the "Collective Loan"). The Collective Loan was structured with a mortgage loan with a principal amount of $611,000 (the "Mortgage") and two mezzanine loans with an aggregate principal amount of $251,500 (the "Mezzanine Loans"). The obligations under the Collective Loan are joint and several and are secured by the DT Portfolio and the Co-borrowers' 31 properties.

The obligation under the Mortgage is guaranteed by BSHH, LLC, a Delaware limited liability company and an affiliate of the Company (the "Guarantor"). In addition, the Borrower and Guarantor have recourse liability under the Collective Loan for certain matters typical of a transaction of this type.

The Borrower may prepay the Collective Loan, in whole or in part, without any prepayment penalty or fee.

The portion of the Collective Loan associated with the DT Portfolio, based on the individual release price identified in the Collective Loan, is approximately $49,000 for the Mortgage and approximately $20,200 for the Mezzanine Loans. The Collective Loan had an initial maturity date of December 9, 2016, with three successive on-year extension options through December 9, 2019. During 2016, the Borrower extended the maturity date of the Collective Loan to December 9, 2017. The Collective Loan requires the payment of month interest based on the on-month LIBOR plus a margin.

On July 14, 2016, an affiliate of the Company purchased a portion of the Mezzanine Loans. The amount associated with the Company's portion of the Mezzanine Loans is approximately $3,600, which is reflected as related party mezzanine loan payable, net in the Financials. The amount of interest associated with the related party mezzanine loan is approximately $180 and is included in interest expense, net within the Financials.

Pursuant to the terms of the Collective Loan, the Borrower was required to enter into an interest rate cap agreement with respect to each loan, which caps the base interest rate before applying the applicable margins on the Collective Loan, for an aggregate notional amount of $862,500, with a termination date of December 9, 2016, and a strike rate of 3.00%. In connection with the extension of the Collective Loan, the Borrower entered into interest rate cap agreements for an aggregate notional amount of

approximately $753,500, with a termination date of December 15, 2017, and a strike rate of 3.979% there were terminated when the loan was paid off on July 7, 2017, as discussed below. The counterparty to the interest rate cap agreements is a financial institution.

The Collective Loan contains various representations and warranties, as well as certain financial, operating and other covenants. Pursuant to the terms of the Collective Loan, the Borrower is required to maintain a certain debt yield, as defined in the Collective Loan. In the event the debt yield falls below the stated percentage, the Borrower is obligated to deposit excess cash flows into the debt yield payment reserve account. Funds on deposit in the reserve account are restricted, as defined by the terms of the Collective Loan. The Borrower met the required debt yield as of December 31, 2016 and 2015 and January 1, 2015.

The Collective Loan requires the maintenance of a replacement reserve for the payment of property improvements and fixed asset replacements.

Deferred financing costs consisted of amounts paid in connection with obtaining the Collective Loan. Such costs were amortized on a straight-line basis over the term of the related debt. Amortization of deferred financing costs totaled approximately $390,000 and $423,000 for the years ended December 31, 2016 and 2015, and is included in interest expense, net in the Financials. There are no unamortized deferred financing costs at December 31, 2016.

On May 3, 2018, in conjunction with the sale of the Properties, the proceeds from the sale were used to repay all indebtedness of the Company. The outstanding principal balance for the note payable, net, the mezzanine loan, net and the related party mezzanine loan payable, net, related to the Properties as of May 3, 2018 and December 31, 2017 are as follows:

	May 3, 2018	December 31, 2017
Note payable	$ -	$ 49,031
Less: current maturities	-	-
Less: unamortized portion of deferred financing costs	-	-
Note payable, net	$ -	$ 49,031

	May 3, 2018	December 31, 2017
Mezzanine debt	$ -	$ 16,588
Less: current maturities	-	—
Less: unamortized portion of deferred financing costs	-	-
Mezzanine note, net	$ -	$ 16,588

	May 3, 2018	December 31, 2017
Related party mezzanine loan	$ -	$ 3,594
Less: current maturities	-	—
Less: unamortized portion of deferred financing costs	-	-
Related party mezzanine loan payable, net	$ -	$ 3,594

Note 9. Interest Expense, Net

	For the Period from January 1, 2018 to May 3, 2018	For the Year Ended December 31, 2017
Interest on debt	$ 940	$ 2,058
Amortization of deferred financing costs	268	-
Interest expense, net	$ 1,208	$ 2,058

Note 10. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. For the period January 1, 2018 through May 3, 2018, cash distributions totaled $10,151. All income or loss allocations are based on the member's respective ownership percentage.

Note 11. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of May 3, 2018 the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of May 3, 2018 the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of May 3, 2018 the Company had repaid all of its debts.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. As of May 3, 2018 the Company was dissolved and no material risk with respect to trade and other receivables remained.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to

demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of May 3, 2018, the Company was dissolved and the remaining cash is to be used to pay all final liabilities.

Note 12. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 13. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 14. Commitments and Contingencies

(a) Franchise agreement

The DT Portfolio operates under franchise agreements with DoubleTree. The franchise agreements have 10 year terms that expire between 2022 and 2024. The franchise agreements require the payment of royalty fees calculated at 3% of gross room revenue, as defined, for the first operating year; 4% of gross room revenue for the second operating year; and 5% of gross room revenue for the third through tenth operating year. In addition, the franchise agreements provide for a monthly program fee, as defined, calculated at 4% of gross room revenue. Franchise fees paid to DoubleTree totaled approximately $299 and $1,033 for the period from January 1, 2018 through May 3, 2018 and the year ended December 31, 2017, respectively. Monthly program fees under the agreements totaled approximately $300 and $1,000 for the period from January 1, 2018 through May 3, 2018 and the year ended December 31, 2017, respectively and are included in marketing expenses.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

(c) Soil remediation costs

In connection with the acquisition of the DoubleTree Olympia hotel, the Company recorded an environmental remediation liability of approximately $141,000 related to expected soil remediation costs. These costs were capitalized as part of the hotel property and equipment. During 2009, the Company determined that additional soil remediation work would be required and estimated the additional cost to be approximately $208,000. As of May 3, 2018, the soil remediation had been resolved and all capital reserved was paid or released.

DOUBLETREE PORTFOLIO
NOTES TO THE UNAUDITED COMBINED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except per unit amounts)

Note 15. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the period from January 1, 2018 to May 3, 2018 were as follows:

	Liabilities				
	Accounts payable and other accrued liabilities	Note payable, net	Mezzanine note, net	Members' equity	Total
Balance December 31, 2017	$ 1,177	$ 49,031	$ 20,182	$ (28,008)	$ 42,382
Changes from financing cash flows:					
Principal payments on notes payable	-	(49,031)	(20,182)	-	(69,213)
Distributions	-	-	-	(10,151)	(10,151)
Total changes from financing cash flows	-	(49,031)	(20,182)	(10,151)	(79,364)
Liability related:					
Other changes in payables	(1,177)	-	-	-	(1,177)
Members' equity related:					
Comprehensive Income (loss)	-	-	-	38,159	38,159
Balance May 3, 2018	$ -	$ -	$ -	$ -	$ -

Note 16. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements and determined there were no such events.

DOUBLETREE PORTFOLIO

Combined Financial Statements

As at December 31, 2017, December 31, 2016 and January 1, 2016 and for the years ended December 31, 2017 and December 31, 2016

(With Independent Auditors' Report Thereon)

Advisory Assurance Tax Private Client

INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
Nexpoint Hospitality Trust

We have audited the accompanying combined financial statements of DoubleTree Portfolio, which comprise the combined statements of financial position as of December 31, 2017, December 31, 2016, and January 1, 2016 and the related combined statements of net income and comprehensive income, members' equity, and cash flows for the years then ended, and the related notes to the combined financial statements.

Management's Responsibility for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

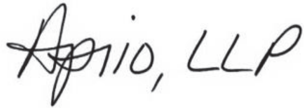
Our responsibility is to express an opinion on these combined financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and in accordance with International Standards on Auditing. Those standards require that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

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

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the combined financial position of DoubleTree Portfolio as of December 31, 2017, December 31, 2016, and January 1, 2016 and the results of its combined net income and comprehensive income, changes in equity and its cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.



Atlanta, Georgia

March 27, 2019

DOUBLETREE PORTFOLIO
COMBINED STATEMENTS OF FINANCIAL POSITION
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016 AND JANUARY 1, 2016
(Amounts in thousands of U.S. dollars)

	Notes	December 31, 2017	December 31, 2016	January 1, 2016
ASSETS				
Current assets				
Cash and cash equivalents		$ 580	$ 100	$ 199
Restricted cash		—	215	43
Trade and other receivables		2,087	242	492
Prepaid and other assets		455	536	552
Total current assets		3,122	1,093	1,286
Non-current assets				
Property and equipment, net	4	39,260	40,923	43,855
Total non-current assets		39,260	40,923	43,855
TOTAL ASSETS		$ 42,382	$ 42,016	$ 45,141
LIABILITIES AND MEMBERS' DEFICIT				
Current liabilities				
Accounts payable and other accrued liabilities	8	$ 939	$ 1,063	$ 1,233
Due to related party		239	246	$ 208
Current portion of note payable	9	—	—	—
Total current liabilities		1,178	1,309	1,441
Non-current liabilities				
Note payable, net	9	49,031	49,031	48,642
Mezzanine loan, net		20,182	16,588	20,182
Related party mezzanine loan payable, net		-	3,594	
Total non-current liabilities		69,213	69,213	68,824
Total Liabilities		70,391	70,522	70,265
Members' deficit		(28,009)	(28,506)	(25,124)
TOTAL LIABILITIES AND MEMBERS' DEFICIT		$ 42,382	$ 42,016	$ 45,141

See accompanying notes to these audited combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENTS OF NET INCOME AND COMPREHENSIVE INCOME
FOR THE YEARS ENDED DECEMBER 31, 2017 AND DECEMBER 31, 2016
(Amounts in thousands of U.S. dollars)

	Notes	For the Years Ended December 31, 2017	2016
Revenues			
Rooms		$ 20,450	$ 21,242
Food and beverage		1,428	1,462
Total revenues		21,878	22,704
Expenses			
Operating expenses	6	10,181	10,116
General and administrative expenses	7	4,361	3,845
Depreciation and amortization		3,235	3,230
Total expenses		17,777	17,191
Operating income		4,101	5,513
Interest expense, net	10	(2,058)	(3,863)
Income before income taxes		2,043	1,650
Loss on derivatives		-	(8)
Net income and comprehensive income		$ 2,043	$ 1,642

See accompanying notes to these audited combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENT OF MEMBERS' DEFICIT
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016 AND JANUARY 1, 2016
(Amounts in thousands of U.S. dollars)

	Members' Deficit
Balances, January 1, 2016	$ (25,124)
Net income and comprehensive income	1,642
Contributions	—
Distributions	(5,024)
Balances, December 31, 2016	(28,506)
Net income and comprehensive income	2,043
Contributions	—
Distributions	(1,546)
Balances, December 31, 2017	$ (28,009)

See accompanying notes to these audited combined financial statements

DOUBLETREE PORTFOLIO
COMBINED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2017 AND DECEMBER 31, 2016
(Amounts in thousands of U.S. dollars)

	Notes	For the Years Ended December 31, 2017	2016
Cash flows from operating activities			
Net income		$ 2,043	$ 1,642
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization		3,235	3,230
Loss on derivatives		-	8
Provision for bad debt		-	12
Amortization of deferred financing costs		-	390
Changes in operating assets and liabilities:			
Operating assets		(1,804)	217
Operating liabilities		(129)	(133)
Net cash provided by operating activities		3,345	5,366
Cash flows from investing activities			
Additions to property and equipment	4	(1,534)	(260)
Change in restricted cash		—	(173)
Net cash used in investing activities		(1,534)	(433)
Cash flows from financing activities			
Purchase of interest rate caps		—	(8)
Distributions		(1,546)	(5,024)
Net cash used in financing activities		(1,546)	(5,032)
Net increase (decrease) in cash and cash equivalents		265	(99)
Cash and cash equivalents, beginning of period		315	199
Cash and cash equivalents, end of period		$ 580	$ 100

See accompanying notes to these audited combined financial statements

DOUBLETREE PORTFOLIO
NOTES TO THE AUDITED COMBINED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except per unit amounts)

Note 1. General Information

The accompanying financial statements are the combined financial statements of the DoubleTree Portfolio (the "Company"). The Company is composed of five properties that are owned indirectly or directly by BRE GM Hotel JV Holdings, LLC ("BRE"). BRE was formed on November 14, 2011, under the laws of the State of Delaware and is owned, managed and advised by various Blackstone funds and entities (collectively the "Fund") and their affiliates. . The accompanying combined financial statements include the following hotels (the "Properties").

Property Name	Location
DoubleTree Beaverton	Beaverton, OR
DoubleTree Bend	Bend, OR
DoubleTree Tigard	Tigard, OR
DoubleTree Olympia	Olympia, WA
DoubleTree Vancouver	Vancouver, WA

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Transaction and Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These combined financial statements of the Company (the "Financials") consist of the Properties. The Financials have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company and the Operating Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). These are the Company's first consolidated financial statements prepared in accordance with IFRS; the Company adopted IFRS in accordance with IFRS 1, First-Time Adoption of International Reporting Standards. An explanation or reconciliation of how the transition to IFRS has affected the Company's consolidated financial position, results of operations and cash flows has not been presented as the Company has not presented consolidated financial statements in previous years. The date of transition to IFRS was January 1, 2016.

(b) Basis of Measurement

The Financials have been prepared on a historical cost basis.

(c) Basis of Presentation

The Financials include the accounts of the Company on a consolidated basis. The Financials are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The Financials comprise the financial statements of the Company and its single-asset limited liability company subsidiaries. Intra-company transactions and balances are eliminated in preparing the Financials. The Financials reflect the consolidated financial position, results of operations and cash flows of the Company and its subsidiaries.

(b) Properties and equipment

(i) Recognition and measurement

Properties and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the estimated useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than

goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Financial assets

The Company's financial assets are comprised of cash and cash equivalents, restricted cash, trade and other receivables and prepaid and other assets. The Company classifies these financial assets as loans and receivables. The Company initially recognizes loans and receivables on the date that they are originated. Loans and receivables are financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are recognized initially at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, loans and receivables are measured at amortized cost using the effective interest method, less any impairment losses.

(ii) Financial liabilities

The Company has the following non-derivative financial liabilities: accounts payable and other accrued liabilities and note payable. The Company classifies each of its non-derivative financial liabilities as other financial liabilities. Initial measurement is at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, these non-derivative financial liabilities are measured at amortized cost using the effective interest method. All non-derivative financial liabilities are initially recognized on the date that the Company becomes a party to the contractual provisions of the instrument. The Company derecognizes a financial liability when its contractual obligations are discharged or cancelled or expire.

(iii) Impairment of financial assets

Loans and receivables are assessed at each reporting date to determine whether there is objective evidence that they are impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably. Objective evidence that financial assets are impaired can include default or delinquency by a debtor, restructuring of an amount due to the Company on terms that the Company would not consider otherwise, or indications that a debtor or issuer will enter bankruptcy.

The Company considers evidence of impairment for loans and receivables at both a specific asset and collective level. All individually significant loans and receivables are assessed for specific impairment. All individually significant loans and receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Loans and receivables that are not individually significant are collectively assessed for impairment by grouping together loans and receivables with similar risk characteristics.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows, discounted using the instrument's original effective interest rate. Losses are recognized in profit or loss and reflected in an allowance account against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value

of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense primarily consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company that indirectly owns the Properties through single-asset limited liability companies. The Company is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of December 31, 2017, December 31, 2016 and January 1, 2016, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of December 31, 2017, December 31, 2016 and January 1, 2016.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its Financials.

(k) Operating segments

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The Company implemented the amendments to IAS 7 on January 1, 2017 and there was no material impact on its Financials.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company intends to adopt IFRS 9 in its Financials for the annual period beginning on January 1, 2018 and does not expect the new standard to have a material impact on its Financials.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company intends to adopt IFRS 15 in its Financials for the annual period beginning on January 1, 2018 and does not expect the new standard to have a material impact on its Financials.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its Financials for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, January 1, 2016	$ 4,988	$ 42,260	$ 16,971	$ 64,219
Additions	22	24	214	260
Disposals	—	—	—	—
Balance, December 31, 2016	5,010	42,284	17,185	64,479
Additions	14	1,090	430	1,534
Disposals	—	—	—	—
Balance, December 31, 2017	$ 5,024	$ 43,374	$ 17,615	$ 66,013
Accumulated depreciation:				
Balance, January 1, 2016	$ -	$ 14,479	$ 5,885	$ 20,364
Depreciation	—	2,270	922	3,192
Disposals	—	—	—	—
Balance, December 31, 2016	—	16,749	6,807	23,556
Depreciation	—	2,277	920	3,197
Disposals	—	—	—	—
Balance, December 31, 2017	$ —	$ 19,026	$ 7,727	$ 26,753
Carrying amount, January 1, 2016	4,988	27,781	11,086	43,855
Carrying amount, December 31, 2016	5,010	25,535	10,378	40,923
Carrying amount, December 31, 2017	5,024	24,348	9,888	39,260

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement. Shortly after acquisition of the properties, the Company began an extensive renovation program on the Properties.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the Company's franchise agreement. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of December 31, 2017 and December 31, 2016, the Company had $0 and $215 of restricted cash, respectively.

Note 6. Operating Expenses

	For the Years Ended December 31,	
	2017	2016
Payroll	$ 5,223	$ 5,007
Repairs and maintenance	293	301
Utilities	588	565
Property taxes and insurance	735	739
Cost of goods sold	350	456
Franchise fees	1,033	1,000
Other operating expenses	1,959	2,048
Operating expenses	$ 10,181	$ 10,116

Note 7. General and Administrative Expenses

	For the Years Ended December 31,	
	2017	2016
Property management fees	$ 656	$ 681
Office operations	827	448
Marketing	1,590	1,626
Other administrative expenses	1,288	1,090
General and administrative expenses	$ 4,361	$ 3,845

Note 8. Accounts Payable and Other Accrued Liabilities

	December 31, 2017	December 31, 2016
Trade payables	$ 203	$ 145
Payroll and payroll taxes	368	375
Property taxes	3	3
Sales and occupancy taxes	178	185
Interest on note payable	—	169
Deposits	4	2
Other payables	183	184
Accounts payable and other accrued liabilities	$ 939	$ 1,063

Note 9. Note Payable, Net

On December 3, 2014, the Company, along with three affiliates of the Fund (the Co-borrowers") (collectively the "Borrower"), were obligated under the loan agreements totaling $862,500 (the "Collective Loan"). The Collective Loan was structured with a mortgage loan with a principal amount of $611,000 (the "Mortgage") and two mezzanine loans with an aggregate principal amount of $251,500 (the "Mezzanine Loans"). The obligations under the Collective Loan are joint and several and are secured by the DT Portfolio and the Co-borrowers' 31 properties.

The obligation under the Mortgage is guaranteed by BSHH, LLC, a Delaware limited liability company and an affiliate of the Company (the "Guarantor"). In addition, the Borrower and Guarantor have recourse liability under the Collective Loan for certain matters typical of a transaction of this type.

The Borrower may prepay the Collective Loan, in whole or in part, without any prepayment penalty or fee.

The portion of the Collective Loan associated with the DoubleTree Portfolio, based on the individual release price identified in the Collective Loan, is approximately $49,000 for the Mortgage and approximately $20,200 for the Mezzanine Loans. The Collective Loan had an initial maturity date of December 9, 2016, with three successive on-year extension options through December 9, 2019. During 2016, the Borrower extended the maturity date of the Collective Loan to December 9, 2017. The Collective Loan requires the payment of month interest based on the one-month LIBOR plus a margin.

On July 14, 2016, an affiliate of the Company purchased a portion of the Mezzanine Loans. The amount associated with the Company's portion of the Mezzanine Loans is approximately $3,600, which is reflected as related party mezzanine loan payable, net in the Financials. The amount of interest associated with the related party mezzanine loan is approximately $180 and is included in interest expense, net within the Financials.

Pursuant to the terms of the Collective Loan, the Borrower was required to enter into an interest rate cap agreement with respect to each loan, which caps the base interest rate before applying the applicable margins on the Collective Loan, for an aggregate notional amount of $862,500, with a termination date of December 9, 2016, and a strike rate of 3.00%. In connection with the extension of the Collective Loan, the Borrower entered into interest rate cap agreements for an aggregate notional amount of approximately $753,005, with a termination date of December 15, 2017, and a strike rate of 3.979% . The interest rate cap agreements were terminated when the loan was refinanced on July 7, 2017, as discussed below. The counterparty to the interest rate cap agreements is a financial institution.

The Collective Loan contains various representations and warranties, as well as certain financial, operating and other covenants. Pursuant to the terms of the Collective Loan, the Borrower is required to maintain a certain debt yield, as defined in the Collective

Loan. In the event the debt yield falls below the stated percentage, the Borrower is obligated to deposit excess cash flows into the debt yield payment reserve account. Funds on deposit in the reserve account are restricted, as defined by the terms of the Collective Loan. The Borrower met the required debt yield as of December 31, 2017 and January 1, 2017.

The Collective Loan requires the maintenance of a replacement reserve for the payment of property improvements and fixed asset replacements.

Deferred financing costs consisted of amounts paid in connection with obtaining the Collective Loan. Such costs were amortized on a straight-line basis over the term of the related debt. Amortization of deferred financing costs totaled approximately $390,000 for the year ended December 31, 2016, and is included in interest expense, net in the Financials. There are no unamortized deferred financing costs at December 31, 2017 and 2016.

On July 7, 2017, the Collective Loan was refinanced with an affiliated party, PIH Beaverton, LLC etal (the "Refinanced Loan"). The Refinanced Loan has no stated maturity date but is repayable upon a sale of the Company's assets and accrues interest at an annual rate of one-month LIBOR plus 155 bps. No deferred financing costs were paid as part of the refinancing transaction. The portion of the Refinanced loan allocated to the Company had an outstanding balance as of December 31, 2017 of $69.2 million and was allocated amongst the note payable, net; the mezzanine loan, net; and the related party mezzanine loan payable, net as follows:

	December 31, 2017		December 31, 2016	
Note payable	$	49,031	$	49,031
Less: current maturities		—		—
Less: unamortized portion of deferred financing costs		-		-
Note payable, net	$	49,031	$	49,031

	December 31, 2017		December 31, 2016	
Mezzanine debt	$	20,182	$	16,588
Less: current maturities		—		—
Less: unamortized portion of deferred financing costs		-		-
Mezzanine note, net	$	20,182	$	16,588

	December 31, 2017		December 31, 2016	
Related party mezzanine loan	$	-	$	3,594
Less: current maturities		—		—
Less: unamortized portion of deferred financing costs		-		-
Related party mezzanine loan payable, net	$	-	$	3,594

Note 10. Interest Expense, Net

	For the Years Ended December 31,			
	2017		2016	
Interest on debt	$	2,058	$	3,473
Amortization of deferred financing costs		-		390
Interest expense, net	$	2,058	$	3,863

Note 11. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of December 31, 2017 and 2016, cash contributions totaled $0 and $0 and cash distributions totaled $1,546 and $5,024, respectively. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2017, December 31, 2016 and January 1, 2016, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of December 31, 2017, December 31, 2016 and January 1, 2016, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of December 31, 2017, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $490 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the years ended December 31, 2017 and December 31, 2016, bad debt expense was $0. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available

access to capital to fund ongoing operational and capital requirements. As of December 31, 2017, the Company had cash and cash equivalents of $580.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 1.56% as of December 31, 2017:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 49,031	$ 49,031	$ —	$ 49,031
Mezzanine debt	20,182	20,182	-	20,182
Interest payable on note	—	4,252	2,126	2,126
Accounts payable and other accrued liabilities	939	939	939	—
Total	$ 70,152	$ 74,404	$ 3,065	$ 71,339

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Commitments and Contingencies

(a) Franchise agreement

The DoubleTree Portfolio operates under franchise agreements with DoubleTree. The franchise agreements have 10 year terms that expire between 2022 and 2024. The franchise agreements require the payment of royalty fees calculated at 3% of gross room revenue, as defined, for the first operating year; 4% of gross room revenue for the second operating year; and 5% of gross room revenue for the third through tenth operating year. In addition, the franchise agreements provide for a monthly program fee, as defined, calculated at 4% of gross room revenue. Franchise fees paid to DoubleTree totaled approximately $1,000 for the year ended December 31, 2017. Monthly program fees under the agreements totaled approximately $900 for the year ended December 31, 2017 and are included in marketing expenses.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

(c) Soil remediation costs

In connection with the acquisition of the DoubleTree Olympia hotel, the Company recorded an environmental remediation liability of approximately $141,000 related to expected soil remediation costs. These costs were capitalized as part of the hotel property and equipment. During 2009, the Company determined that additional soil remediation work would be required and estimated the additional cost to be approximately $208,000. As of December 31, 2017 and 2016, approximately $90,000 and $90,000 is remaining in the liability, respectively, which is included in accounts payable and accrued expenses in the Financials.

Note 16. Related Party Transactions

The Company entered into a joint financing arrangement with affiliates referred to as the Collective Loan. The Collective Loan was outstanding as of December 31, 2016 and January 1, 2016. The Company paid affiliates $183 in interest in 2017 under the Collective Loan. Additionally, the Company was jointly and severally liable on $862,500 of debt with affiliates.

On July 7, 2017, the Collective Loan was refinanced with the Refinanced Loan, which was issued by an affiliate. The Company paid affiliates $1,063 in 2017 under the Refinanced Loan.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2017 was as follows:

	Liabilities				
	Accounts payable and other accrued liabilities	Note payable, net	Mezzanine note, net	Members' equity	Total
Balance January 1, 2017	$ 1,309	$ 49,031	$ 20,182	$ (28,506)	$ 42,016
Changes from financing cash flows:					
Principal payments on notes payable	-	-	-	-	-
Distributions	-	-	-	(1,546)	(1,546)
Total changes from financing cash flows	-	-	-	(1,546)	(1,546)
Liability related:					
Other changes in payables	(131)	-	-	-	(131)
Members' equity related:					
Comprehensive Income	-	-	-	2,043	2,043
Balance December 31, 2017	$ 1,178	$ 49,031	$ 20,182	$ (28,009)	$ 42,382

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On May 3, 2018, the DoubleTree Portfolio was purchased by NREO NW Hospitality, LLC. On January 8, 2019, the owner of NREO NW Hospitality, LLC, contributed its interests in NREO NW Hospitality, LLC to the OP in exchange for 9,629,170 Class B Units of the OP.

HCBH 11611 FERGUSON, LLC

Consolidated Financial Statements

As at September 30, 2018 and December 31, 2017 and
for the nine months ended September 30, 2018, for the period from May 4, 2017 to September 30, 2017 and
for the three months ended September 30, 2018 and 2017

(Unaudited)

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	September 30, 2018	December 31, 2017
		(Unaudited)	
ASSETS			
Current assets			
Cash and cash equivalents		$ 705	$ 697
Restricted cash		889	1,008
Trade and other receivables		242	245
Prepaid and other assets		187	180
Total current assets		2,023	2,130
Non-current assets			
Property and equipment, net	4	41,214	35,392
Total non-current assets		41,214	35,392
TOTAL ASSETS		$ 43,237	$ 37,522
LIABILITIES AND MEMBERS' EQUITY			
Current liabilities			
Accounts payable and other accrued liabilities	8	$ 1,657	$ 1,762
Current portion of note payable	9	158	—
Total current liabilities		1,815	1,762
Non-current liabilities			
Note payable, net	9	31,641	26,304
Total non-current liabilities		31,641	26,304
Total Liabilities		33,456	28,066
Members' Equity		9,781	9,456
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ 43,237	$ 37,522

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENTS OF NET INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2018,
FOR THE PERIOD FROM MAY 4, 2017 TO SEPTEMBER 30, 2017
AND FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Nine Months Ended September 30, 2018	For the Period from May 4, 2017 (date of formation) to September 30, 2017	For the Three Months Ended September 30, 2018	For the Three Months Ended September 30, 2017
Revenues					
Rooms		$ 7,446	$ 4,771	$ 2,863	$ 2,914
Food and beverage		14	8	3	3
Other		87	71	32	33
Total revenues		7,547	4,850	2,898	2,950
Expenses					
Operating expenses	6	4,113	2,325	1,502	1,433
General and administrative expenses	7	1,818	1,057	655	670
Depreciation		597	324	202	195
Total expenses		6,528	3,706	2,359	2,298
Operating income		1,019	1,144	539	652
Interest expense, net	10	(1,680)	(653)	(609)	(370)
Net income (loss) and comprehensive income (loss)		$ (661)	$ 491	$ (70)	$ 282

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY
AS OF SEPTEMBER 30, 2018, DECEMBER 31, 2017, SEPTEMBER 30, 2017 AND MAY 4, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Members' Equity
Balance, May 4, 2017	—
Net income and comprehensive income (unaudited)	491
Contributions (unaudited)	9,106
Distributions (unaudited)	—
Balances, September 30, 2017	9,597
Balances, December 31, 2017	$ 9,456
Net loss and comprehensive loss (unaudited)	(661)
Contributions (unaudited)	1,214
Distributions (unaudited)	(228)
Balances, September 30, 2018	$ 9,781

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2018,
FOR THE PERIOD FROM MAY 4, 2017 TO SEPTEMBER 30, 2017 AND
FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Nine Months Ended September 30, 2018	For the Period from May 4, 2017 (date of formation) to September 30, 2017	For the Three Months Ended September 30, 2018	For the Three Months Ended September 30, 2017
Cash flows from operating activities					
Net income (loss)		$ (661)	$ 491	$ (70)	$ 282
Adjustments to reconcile net income (loss) to net cash provided by operating activities					
Depreciation		597	324	202	195
Interest expense, net	10	1,680	653	609	370
Changes in operating assets and liabilities:					
Operating assets		(4)	(510)	239	(290)
Operating liabilities		(130)	1,721	(647)	387
Net cash provided by operating activities		1,482	2,679	333	944
Cash flows from investing activities					
Acquisitions of property and equipment		-	(32,397)	-	-
Additions to property and equipment	4	(6,419)	(24)	(1,224)	(2,646)
Change in restricted cash		119	(1,051)	622	(208)
Net cash used in investing activities		(6,300)	(33,472)	(602)	(2,854)
Cash flows from financing activities					
Proceeds from note payable	9	5,349	24,575	1,285	2,395
Deferred financing costs paid	9	—	(584)	—	—
Contributions		1,214	9,106	—	3
Distributions		(228)	—	(540)	—
Interest paid		(1,509)	(454)	(564)	(351)
Net cash provided by financing activities		4,826	32,643	181	2,047
Net increase in cash and cash equivalents		8	1,850	(88)	137
Cash and cash equivalents, beginning of period		697	—	793	1,713
Cash and cash equivalents, end of period		$ 705	$ 1,850	$ 705	$ 1,850
Supplemental Disclosure of Noncash Activities				$ -	$ -
Other assets acquired from acquisitions		$ —	$ 65	$ —	$ —
Liabilities assumed from acquisitions		—	521		

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

HCBH 11611 Ferguson, LLC (the "Company") is a Delaware, United States of America, limited liability company established on March 2, 2017. The Company was formed to acquire indirect interests in three hospitality properties (the "Properties," see table below) on May 4, 2017 from an independent third party. The Company indirectly owns the properties through single-asset limited liability companies, which are consolidated with the Company's financial statements.

Property Name	Location
Homewood Suites by Hilton – Plano	Plano, TX
Homewood Suites by Hilton – Dallas/Irving/Las Colinas	Irving, TX
Homewood Suites by Hilton – Dallas/Addison	Addison, TX

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

The consolidated financial statements of the Company (the "Financials") consist of the Properties. The Financials have been prepared for the specific purpose of reporting on the historical assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

The Financials have been prepared on a historical cost basis.

(c) Basis of Presentation

The Financials include the accounts of the Company on a consolidated basis. The Financials are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The Financials comprise the financial statements of the Company and its single-asset limited liability company subsidiaries. Intra-company transactions and balances are eliminated in preparing the Financials. The Financials reflect the consolidated financial position, results of operations and cash flows of the Company and its subsidiaries.

(b) Properties and equipment

(i) Recognition and measurement

Properties and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the estimated useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than

goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	**Classification**
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Notes payable	Amortized cost

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The Company adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, netNet interest expense primarily consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company that indirectly owns the Properties through single-asset limited liability companies. The Company is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 30, 2018 and December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties.

The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 30, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its Financials.

(k) Operating segments

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 on January 1, 2018 and there was no material impact on its Financials.

(ii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company adopted IFRS 15 on January 1, 2018, using the modified retrospective method, and there was no material impact on its Financials.

(iii) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most

leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its Financials for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Construction in progress	Total
Cost:					
Balance, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Additions	6,715	20,946	2,075	2,685	32,421
Disposals	—	—	—	—	—
Balance, September 30, 2017	6,715	20,946	2,075	2,685	32,421
Balance, December 31, 2017	$ 6,715	$ 20,998	$ 2,094	$ 6,105	$ 35,912
Additions	—	103	161	6,155	6,419
Disposals	—	—	—	—	—
Balance, September 30, 2018	$ 6,715	$ 21,101	$ 2,255	$ 12,260	$ 42,331
Accumulated depreciation:					
Balance, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Additions	—	236	88	—	324
Disposals	—	—	—	—	—
Balance, September 30, 2017	—	236	88	—	324
Balance, December 31, 2017	$ —	$ 379	$ 141	$ —	$ 520
Depreciation	—	433	164	—	597
Disposals	—	—	—	—	—
Balance, September 30, 2018	$ —	$ 812	$ 305	$ —	$ 1,117
Carrying amount, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Carrying amount, September 30, 2017	$ 6,715	$ 20,710	$ 1,987	$ 2,685	$ 32,097
Carrying amount, December 31, 2017	$ 6,715	$ 20,619	$ 1,953	$ 6,105	$ 35,392
Carrying amount, September 30, 2018	6,715	20,289	1,950	12,260	41,214

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement. Shortly after acquisition of the properties, the Company began an extensive renovation program on the Properties. As of December 31, 2017, the renovation program was still in process resulting in a $6,508 balance in construction in progress. The renovation program continued into 2018 with an additional $5,752 of construction begun in 2018 with an ending balance in construction in progress of $12,260 as of September 30, 2018. The renovation was completed in May 2018 and the balances in construction in progress were moved to buildings and improvements and furniture, fixture and equipment when placed in service.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the franchise agreements in 2017 of each underlying property of the Company. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of September 30, 2018 and December 31, 2017, the Company had $889 and $1,008 of restricted cash, respectively.

HCBH 11611 FERGUSON, LLC
NOTES TO THE UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 6. Operating Expenses

	For the Nine Months Ended September 30, 2018	For the Period from May 4, 2017 (Inception) to September 30, 2017
Payroll	$ 1,826	$ 995
Repairs and maintenance	485	238
Utilities	304	201
Property taxes and insurance	524	314
Cost of goods sold	186	100
Franchise fees	409	264
Other operating expenses	379	213
Operating expenses	$ 4,113	$ 2,325

Note 7. General and Administrative Expenses

	For the Nine Months Ended September 30, 2018	For the Period from May 4, 2017 (Inception) to September 30, 2017
Property management fees	$ 189	$ 121
Office operations	463	245
Marketing	807	516
Other administrative expenses	359	175
General and administrative expenses	$ 1,818	$ 1,057

Note 8. Accounts Payable and Other Accrued Liabilities

	September 30, 2018	December 31, 2017
Trade payables	$ 134	$ 74
Payroll and payroll taxes	173	110
Property taxes	489	727
Property management fees	34	30
Sales and occupancy taxes	176	166
Interest on note payable	173	148
Franchise fees	138	127
Other payables	340	380
Accounts payable and other accrued liabilities	$ 1,657	$ 1,762

Note 9. Note Payable, Net

	September 30, 2018	December 31, 2017
Note payable	$ 32,107	$ 26,758
Less: current maturities	(158)	—
Less: unamortized portion of deferred financing costs	(308)	(454)
Note payable, net	$ 31,641	$ 26,304

On May 4, 2017, in connection with the acquisition of the Properties, the Company entered into a $32,350 term loan (the "Loan") with a large financial institution and immediately drew $22,180. Subsequently, the Company drew $5,349 and $4,578 during the periods ended September 30, 2018 and December 31, 2017, respectively. The Loan is secured by the Properties and bears interest at a variable rate equal to the 30-day London InterBank Offered Rate ("LIBOR") plus 4.95%. As of September 30, 2018 and December 31, 2017, the Loan's effective interest rates were 7.21% and 6.51%, respectively. Beginning in June 2019, the Loan's monthly

payments include a fixed monthly amortization payment of $40 along with the monthly interest payments. The Loan matures on May 4, 2020, and has one twelve-month extension option.

The Company's loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of September 30, 2018 and December 31, 2017, the Company was in compliance with all covenants of its loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to September 30, 2018 are as follows:

	Note payable
2018	$ —
2019	277
2020	31,364
2021	—
2022	—
Thereafter	—
Total	$ 31,641

Note 10. Interest Expense, Net

	For the Nine Months Ended September 30, 2018	For the Period from May 4, 2017 (Inception) to September 30, 2017
Interest on debt	$ 1,534	$ 572
Amortization of deferred financing costs	146	81
Interest expense, net	$ 1,680	$ 653

Note 11. Members' Capital

The members of the Company have made cash contributions based on their respective ownership percentages. As of September 30, 2018, cash contributions totaled $10,320 and cash distributions totaled $228. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of September 30, 2018 and December 31, 2017, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of September 30, 2018 and December 31, 2017, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of September 30, 2018, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $321 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the nine months ended September 30, 2018, bad debt expense was $1. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Properties and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Properties, the proceeds to the Company may be significantly less than the Properties' carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of September 30, 2018 and December 31, 2017, the Company had cash and cash equivalents of $705 and $697, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 2.26% as of September 30, 2018:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 32,107	$ 32,107	$ 158	$ 31,949
Interest payable on note	173	3,893	2,345	1,548
Accounts payable and other accrued liabilities	1,484	1,484	1,484	—
Total	$ 33,764	$ 37,484	$ 3,987	$ 33,497

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Related Party Transactions

The Company periodically evaluates arrangements and agreements to identify related party transactions. For the nine months ended September 30, 2018, the Company has identified no material related party transactions.

Note 16. Commitments and Contingencies

(a) Franchise agreements

The Properties are operated under franchise agreements (the "Franchise Agreements") with a subsidiary of Hilton Worldwide (the "Franchisor"). The Franchise Agreements were executed on May 4, 2017 and have a 15-year term. The Franchise Agreements require the payment of a monthly royalty fee of 5.5% and a monthly program fee of 3.5% of the Properties' gross room revenue. For the nine months ended September 30, 2018, franchise fees were $409, and are included in operating expenses in the consolidated statements of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these Financials. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company or the Properties.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the nine months ended September 30, 2018 were as follows:

	Liabilities				
	Accounts payable and other accrued liabilities	Current portion of note payable	Note payable, net	Members' equity	Total
Balance December 31, 2017	$ 1,762	$ -	$ 26,304	$ 9,456	$ 37,522
Changes from financing cash flows:					
Reclass of current portion of note payable	-	158	(158)		-
Amortization of deferred financing costs	-	-	146	-	146
Proceeds from note payable	-	-	5,349	-	5,349
Interest accrual	25	-	-	-	25
Contributions	-	-	-	1,214	1,214
Distributions	-	-	-	(228)	(228)
Total changes from financing cash flows	25	158	5,337	986	6,506
Liability related:					
Other payable increases (decreases)	(130)	-	-	-	(130)
Members' equity related:					
Comprehensive Income (loss)	-	-	-	(661)	(661)
Balance September 30, 2018	$ 1,657	$ 158	$ 31,641	$ 9,781	$ 43,237

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT DFW Portfolio, LLC, which was immediately contributed to NHT Holdco, LLC in exchange for 3,843,184 units.

HCBH 11611 FERGUSON, LLC

Consolidated Financial Statements

As at December 31, 2017 and
for the period from May 4, 2017 (date of formation) to December 31, 2017

(With Independent Auditors' Report Thereon)

Advisory Assurance Tax Private Client

INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
Nexpoint Hospitality Trust

We have audited the accompanying consolidated financial statements of HCBH 11611 Ferguson, LLC, which comprise the consolidated statement of financial position as of December 31, 2017, and the related consolidated statements of net income and comprehensive income, members' equity, and cash flows for the period from inception (May 4, 2017) to December 31, 2017, and the related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

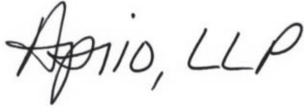
Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and in accordance with International Standards on Auditing. Those standards require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

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

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of HCBH 11611 Ferguson, LLC as of December 31, 2017 and the results of its consolidated net income and comprehensive income, changes in equity and its cash flows for the period then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.



Atlanta, Georgia

March 27, 2019

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENT OF FINANCIAL POSITION
AS OF DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)

	Notes	December 31, 2017
ASSETS		
Current assets		
Cash		$ 697
Restricted cash	6	1,008
Trade and other receivables		245
Prepaid and other assets		180
Total current assets		2,130
Non-current assets		
Property and equipment, net	4	35,392
Total non-current assets		35,392
TOTAL ASSETS		$ 37,522
LIABILITIES AND MEMBERS' EQUITY		
Current liabilities		
Accounts payable and other accrued liabilities	9	$ 1,762
Total current liabilities		1,762
Non-current liabilities		
Note payable, net	10	26,304
Total non-current liabilities		26,304
Total Liabilities		28,066
Members' Equity		9,456
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ 37,522

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENT OF NET INCOME AND COMPREHENSIVE INCOME
FOR THE PERIOD FROM MAY 4, 2017 (DATE OF FORMATION) TO DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)

	Notes	For the Period from May 4, 2017 (date of formation) to December 31, 2017
Revenues		
Rooms		$ 7,538
Food and beverage		14
Other		101
Total revenues		7,653
Expenses		
Operating expenses	7	3,755
General and administrative expenses	8	1,701
Depreciation		520
Total expenses		5,976
Operating income		1,677
Interest expense, net	11	(1,106)
Net income and comprehensive income		$ 571

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENT OF MEMBERS' EQUITY
AS OF DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)

	For the Period from May 4, 2017 (date of formation) to December 31, 2017
Balance, May 4, 2017	$ -
Net income and comprehensive income	571
Contributions	8,885
Balance, December 31, 2017	$ 9,456

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
CONSOLIDATED STATEMENT OF CASH FLOWS
FOR THE PERIOD FROM MAY 4, 2017 TO DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)

	Notes	For the Period from May 4, 2017 (date of formation) to December 31, 2017
Cash flows from operating activities		
Net income		$ 571
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation		520
Interest expense, net	11	1,106
Changes in operating assets and liabilities:		
Operating assets		(425)
Operating liabilities		1,614
Net cash provided by operating activities		3,386
Cash flows from investing activities		
Acquisitions of property and equipment		$ (35,912)
Change in restricted cash		(1,008)
Net cash used in investing activities		(36,920)
Cash flows from financing activities		
Proceeds from note payable	10	26,758
Deferred financing costs paid	10	(584)
Contributions		8,885
Interest paid		(828)
Net cash provided by financing activities		34,231
Net increase in cash		697
Cash, beginning of period		—
Cash, end of period		$ 697
Supplemental Disclosure of Noncash Activities		
Other assets acquired from acquisitions		65
Liabilities assumed from acquisitions		521

See accompanying notes to these consolidated financial statements

HCBH 11611 FERGUSON, LLC
NOTES TO THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

HCBH 11611 Ferguson, LLC (the "Company") is a Delaware, United States of America, limited liability company established on March 2, 2017. The Company was formed to acquire indirect interests in three hospitality properties (the "Properties," see table below) on May 4, 2017 from an independent third party. The Company indirectly owns the properties through single-asset limited liability companies, which are consolidated with the Company's financial statements.

Property Name	Location
Homewood Suites by Hilton – Plano	Plano, TX
Homewood Suites by Hilton – Dallas/Irving/Las Colinas	Irving, TX
Homewood Suites by Hilton – Dallas/Addison	Addison, TX

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

The consolidated financial statements of the Company (the "Financials") consist of the Properties. The Financials have been prepared for the specific purpose of reporting on the historical assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company for the period presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

The Financials have been prepared on a historical cost basis.

(c) Basis of Presentation

The Financials include the accounts of the Company on a consolidated basis. The Financials are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these Financials are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The Financials comprise the financial statements of the Company and its single-asset limited liability company subsidiaries. Intra-company transactions and balances are eliminated in preparing the Financials. The Financials reflect the consolidated financial position, results of operations and cash flows of the Company and its subsidiaries.

(b) Properties and equipment

(i) Recognition and measurement

Properties and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the estimated useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the REIT has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Financial assets

The Company's financial assets are comprised of cash and cash equivalents, restricted cash, trade and other receivables and prepaid and other assets. The Company classifies these financial assets as loans and receivables. The Company initially recognizes loans and receivables on the date that they are originated. Loans and receivables are financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are recognized initially at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, loans and receivables are measured at amortized cost using the effective interest method, less any impairment losses.

(ii) Financial liabilities

The Company has the following non-derivative financial liabilities: accounts payable and other accrued liabilities and note payable. The Company classifies each of its non-derivative financial liabilities as other financial liabilities. Initial measurement is at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, these non-derivative financial liabilities are measured at amortized cost using the effective interest method. All non-derivative financial liabilities are initially recognized on the date that the Company becomes a party to the contractual provisions of the instrument. The Company derecognizes a financial liability when its contractual obligations are discharged or cancelled or expire.

(iii) Impairment of financial assets

Loans and receivables are assessed at each reporting date to determine whether there is objective evidence that they are impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably. Objective evidence that financial assets are impaired can include default or delinquency by a debtor, restructuring of an amount due to the Company on terms that the Company would not consider otherwise, or indications that a debtor or issuer will enter bankruptcy.

The Company considers evidence of impairment for loans and receivables at both a specific asset and collective level. All individually significant loans and receivables are assessed for specific impairment. All individually significant loans and receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Loans and receivables that are not individually significant are collectively assessed for impairment by grouping together loans and receivables with similar risk characteristics.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows, discounted using the instrument's original effective interest rate. Losses are recognized in profit or loss and reflected in an allowance account against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss.

(e) Cash

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash consists of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense primarily consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company that indirectly owns the Properties through single-asset limited liability companies. The Company is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its Financials.

(k) Operating segments

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Significant estimates used in the accompanying consolidated financial statements include estimates used in acquisition accounting (see Note 5). Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The Company implemented the amendments to IAS 7 on May 4, 2017.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company intends to adopt IFRS 9 in its Financials for the annual period beginning on January 1, 2018 and does not expect the new standard to have a material impact on its Financials.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company intends to adopt IFRS 15 in its Financials for the annual period beginning on January 1, 2018. The Company has performed an in-depth assessment of IFRS 15 to determine what the impact of the adoption of the new standard will have on the Company's Financials. Based on the nature of the Company's operations to own and operate hotels, the Company does not expect there to be a material impact on the timing and measurement of revenue recognized as compared to the previous standard. Additional disclosures will be required to comply with IFRS 15.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable

future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its Financials for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its Financials.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Construction in progress	Total
Cost:					
Balance, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Additions	6,715	20,998	2,094	6,105	35,912
Disposals	—	—	—	—	—
Balance, December 31, 2017	$ 6,715	$ 20,998	$ 2,094	$ 6,105	$ 35,912
Accumulated depreciation:					
Balance, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Depreciation	—	379	141	—	520
Disposals	—	—	—	—	—
Balance, December 31, 2017	$ —	$ 379	$ 141	$ —	$ 520
Carrying amount, May 4, 2017	$ —	$ —	$ —	$ —	$ —
Carrying amount, December 31, 2017	$ 6,715	$ 20,619	$ 1,953	$ 6,105	$ 35,392

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

On May 4, 2017, the Company acquired the Properties. The acquisition of the Properties was considered to be an acquisition of a business in accordance with IFRS 3, business combinations. Accordingly, the acquisition method of accounting was used to record the assets and liabilities acquired. See Note 5. Business Combinations.

Note 5. Business Combinations

The table below summarizes the fair values of the assets acquired and liabilities assumed for acquisitions in 2017:

	Homewood Suites Plano	Homewood Suites Las Colinas	Homewood Suites Addison	Total
Fair value of consideration transferred:				
Cash	$ 1,676	$ 3,017	$ 2,627	$ 7,320
Note payable	8,624	6,983	6,573	22,180
	$ 10,300	$ 10,000	$ 9,200	$ 29,500
Property and equipment	10,300	10,000	9,200	29,500
Fair value of net identifiable assets acquired and liabilities assumed	$ 10,300	$ 10,000	$ 9,200	$ 29,500

On May 4, 2017, the Company completed the acquisition of three Homewood Suite properties located in Plano, Texas; Las Colinas, Texas; and Addison, Texas (all of which are located within the greater Dallas/Fort Worth Metroplex) for a purchase price of $29,500. Acquisition costs of $209 were expensed as incurred and included in general and administrative expenses in the accompanying consolidated statements of net income and comprehensive income. In conjunction with the purchase, the Company incurred a new mortgage totaling $32,350 and immediately utilized $22,180 to close the acquisitions. In securing the mortgage, the Company incurred $584 in deferred financing costs. The mortgage is collateralized by the properties, incurs interest at an annual variable rate equal to the 30-day London InterBank Offered Rate ("LIBOR") plus 4.95% and matures May 4, 2020. The undrawn

difference between the total loan amount and the amount utilized at acquisition is available for the Company to utilize for future PIP expenditures. (see Note 10. Note Payable, Net for more information related to the mortgage).

Note 6. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the franchise agreements in 2017 of each underlying property of the Company. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of the period ended December 31, 2017 the Company had $1,008 of restricted cash.

Note 7. Operating Expenses

	For the Period from May 4, 2017 (Inception) to December 31, 2017	
Payroll	$	1,624
Repairs and maintenance		394
Utilities		298
Property taxes and insurance		526
Cost of goods sold		150
Franchise fees		417
Other operating expenses		346
Operating expenses	$	3,755

Note 8. General and Administrative Expenses

	For the Period from May 4, 2017 (Inception) to December 31, 2017	
Property management fees	$	191
Office operations		420
Marketing		808
Other administrative expenses		282
General and administrative expenses	$	1,701

Note 9. Accounts Payable and Other Accrued Liabilities

	December 31, 2017	
Trade payables	$	74
Payroll and payroll taxes		110
Property taxes		727
Property management fees		30
Sales and occupancy taxes		166
Interest on note payable		148
Franchise fees		127
Other payables		380
Accounts payable and other accrued liabilities	$	1,762

Note 10. Note Payable, Net

		December 31, 2017
Note payable	$	26,758
Less: current maturities		—
Less: unamortized portion of deferred financing costs		(454)
Note payable, net	$	26,304

On May 4, 2017, in connection with the acquisition of the Properties, the Company entered into a $32,350 term loan (the "Loan") with a large financial institution and immediately drew $22,180. Subsequently, the Company drew $4,578 during the period ended December 31, 2017 for PIP expenditures. The Loan is secured by the Properties and bears interest at a variable rate equal to the 30-day London InterBank Offered Rate ("LIBOR") plus 4.95%. As of December 31, 2017, the Loan's effective interest rate was 6.51%. As of December 31, 2017, the Company had an undrawn balance of $5,592 that may be used to fund future PIP expenditures. Beginning in June 2019, the Loan's monthly payments include a fixed monthly amortization payment of $40 along with the monthly interest payments. The Loan matures on May 4, 2020, and has one twelve-month extension option.

The Company's loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of December 31, 2017, the Company was in compliance with all covenants of its loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to December 31, 2017 are as follows:

		Note payable
2018	$	—
2019		277
2020		26,481
2021		—
2022		—
Thereafter		—
Total	$	26,758

Note 11. Interest Expense, Net

		For the Period from May 4, 2017 (Inception) to December 31, 2017
Interest on debt	$	976
Amortization of deferred financing costs		130
Interest expense, net	$	1,106

Note 12. Members' Equity

The members of the Company have made cash contributions based on their respective ownership percentages. As of December 31, 2017, cash contributions totaled $8,885. All income or loss allocations are based on the member's respective ownership percentage.

Note 13. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2017, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of December 31, 2017, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Loan bears interest at a variable rate. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

As of December 31, 2017, every 1% increase or decrease in the applicable interest rate, assuming all other variables are constant, would result in a corresponding change of approximately $268 in the Company's net interest expense on an annual basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the period ended December 31, 2017, bad debt expense was $7. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Properties and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Properties, the proceeds to the Company may be significantly less than the Properties' carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of December 31, 2017, the Company had cash and cash equivalents of $697.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 1.56% as of December 31, 2017:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 26,758	$ 26,758	$ —	$ 26,758
Interest payable on note	148	4,256	1,767	2,489
Accounts payable and other accrued liabilities	1,614	1,614	1,614	—
Total	$ 28,520	$ 32,628	$ 3,381	$ 29,247

Note 14. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 15. Segment Reporting

The Company currently operates in one business segment, owning and operating three hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 16. Related Party Transactions

The Company periodically evaluates arrangements and agreements to identify related party transactions. For the period ended December 31, 2017, the Company has identified no material related party transactions.

Note 17. Commitments and Contingencies

(a) Franchise agreements

The Properties are operated under franchise agreements (the "Franchise Agreements") with a subsidiary of Hilton Worldwide (the "Franchisor"). The Franchise Agreements were executed on May 4, 2017 and have a 15-year term. The Franchise Agreements require the payment of a monthly royalty fee of 5.5% and a monthly program fee of 3.5% of the Properties' gross room revenue. For the period ended December 31, 2017, franchise fees were $417, and are included in operating expenses in the consolidated statement of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these Financials. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company or the Properties.

Note 18. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2017 was as follows:

	Liabilities			
	Account payable and other accrued liabilities	Note payable, net	Members' equity	Total
Balance May 4, 2017	$ -	$ -	$ -	$ -
Changes from financing cash flows:				
Amortization of deferred financing costs	-	130	-	130
Proceeds from note payable	-	26,758	-	26,758
Deferred financing costs paid	-	(584)	-	(584)
Interest accrual	148	-	-	148
Contributions	-	-	8,885	8,885
Total changes from financing cash flows	148	26,304	8,885	35,337
Liability related:				
Other payable increases	1,614	-	-	1,614
Members' equity related:				
Comprehensive Income	-	-	571	571
Balance December 31, 2017	$ 1,762	$ 26,304	$ 9,456	$ 37,522

Note 19. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company was contributed to a newly formed entity, NHT DFW Portfolio, LLC, which was immediately contributed to NHT Holdco, LLC in exchange for 3,843,184 units.

PALLAS, LLC

Financial Statements

As at September 24, 2018 and December 31, 2017 and
for the periods from January 1, 2018 to September 24, 2018 and from January 1, 2017 to September 30, 2017

(Unaudited)

PALLAS, LLC
STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 24, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	September 24, 2018 (Unaudited)	December 31, 2017
ASSETS			
Current assets			
Cash and cash equivalents		$ 3,803	$ 4,271
Restricted cash	5	—	2
Trade and other receivables		146	23
Prepaid and other assets		453	244
Total current assets		4,402	4,540
Non-current assets			
Property and equipment, net	4	13,895	13,287
Total non-current assets		13,895	13,287
TOTAL ASSETS		$ 18,297	$ 17,827
LIABILITIES AND MEMBERS' EQUITY			
Current liabilities			
Accounts payable and other accrued liabilities	8	$ 1,214	$ 525
Current portion of note payable	9	580	564
Total current liabilities		1,794	1,089
Non-current liabilities			
Note payable, net	9	21,830	22,253
Total non-current liabilities		21,830	22,253
Total Liabilities		23,624	23,342
Members' deficit	11	(5,327)	(5,515)
TOTAL LIABILITIES AND MEMBERS' DEFICIT		$ 18,297	$ 17,827

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF COMPREHENSIVE INCOME
FOR THE PERIOD FROM JANUARY 1 TO SEPTEMBER 24, 2018 AND JANUARY 1 TO SEPTEMBER 30, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Revenues			
Rooms		$ 6,273	$ 6,174
Food and beverage		744	772
Other		1,503	1,496
Total revenues		8,520	8,442
Expenses			
Operating expenses	6	4,747	4,674
General and administrative expenses	7	1,421	1,451
Depreciation and amortization		305	328
Total expenses		6,473	6,453
Operating income		2,047	1,989
Interest expense, net	10	(670)	(663)
Other income (expense)		61	69
Net income and comprehensive income		$ 1,438	$ 1,395

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF MEMBERS' DEFICIT
AS OF SEPTEMBER 24, 2018, DECEMBER 31, 2017, SEPTEMBER 30, 2017 AND DECEMBER 31, 2016
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Members' Equity
Balances, December 31, 2016	$ (5,938)
Net income and comprehensive income (unaudited)	1,395
Distributions (unaudited)	—
Balances, September 30, 2017	(4,543)
Balances, December 31, 2017	(5,515)
Net income and comprehensive income (unaudited)	1,438
Distributions (unaudited)	(1,250)
Balances, September 24, 2018	$ (5,327)

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF CASH FLOWS
FOR THE PERIOD FROM JANUARY 1 TO SEPTEMBER 24, 2018 AND JANUARY 1 TO SEPTEMBER 30, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Cash flows from operating activities			
Net income		$ 1,438	$ 1,395
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization		317	218
Interest expense, net	10	691	633
Changes in operating assets and liabilities:			
Operating assets		(330)	(139)
Operating liabilities		688	411
Net cash provided by operating activities		2,804	2,519
Cash flows from investing activities			
Additions to property and equipment	4	(914)	—
Change in restricted cash		2	—
Net cash used in investing activities		(912)	—
Cash flows from financing activities			
Principal payments on note payable	9	(419)	(401)
Payments on related party note	16	—	(53)
Distributions		(1,250)	—
Interest paid		(691)	(633)
Net cash used in financing activities		(2,360)	(1,087)
Net increase (decrease) in cash and cash equivalents		(468)	1,432
Cash and cash equivalents, beginning of period		4,271	1,339
Cash and cash equivalents, end of period		$ 3,803	$ 2,771

See accompanying notes to these financial statements

PALLAS, LLC
NOTES TO THE UNAUDITED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

Pallas, LLC (the "Company") is a limited liability company registered in Florida and was established on February 12, 2002. The Company was formed to develop and operate the St. Petersburg Marriott Clearwater hotel property and related restaurant located in St. Petersburg, Florida (the "Property"). The Company is owned by four members:

Member Entity	Ownership %
Menna Family Limited Partnership, L.L.L.P	68%
Anthony Menna's Children's Trust	18%
Giuseppe DiGiovanni	8%
Francesco Carriera	6%

The Company is managed by Anthony Menna (the "Manager"), who is an affiliate of two of the Members, and the Property is managed and operated by Menna Development & Management, Inc. ("MDM"), a Florida corporation, which is an affiliate of the Manager.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These financial statements of the Company (the "Financials") have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed with the OSC by the REIT. The Financials present the financial position, results of operations and cash flows of the Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

These financial statements have been prepared on a historical cost basis.

(c) Basis of Presentation

These financial statements have been prepared in accordance with IFRS as issued by the IASB. These financial statements include the accounts of the Company. These financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

The Financials were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these financial statements are described below and have been applied consistently to all periods presented:

(a) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(b) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has

subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(c) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the statement of net income and comprehensive income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	**Classification**
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Notes payable	Amortized cost

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The Company adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income and comprehensive income with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(d) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(e) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(f) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(g) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(h) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's statements of financial position.

(i) Income taxes

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income, as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 24, 2018 and December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties.

The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 24, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its financial statements.

(j) Operating segments

The Company currently operates in one business segment, owning and operating one hotel property and related restaurant in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(k) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(l) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(m) Recent accounting pronouncements

(i) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 on January 1, 2018 and there was no material impact on its financial statements.

(ii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company adopted IFRS 15 on January 1, 2018 and there was no material impact on its financial statements.

(iii) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for

low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its financial statements.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, December 31, 2016	$ 1,777	$ 18,128	$ 3,452	$ 23,357
Additions	—	—	—	—
Disposals	—	—	—	—
Balance, September 30, 2017	1,777	18,128	3,452	23,357
Balance, December 31, 2017	$ 1,777	$ 18,128	$ 4,325	$ 24,230
Additions	—	914	—	914
Disposals	—	—	—	—
Balance, September 24, 2018	$ 1,777	$ 19,042	$ 4,325	$ 25,144
Accumulated depreciation:				
Balance, December 31, 2016	$ —	$ 6,988	$ 3,520	$ 10,508
Additions	—	276	52	328
Disposals	—	—	—	—
Balance, September 30, 2017	—	7,264	3,572	10,836
Balance, December 31, 2017	$ —	$ 7,520	$ 3,423	$ 10,943
Depreciation	—	243	62	305
Disposals	—	—	—	—
Balance, September 24, 2018	$ —	$ 7,763	$ 3,485	$ 11,248
Carrying amount, December 31, 2017	$ 1,777	$ 10,608	$ 902	$ 13,287
Carrying amount, September 24, 2018	1,777	11,278	840	13,895

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement in 2008. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of September 24, 2018 and December 31, 2017, the Company had $0 and $2 of restricted cash, respectively.

Note 6. Operating Expenses

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Payroll	$ 1,385	$ 1,411
Repairs and maintenance	800	668
Utilities	325	325
Property taxes and insurance	515	542
Cost of goods sold	960	962
Franchise fees	682	680
Other operating expenses	81	86
Operating expenses	$ 4,748	$ 4,674

Note 7. General and Administrative Expenses

	For the Period from January 1 to September 24, 2018	For the Period from January 1 to September 30, 2017
Property management fees	$ 436	$ 409
Office operations	84	131
Marketing	898	906
Other administrative expenses	3	5
General and administrative expenses	$ 1,421	$ 1,451

Note 8. Accounts Payable and Other Accrued Liabilities

	September 24, 2018	December 31, 2017
Trade payables	$ 496	$ 262
Payroll and payroll taxes	9	73
Property taxes	263	—
Sales and occupancy taxes	65	98
Due to related parties	—	6
Deposits	165	26
Other payables	216	60
Accounts payable and other accrued liabilities	$ 1,214	$ 525

Note 9. Note Payable, Net

	September 24, 2018	December 31, 2017
Note payable	$ 22,535	$ 22,953
Less: current maturities	(580)	(564)
Less: unamortized portion of deferred financing costs	(125)	(136)
Note payable, net	$ 21,830	$ 22,253

On September 26, 2012, the Company entered into a $19,570 term loan (the "Loan") with a large financial institution. The Loan incurred interest at a fixed rate equal to 4.25% and required monthly principal payments and was secured by the Property. The Loan was refinanced on November 25, 2017, increasing the loan balance to $23,000 (the "Amended Loan"). The Amended Loan is secured by the Property and bears interest at a fixed rate equal to 3.80% and requires monthly principal payments. The Amended Loan matures on November 25, 2022.

The Amended Loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of September 24, 2018 and December 31, 2017, the Company was in compliance with all covenants of the Loan agreement and Amended Loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the statements of financial position

Future principal payments on the Amended Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to September 24, 2018 are as follows:

	Note payable
2018	$ 143
2019	586
2020	608
2021	632
2022	20,566
Thereafter	—
Total	$ 22,535

Note 10. Interest Expense, Net

	For the Period from January 1 to September 24,	For the Period from January 1 to September 30,
	2018	2017
Interest on debt	$ 658	$ 632
Amortization of deferred financing costs	12	31
Interest expense, net	$ 670	$ 663

Note 11. Members' Capital

The members of the Company have received cash distributions based on their respective ownership percentages. As of September 24, 2018 cash distributions totaled $13,284. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of September 24, 2018 and December 31, 2017, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of September 24, 2018 and December 31, 2017, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Amended Loan bears interest at a fixed rate, so fluctuations in interest rates will not impact the cost of financing incurred in the future but may impact the carrying value of the Ameded Loan. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the periods ended September 24, 2018 and December 31, 2017, the Company had no bad debt expense. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of September 24, 2018 and December 31, 2017, the Company had cash and cash equivalents of $3,803 and $4,271, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the fixed rate of the Loan of 3.80% as of September 24, 2018:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 22,535	$ 22,535	$ 580	$ 21,955
Interest payable on note	—	—	—	—
Accounts payable and other accrued liabilities	1,214	1,214	1,214	—
Total	$ 23,749	$ 23,749	$ 1,794	$ 21,955

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property and related restaurant in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Marriott International (the "Franchisor"). The Franchise Agreement was executed on October 22, 2014 and has a 15-year term. The Franchise Agreement requires the payment of a monthly royalty fee of 5.5% and a monthly program fee of 4.3% of the Property's gross room revenue. Under a covenant in the Franchise Agreement, the Property was responsible for funding an amount equal to 4% of gross revenue for the first 36 months under the contract, then an amount equal to 5% of gross revenues each month for the remainder of the contract, into a reserve cash account. The Property did not retain the required cash and was not in compliance with the covenant for the periods ended September 24, 2018 and September 30, 2017, under the Franchise Agreement. For the periods ended September 24, 2018 and September 30, 2017, franchise fees were $682 and $680, respectively, and are included in operating expenses in the statements of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

Note 16. Related Party Transactions

The Company engaged MDM for the day-to-day management of the Property. The Manager is deemed to be a related party due to its affiliation with one of the members of the Company. The property management agreement commenced on June 30, 2008 with an initial 5-year term that automatically renewed in one year renewals. The property management fee is 4.25% of the Property's gross revenues (as defined in the Management Agreement). The Management Agreement also calls for the Company to reimburse the Manager for those employees of the Manager as utilized by the Company. For the period from January 1 to September 24, 2018 and from January 1 to September 30, 2017, in accordance with the Management Agreement, property management fees were $436 and $409, respectively. Property management fees are included in general and administrative expenses in the statements of comprehensive income.

In addition, on September 27, 2012 the Company entered into a $2,576 loan agreement with the Manager (the "MDM Loan"). The Loan was the result of expenses paid by MDM on behalf of the Company which the Company was unable to reimburse at the time. The Loan bears no interest, and only principal is due. The note payable to MDM was repaid in full on November 25, 2017.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the period from January 1, 2018 to September 24, 2018 was as follows:

	Liabilities				
	Accounts payable and other accrued liabilities	Current portion of note payable	Note payable, net	Members' equity	Total
Balance December 31, 2017	$ 525	$ 564	$ 22,253	$ (5,514)	$ 17,828
Changes from financing cash flows:					
Amortization of deferred financing costs	-	-	12	-	12
Reclass from note payable, net to current portion	-	16	(16)	-	-
Principal payments on notes payable	-	-	(419)	-	(419)
Interest accrual	-	-	-	-	-
Distributions	-	-	-	(1,250)	(1,250)
Total changes from financing cash flows	-	16	(423)	(1,250)	(1,657)
Liability related:					
Other payable increases	689	-	-	-	689
Members' equity related:					
Comprehensive Income (loss)	-	-	-	1,437	1,437
Balance September 24, 2018	$ 1,214	$ 580	$ 21,830	$ (5,327)	$ 18,297

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On September 24, 2018, the Company sold the Property to NHT SP, LLC. On January 8, 2019, the parent of NHT SP, LLC (NHT SP Parent, LLC), was contributed to NHT Holdco, LLC in exchange for 3,613,498 units.

PALLAS, LLC

Financial Statements

As at December 31, 2017, December 31, 2016 and January 1, 2016 and
for the years ended December 31, 2017 and December 31, 2016

(With Independent Auditors' Report Thereon)

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INDEPENDENT AUDITORS' REPORT

To the Board of Trustees
NexPoint Hospitality Trust

We have audited the accompanying financial statements of Pallas, LLC (an S Corporation), which comprise the statements of financial position as of December 31, 2017 and 2016, and January 1, 2016 and the related statements of comprehensive income, members' deficit, and cash flows for the years ended December 31, 2017 and 2016, and the related notes to the financial statements.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

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

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

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

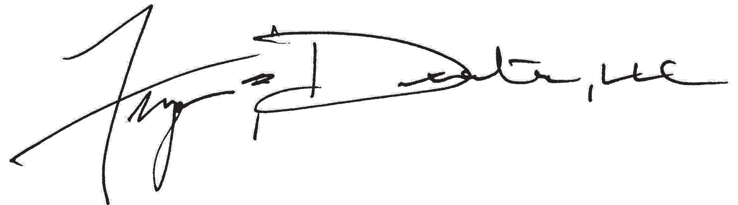
Basis for Qualified Opinion

We were unable to obtain sufficient appropriate audit evidence to support the carrying amounts of the Company's property and equipment at December 31, 2017 and 2016 and January 1, 2016. Therefore, we were unable to satisfy ourselves as to the amounts property and equipment were reported on the statements of financial position of approximately $13,287,000, $12,851,000 and $13,469,000 as of December 31, 2017 and 2016 and January 1, 2016, respectively. In addition, we were unable to satisfy ourselves as to the amounts of depreciation and amortization expense reported in the statements of comprehensive income of approximately $441,000 and $639,000 for the years ended December 31, 2017 and 2016, respectively. Furthermore, we were unable to satisfy ourselves with the amounts of accumulated depreciation and amortization disclosed in note 4 to the Company's financial statements of approximately $10,943,000, $10,506,000 and $9,872,000, as of December 31, 2017 and 2016 and January 1, 2016, respectively. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.

Qualified Opinion

In our opinion, except for the possible effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Pallas, LLC as of December 31, 2017 and 2016 and January 1, 2016, and the results of its operations and its cash flows for the years ended December 31, 2017 and 2016, in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

March 27, 2019



PALLAS, LLC
STATEMENTS OF FINANCIAL POSITION
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016 AND JANUARY 1, 2016
(Amounts in thousands of U.S. dollars)

	Notes	December 31, 2017	December 31, 2016	January 1, 2016
ASSETS				
Current assets				
Cash and cash equivalents		$ 4,271	$ 1,339	$ 859
Restricted cash	5	2	2	2
Trade and other receivables		23	86	107
Prepaid and other assets		244	220	281
Total current assets		4,540	1,647	1,249
Non-current assets				
Property and equipment, net	4	13,287	12,851	13,469
Total non-current assets		13,287	12,851	13,469
TOTAL ASSETS		$ 17,827	$ 14,498	$ 14,718
LIABILITIES AND MEMBERS' EQUITY				
Current liabilities				
Accounts payable and other accrued liabilities	8	$ 525	$ 629	$ 946
Current portion of note payable	9	564	17,501	364
Total current liabilities		1,089	18,130	1,310
Non-current liabilities				
Note payable, net	9	22,253	-	17,599
Related party note payable	16	—	2,306	2,374
Total non-current liabilities		22,253	2,306	19,973
Total Liabilities		23,342	20,436	21,283
Members' deficit		(5,515)	(5,938)	(6,565)
TOTAL LIABILITIES AND MEMBERS' DEFICIT		$ 17,827	$ 14,498	$ 14,718

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF COMPREHENSIVE INCOME
FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016
Revenues			
Rooms		$ 7,772	$ 7,517
Food and beverage		1,007	1,037
Other		2,209	2,232
Total revenues		10,988	10,786
Expenses			
Operating expenses	6	5,968	5,829
General and administrative expenses	7	1,948	1,876
Depreciation and amortization	4	441	639
Total expenses		8,357	8,344
Operating income		2,631	2,442
Interest expense, net	10	(880)	(918)
Other income (expense)		73	106
Net income and comprehensive income		$ 1,824	$ 1,630

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF MEMBERS' DEFICIT
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016 AND JANUARY 1, 2016
(Amounts in thousands of U.S. dollars)

		Members' Deficit
Balances, January 1, 2016		(6,565)
Net income and comprehensive income		1,630
Distributions		(1,003)
Balances, December 31, 2016		(5,938)
Net income and comprehensive income		1,824
Distributions		(1,401)
Balances, December 31, 2017	$	(5,515)

See accompanying notes to these financial statements

PALLAS, LLC
STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016
Cash flows from operating activities			
Net income		$ 1,824	$ 1,630
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization		441	639
Interest expense, net	10	880	918
Changes in operating assets and liabilities:			
Operating assets		35	77
Operating liabilities		(104)	(317)
Net cash provided by operating activities		3,076	2,947
Cash flows from investing activities			
Additions to property and equipment	4	(873)	(16)
Net cash used in investing activities		(873)	(16)
Cash flows from financing activities			
Note payable proceeds received	9	5,464	—
Principal payments on note payable	9	(47)	(511)
Payments on related party note	16	(2,306)	(68)
Deferred financing costs paid		(137)	—
Distributions		(1,401)	(1,003)
Interest paid		(844)	(869)
Net cash provided by (used in) financing activities		729	(2,451)
Net increase in cash and cash equivalents		2,932	480
Cash and cash equivalents, beginning of period		1,339	859
Cash and cash equivalents, end of period		$ 4,271	$ 1,339

See accompanying notes to these financial statements

Note 1. General Information

Pallas, LLC (the "Company") is a limited liability company registered in Florida and was established on February 12, 2002. The Company was formed to invest in the St. Petersburg Marriott Clearwater hotel property and related restaurant located in St. Petersburg, Florida (the "Property"). The Company is owned by four members (see below, the "Members"):

Member Entity	Ownership %
Menna Family Limited Partnership, L.L.L.P	68%
Anthony Menna's Children's Trust	18%
Giuseppe DiGiovanni	8%
Francesco Carriera	6%

The Company is managed by Anthony Menna (the "Manager"), who is an affiliate of two of the Members, and the Property is managed and operated by Menna Development & Management, Inc. ("MDM"), a Florida corporation, which is an affiliate of the Manager.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). Once the Listing is completed, the REIT will own eleven properties indirectly through its ownership of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (THE "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT.

These financial statements of the Company (the "Financials") have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed with the OSC by the REIT. The Financials present the financial position, results of operations and cash flows of the Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). These are the Company's first financial statements prepared in accordance with IFRS; the Company adopted IFRS in accordance with IFRS 1, *First-Time Adoption of International Reporting Standards*. An explanation or reconciliation of how the transition to IFRS has affected the Company's financial position, results of operations and cash flows has not been presented as the Company has not presented financial statements in previous years. The date of transition to IFRS was January 1, 2016.

(b) Basis of Measurement

These financial statements have been prepared on a historical cost basis.

(c) Basis of Presentation

These financial statements have been prepared in accordance with IFRS as issued by the IASB. These financial statements include the accounts of the Company. These financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

These financial statements were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these financial statements are described below and have been applied consistently to all periods presented:

(a) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(b) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than

goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(c) Financial instruments

(i) Financial assets

The Company's financial assets are comprised of cash and cash equivalents, restricted cash, trade and other receivables and prepaid and other assets. The Company classifies these financial assets as loans and receivables. The Company initially recognizes loans and receivables on the date that they are originated. Loans and receivables are financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are recognized initially at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, loans and receivables are measured at amortized cost using the effective interest method, less any impairment losses.

(ii) Financial liabilities

The Company has the following non-derivative financial liabilities: accounts payable and other accrued liabilities and note payable. The Company classifies each of its non-derivative financial liabilities as other financial liabilities. Initial measurement is at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, these non-derivative financial liabilities are measured at amortized cost using the effective interest method. All non-derivative financial liabilities are initially recognized on the date that the Company becomes a party to the contractual provisions of the instrument. The Company derecognizes a financial liability when its contractual obligations are discharged or cancelled or expire.

(iii) Impairment of financial assets

Loans and receivables are assessed at each reporting date to determine whether there is objective evidence that they are impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably. Objective evidence that financial assets are impaired can include default or delinquency by a debtor, restructuring of an amount due to the Company on terms that the Company would not consider otherwise, or indications that a debtor or issuer will enter bankruptcy.

The Company considers evidence of impairment for loans and receivables at both a specific asset and collective level. All individually significant loans and receivables are assessed for specific impairment. All individually significant loans and receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Loans and receivables that are not individually significant are collectively assessed for impairment by grouping together loans and receivables with similar risk characteristics.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows, discounted using the instrument's original effective interest rate. Losses are recognized in profit or loss and reflected in an allowance account against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss.

(d) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(e) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with lenders in respect of future capital expenditures.

(f) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(g) Revenue recognition

Revenue is generated primarily from the operation of the Company's hotel, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(h) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's statements of financial position.

(i) Income taxes

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income, as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of December 31, 2017 and 2016 and January 1, 2016, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of December 31, 2017 and 2016 and January 1, 2016.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its financial statements.

(j) Operating segments

The Company currently operates in one business segment, owning and operating one hotel property and related restaurant in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(k) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(l) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(m) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The Company implemented the amendments to IAS 7 on January 1, 2017 and there was no material impact on its financial statements.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company intends to adopt IFRS 9 in its financial statements for the annual period beginning on January 1, 2018 and does not expect the new standard to have a material impact on its financial statements.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company intends to adopt IFRS 15 in its financial statements for the annual period beginning on January 1, 2018. The Company has performed an in-depth assessment of IFRS 15 to determine what the impact of the adoption of the new standard will have on the Company's financial statements. Based on the nature of the Company's operations to own and operate a hotel, the Company does not expect there to be a material impact on the timing and measurement of revenue recognized as compared to the previous standard. Additional disclosures will be required to comply with IFRS 15.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its financial statements.

PALLAS, LLC
NOTES TO THE AUDITED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Total
Cost:				
Balance, January 1, 2016	$ 1,777	$ 18,128	$ 3,436	$ 23,341
Additions	—	—	16	16
Disposals	—	—	—	—
Balance, December 31, 2016	1,777	18,128	3,452	23,357
Additions	—	—	873	873
Disposals	—	—	—	—
Balance, December 31, 2017	$ 1,777	$ 18,128	$ 4,325	$ 24,230
Accumulated depreciation:				
Balance, January 1, 2016	$ -	$ 6,472	$ 3,400	$ 9,872
Depreciation	—	624	10	634
Disposals	—	—	—	—
Balance, December 31, 2016	—	7,096	3,410	10,506
Depreciation	—	424	13	437
Disposals	—	—	—	—
Balance, December 31, 2017	$ —	$ 7,520	$ 3,423	$ 10,943
Carrying amount, January 1, 2016	$ 1,777	$ 11,656	$ 36	$ 13,469
Carrying amount, December 31, 2016	1,777	11,032	42	12,851
Carrying amount, December 31, 2017	1,777	10,608	902	13,287

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

Note 5. Restricted Cash

The Company funded restricted cash reserves for brand mandated property improvement plans ("PIPs") and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement in 2008. Restricted cash reserves are typically expected to be spent over an 18-24 month period. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. As of December 31, 2017 and 2016, and January 1, 2016, the Company had $2, $2, and $2 of restricted cash, respectively.

Note 6. Operating Expenses

	For the Year Ended December 31,	
	2017	2016
Payroll	$ 2,004	$ 1,940
Repairs and maintenance	495	528
Utilities	437	420
Property taxes and insurance	731	632
Cost of goods sold	1,309	1,311
Franchise fees	876	897
Other operating expenses	116	101
Operating expenses	$ 5,968	$ 5,829

Note 7. General and Administrative Expenses

	For the Year Ended December 31,			
	2017		2016	
Property management fees	$	535	$	540
Office operations		173		154
Marketing		1,234		1,176
Other administrative expenses		6		6
General and administrative expenses	$	1,948	$	1,876

Note 8. Accounts Payable and Other Accrued Liabilities

	December 31, 2017		December 31, 2016		January 1, 2016	
Trade payables	$	262	$	162	$	304
Payroll and payroll taxes		73		55		80
Sales and occupancy taxes		98		79		83
Deposits		26		190		43
Due to related party		6		91		348
Other payables		60		52		88
Accounts payable and other accrued liabilitie	$	525	$	629	$	946

Note 9. Note Payable, Net

	December 31, 2017		December 31, 2016		January 1, 2016	
Note payable	$	22,953	$	17,536	$	18,047
Less: current maturities		(564)		(17,501)		(364)
Less: unamortized portion of deferred financing costs		(136)		(35)		(84)
Note payable, net	$	22,253	$	-	$	17,599

On September 26, 2012, the Company entered into a $19,570 term loan (the “Loan”) with a large financial institution. The Loan incurred interest at a fixed rate equal to 4.25% and required monthly principal payments and was secured by the Property. The Loan was refinanced on November 25, 2017, increasing the loan balance to $23,000 (the “Amended Loan”). The Amended Loan is secured by the Property and bears interest at a fixed rate equal to 3.80% and requires monthly principal payments. The Amended Loan matures on November 25, 2022.

The Amended Loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of December 31, 2017, 2016 and January 1, 2016, the Company was in compliance with all covenants of the Loan agreement and Amended Loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to December 31, 2017 are as follows:

	Note payable	
2018	$	564
2019		586
2020		608
2021		632
2022		20,563
Total	$	22,953

Note 10. Interest Expense, Net

	For the Year Ended December 31,			
	2017		2016	
Interest on debt	$	844	$	869
Amortization of deferred financing costs		36		49
Interest expense, net	$	880	$	918

Note 11. Members' Capital

The members of the Company have received cash distributions based on their respective ownership percentages. As of December 31, 2017, cash distributions totaled $10,620. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2017, 2016 and January 1, 2016, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of December 31, 2017, 2016 and January 1, 2016, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Amended Loan bears interest at a fixed rate, so fluctuations in interest rates will not impact the cost of financing incurred in the future but may impact the carrying value of the Amended Loan. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the years ended December 31, 2017 and 2016, the Company had no bad debt expense. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of December 31, 2017, 2016 and January 1, 2016, the Company had cash and cash equivalents of $4,271, $1,339, and $859, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the fixed rate of the Loan of 3.80% as of December 31, 2017:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 22,953	$ 22,953	$ 564	$ 22,389
Interest payable on note	—	—	—	—
Accounts payable and other accrued liabilities	525	525	525	—
Total	$ 23,478	$ 23,478	$ 1,089	$ 22,389

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property and related restaurant in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Marriott International (the "Franchisor"). The Franchise Agreement was executed on July 3, 2008 and has a 20-year term. The Franchise Agreement requires the payment of a monthly royalty fee of 6% of the Property's gross room revenue and 3% of the Property's gross food and beverage revenue and a monthly program fee of 1% of the Property's gross room revenue. Under a covenant in the Franchise Agreement, the Property was responsible for funding an amount equal to 4% of gross revenue for the first 36 months under the contract, then an amount equal to 5% of gross revenues each month for the remainder of the contract, into a reserve cash account. The Property did not retain the required cash and was not in compliance with the covenant for the years ended December 31, 2017, and 2016, under the

Franchise Agreement. For the years ended December 31, 2017, and 2016, franchise fees were $876, and $897, respectively, and are included in operating expenses in the statements of comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company, the Operating Company or the Property.

Note 16. Related Party Transactions

The Company engaged MDM for the day-to-day management of the Property. The Manager is deemed to be a related party due to its affiliation with one of the members of the Company. The property management agreement commenced on June 30, 2008 with an initial 5-year term that automatically renewed in one year renewals. The property management fee is 4.25% of the Property's gross revenues (as defined in the Management Agreement). The Management Agreement also calls for the Company to reimburse the Manager for those employees of the Manager as utilized by the Company. For the years ended December 31, 2017 and 2016, in accordance with the Management Agreement, property management fees were $535 and $540, respectively. Property management fees are included in general and administrative expenses in the statements of comprehensive income.

In addition, on September 27, 2012 the Company entered into a $2,576 loan agreement with the Manager (the "MDM Loan"). The Loan was the result of expenses paid by MDM on behalf of the Company which the Company was unable to reimburse at the time. The Loan bears no interest, and only principal is due. The note payable to MDM was repaid in full on November 25, 2017.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2017 was as follows:

	Liabilities					
	Accounts payable and other accrued liabilities	Current portion of note payable	Note payable, net	Related party note payable	Members' deficit	Total
Balance January 1, 2017	$ 629	$ 17,501	$ -	$ 2,306	$ (5,938)	$ 14,498
Changes from financing cash flows:						
Amortization of deferred financing costs	-	-	(136)	-	-	(136)
Reclass from note payable, net to current portion	-	564	(564)	-	-	-
Distributions	-	-	-	-	(1,401)	(1,401)
Interest accrual	-	-	-	-	-	-
Proceeds from note payable	-	-	23,000	-	-	23,000
Principal payments on notes payable	-	(17,501)	(47)	(2,306)	-	(19,854)
Total changes from financing cash flows	-	(16,937)	22,253	(2,306)	(1,401)	1,609
Liability related:						
Other payable increases	(104)	-	-	-	-	(104)
Members' equity related:						
Comprehensive Income (loss)	-	-	-	-	1,824	1,824
Balance December 31, 2017	$ 525	$ 564	$ 22,253	$ -	$ (5,515)	$ 17,827

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On September 24, 2018, the Company sold the Property to NHT SP, LLC. On January 8, 2019, the parent of NHT SP, LLC (NHT SP Parent, LLC), was contributed to NHT Holdco, LLC in exchange for 3,613,498 units.

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC

Consolidated Financial Statements

As at September 30, 2018 and December 31, 2017 and
for the nine and three months ended September 30, 2018 and 2017

(Unaudited)

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
AS OF SEPTEMBER 30, 2018 AND DECEMBER 31, 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	September 30, 2018 (Unaudited)	December 31, 2017
ASSETS			
Current assets			
Cash and cash equivalents		$ 2,091	$ 1,310
Restricted cash	5	1,495	871
Trade and other receivables		676	801
Prepaid and other assets		484	624
Total current assets		4,746	3,606
Non-current assets			
Property and equipment, net	4	35,463	34,608
Total non-current assets		35,463	34,608
TOTAL ASSETS		$ 40,209	$ 38,214
LIABILITIES AND MEMBERS' DEFICIT			
Current liabilities			
Accounts payable and other accrued liabilities	8	$ 2,697	$ 1,967
Current portion of notes payable	9	1,104	1,062
Total current liabilities		3,801	3,029
Non-current liabilities			
Notes payable, net	9	68,639	69,429
Total non-current liabilities		68,639	69,429
Total Liabilities		72,440	72,458
Members' Deficit		(32,231)	(34,244)
TOTAL LIABILITIES AND MEMBERS' DEFICIT		$ 40,209	$ 38,214

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF NET INCOME AND COMPREHENSIVE INCOME
FOR THE NINE AND THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Notes	For the Nine Months Ended September 30, 2018	For the Nine Months Ended September 30, 2017	For the Three Months Ended September 30, 2018	For the Three Months Ended September 30, 2017
Revenues					
Rooms		$ 14,222	$ 13,609	$ 4,976	$ 4,929
Food and beverage		235	87	63	13
Other		1,605	1,331	581	460
Total revenues		16,062	15,027	5,620	5,402
Expenses					
Operating expenses	6	7,008	6,883	2,481	2,538
General and administrative expenses	7	1,831	843	425	289
Depreciation and amortization		1,188	933	402	311
Total expenses		10,027	8,659	3,308	3,138
Operating income		6,035	6,368	2,312	2,264
Interest expense, net	10	(2,793)	(2,833)	(938)	(951)
Income before income taxes		3,242	3,535	1,374	1,313
Income tax expense		-	-	-	-
Net income and comprehensive income		$ 3,242	$ 3,535	$ 1,374	$ 1,313

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' DEFICIT
AS OF SEPTEMBER 30, 2018, DECEMBER 31, 2017, SEPTEMBER 30, 2017 AND DECEMBER 31, 2016
(Amounts in thousands of U.S. dollars)
(Unaudited)

	Members' Deficit
Balance, December 31, 2016	$ (36,640)
Net income and comprehensive income (unaudited)	3,535
Contributions (unaudited)	—
Distributions (unaudited)	—
Balance, September 30, 2017 (unaudited)	(33,105)
Balance, December 31, 2017	(34,244)
Net income and comprehensive income (unaudited)	3,242
Contributions (unaudited)	—
Distributions (unaudited)	(1,229)
Balance, September 30, 2018 (unaudited)	$ (32,231)

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE AND THREE MONTHS ENDED SEPTEMBER 30, 2018 AND 2017
(Amounts in thousands of U.S. dollars)
(Unaudited)

		For the Nine Months Ended September 30,		For the Three Months Ended September 30,	
	Notes	2018	2017	2018	2017
Cash flows from operating activities					
Net income		$ 3,242	$ 3,535	$ 1,374	$ 1,313
Adjustments to reconcile net income to net cash provided by operating activities					
Depreciation and amortization		1,188	933	402	311
Interest expense, net	10	2,793	2,833	938	951
Changes in operating assets and liabilities:					
Operating assets		262	(370)	85	(73)
Operating liabilities		743	579	(69)	202
Net cash provided by operating activities		8,228	7,510	2,730	2,704
Cash flows from investing activities					
Additions to property and equipment	4	(2,040)	(1,645)	(1,423)	(203)
Change in restricted cash		(624)	(304)	(468)	(209)
Net cash used in investing activities		(2,664)	(1,949)	(1,891)	(412)
Cash flows from financing activities					
Principal payments on notes payable	9	(800)	(755)	(262)	(248)
Distributions		(1,229)	—	—	—
Interest paid		(2,754)	(2,794)	(921)	(935)
Net cash used in financing activities		(4,783)	(3,549)	(1,183)	(1,183)
Net increase in cash and cash equivalents		781	2,012	(344)	1,109
Cash and cash equivalents, beginning of period		1,310	894	2,435	1,797
Cash and cash equivalents, end of period		$ 2,091	$ 2,906	$ 2,091	$ 2,906

See accompanying notes to these consolidated financial statements

Note 1. General Information

Birchmont H.I. Nashville Partners, LLC (the "Company") is a limited liability company registered in Delaware and was established on April 2, 2007. The Company was formed to invest in a Holiday Inn Express hotel property located in Nashville, Tennessee (the "Property"). The Property was owned by the Company through a wholly owned subsidiary, with the Company formed as a title holding company with no operations.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). The Initial Portfolio will be contributed prior to the Listing by various entities that currently own such properties (the "Transaction"). On January 8, 2019, through subsidiaries, NexPoint Multifamily Capital Trust, Inc. ("NMCT"), purchased the Property from the Company for $117,500. Simultaneously with the purchase of the Property, the shareholders of NMCT contributed NMCT, and thus, the Property, as a part of the Transaction in exchange for units in NHT Holdco LLC, which in turn contributed the Property to the REIT which, through a series of transactions, contributed the property to the OP in exchange for Class A units of the OP. In order to consummate the Transaction and Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT. Upon closing of the Transaction discussed in the Offering, the Initial Portfolio will be owned indirectly by the REIT.

These consolidated financial statements of the Company (the "Financials") have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed with the OSC by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

(b) Basis of Measurement

These consolidated financial statements have been prepared on a historical cost basis.

(c) Basis of Presentation

These consolidated financial statements have been prepared in accordance with IFRS as issued by the IASB. These consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany accounts and transactions have been eliminated in consolidation. These consolidated financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated. The results presented as of December 31, 2017 are derived from audited financial statements presented previously.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

These consolidated financial statements were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these consolidated financial statements are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The consolidated financial statements comprise the financial statements of the Company. Intra-company transactions and balances are eliminated in preparing the consolidated financial statements. The consolidated financial statements reflect the consolidated financial position, results of operations and cash flows of the Company.

(b) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing.

Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized in the consolidated statement of net income. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through net income.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in the consolidated statement of net income.

The Company has made the following classifications for its financial instruments:

Asset/Liability	Classification
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Accounts payable and other accrued liabilities	Amortized cost
Notes payable	Amortized cost

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized through net income.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. The Company adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in the statement of income (loss) and comprehensive income (loss) with the carrying amount of the financial asset or group of financial assets reduced through the use of impairment allowance accounts.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of operating funds set aside as required by the lenders of the Company's mortgage notes for repairs, insurance, property taxes, and investing funds set aside for capital improvements. The lenders hold a security interest in these restricted funds and the release of these funds are subject to the lenders' supervision and approval.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

IFRS 15 establishes a comprehensive framework for determining whether, how much and when revenue is recognized. It replaced IAS 18 Revenue and related interpretations. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income, as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax

or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of September 30, 2018 and December 31, 2017, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of September 30, 2018 and December 31, 2017.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company determined that the 2017 Tax Act has no significant impact on its consolidated financial statements.

(k) Operating segments

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Recent accounting pronouncements

(i) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 in its consolidated financial statements for the annual period beginning on January 1, 2017 and there was no material impact on its consolidated financial statements.

(ii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company adopted IFRS 15 in its consolidated financial statements for the annual

period beginning on January 1, 2018 using the modified retrospective application and determined there was no material impact on its consolidated financial statements.

(iii) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Construction in progress	Total
Cost:					
Balance, December 31, 2016	$ 5,440	$ 34,118	$ 4,902	$ 2,173	$ 46,633
Additions	—		242	1,403	1,645
Disposals	—	—	—	—	—
Balance, September 30, 2017	5,440	34,118	5,144	3,576	48,278
Balance, December 31, 2017	$ 5,440	$ 34,118	$ 8,590	$ 573	$ 48,721
Additions	—		123	1,917	2,040
Disposals	—	—	—	—	—
Balance, September 30, 2018	$ 5,440	$ 34,118	$ 8,713	$ 2,490	$ 50,761
Accumulated depreciation:					
Balance, December 31, 2016	$ —	$ 12,581	$ 298	$ —	$ 12,879
Additions	—	806	122	—	928
Disposals	—	—	—	—	—
Balance, September 30, 2017	—	13,387	420	—	13,807
Balance, December 31, 2017	$ —	$ 13,566	$ 547	$ —	$ 14,113
Depreciation	—	1,016	169	—	1,185
Disposals	—	—	—	—	—
Balance, September 30, 2018	$ —	$ 14,582	$ 716	$ —	$ 15,298
Carrying amount, December 31, 2017	$ 5,440	$ 20,552	$ 8,043	$ 573	$ 34,608
Carrying amount, September 30, 2018	5,440	19,536	7,997	2,490	35,463

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

Note 5. Restricted Cash

Restricted cash primarily consists of operating funds set aside as required by the lenders of the Company's mortgage notes for repairs, insurance, property taxes, and investing funds set aside for capital improvements. The lenders hold a security interest in these restricted funds and the release of these funds are subject to the lenders' supervision and approval. As of September 30, 2018 and December 31, 2017, the Company had $1,495 and $871 of restricted cash, respectively.

Note 6. Operating Expenses

	For the Nine Months Ended September 30,	
	2018	2017
Payroll	$ 1,966	$ 1,895
Property management fees	803	751
Repairs and maintenance	143	143
Utilities	312	304
Property taxes and insurance	659	593
Cost of goods sold	1,844	1,718
Franchise fees	1,037	987
Franchise and excise taxes	136	395
Other operating expenses	108	97
Operating expenses	$ 7,008	$ 6,883

Note 7. General and Administrative Expenses

	For the Nine Months Ended September 30,	
	2018	2017
Marketing	$ 597	$ 547
Asset management fees	1,004	156
Other administrative expenses	230	140
General and administrative expenses	$ 1,831	$ 843

Note 8. Accounts Payable and Other Accrued Liabilities

	September 30, 2018	December 31, 2017
Trade payables	$ 14	$ 18
Payroll and employee related costs	39	107
Property taxes	558	743
Sales and occupancy taxes	329	183
Interest on notes payable	300	313
Franchise fees	(29)	164
Asset management fees	869	—
Deposits	259	247
Other payables	358	192
Accounts payable and other accrued liabilitie	$ 2,697	$ 1,967

Note 9. Notes Payable, Net

	September 30, 2018	December 31, 2017
Notes payable	$ 70,289	$ 71,084
Less: current maturities	(1,104)	(1,062)
Less: unamortized portion of deferred financing costs	(546)	(593)
Notes payable, net	$ 68,639	$ 69,429

On May 8, 2007, in connection with the acquisition of the Property by the Company, the Company entered into a $33,600 term loan (the "Loan") with a large financial institution. The Loan was secured by the property and bore interest at a fixed rate equal to 5.79%. The Loan's first 60 monthly payments were interest only. The Loan was refinanced on June 10, 2016, increasing the commitment amount to $72,500 (the "Amended Loan"). The Amended Loan is secured by the Property and bears interest at fixed rate equal to 5.12% and requires monthly principal payments of $314, with a balloon payment due at maturity on July 1, 2026.

The Company's Amended Loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of September 30, 2018 and December 31, 2017, the Company was in compliance with all covenants of its Loan agreement and Amended Loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to September 30, 2018 are as follows:

	Notes payable
2018	$ 267
2019	1,118
2020	1,168
2021	1,240
2022	1,306
Thereafter	65,190
Total	$ 70,289

Note 10. Interest Expense, Net

	For the Nine Months Ended September 30,	
	2018	2017
Interest on debt	$ 2,741	$ 2,781
Amortization of deferred financing costs	52	52
Interest expense, net	$ 2,793	$ 2,833

Note 11. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of September 30, 2018, cash contributions totaled $8,160 and cash distributions totaled $70,986. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of September 30, 2018 and December 31, 2017, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of notes payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of September 30, 2018 and December 31, 2017, the carrying amount of the Company's notes payable approximated its fair value .

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Amended Loan bears interest at a fixed rate, so fluctuations in interest rates will not impact the cost of financing incurred in the future but may impact the carrying value of the Amended Loan. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the periods ended September 30, 2018 and December 31, 2017, the Company had no bad debt expense. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its notes payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of September 30, 2018 and December 31, 2017, the Company had cash and cash equivalents of $2,091 and $1,310, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the fixed rate of the Loan of 5.12% as of September 30, 2018:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Notes payable	$ 70,289	$ 70,289	$ 1,104	$ 69,185
Interest payable on notes	300	300	300	—
Accounts payable and other accrued liabilities	2,397	2,397	2,397	—
Total	$ 72,986	$ 72,986	$ 3,801	$ 69,185

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and notes payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's

chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Related Party Transactions

(a) Asset management fees

The Company has an asset management agreement with an affiliate of the member. Under this agreement, the Company is initially charged an annual asset management fee of $208 and after the occurrence of any Financing Event, as defined, the annual asset management fee shall be readjusted to 0.5% of the appraised value of the Property at the time of the Financing Event. This agreement will terminate upon the sale of the Property or can be terminated with cause. For the nine months ended September 30, 2018 and September 30, 2017, asset management fee were $1,004 and $156, respectively, and are included in general and administrative expenses in the consolidated statements of comprehensive income.

(b) Property management fees

The Company has a property management agreement with an affiliate of the member. Under this agreement, the Company is charged a property management fee and an oversight management fee of 3.0% and 2.0%, respectively, of the property's gross revenue, as defined. For the nine months ended September 30, 2018 and September 30, 2017, property management fees and oversight management fees totaled $803 and $751, respectively, and are included in operating expenses in the consolidated statements of net income and comprehensive income. This agreement is cancellable by either party with a 30-day written notice.

(c) Labor costs

Certain labor costs are reimbursed to entities affiliated with the member. The labor costs are mainly for on-site maintenance and other labor costs related to property management and hotel services. For the nine months ended September 30, 2018 and September 30, 2017, labor costs incurred totaled to $1,966, and $1,895, respectively, and are included in operating expenses in the consolidated statements of net income and comprehensive income.

Note 16. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Hilton Worldwide (the "Franchisor"). The current Franchise Agreement was executed on June 2, 2016 and expires on January 7, 2028. The Franchise Agreement requires the payment of a monthly royalty fee of 5% (6% prior to June 10, 2016) and a monthly program fee of 3% of the Property's gross room revenue. For the nine months ended September 30, 2018 and September 30, 2017, franchise fees were $1,037 and $987, respectively, and are included in operating expenses in the consolidated statements of net income and comprehensive income.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company or the Property.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the nine months ended September 30, 2018 were as follows:

	Liabilities				
	Accounts payable and other accrued liabilities	Current portion of notes payable	Notes payable, net	Members' deficit	Total
Balance December 31, 2017	$ 1,967	$ 1,062	$ 69,429	$ (34,244)	$ 38,214
Changes from financing cash flows:					
Amortization of deferred financing costs	-	-	52	-	52
Reclass from notes payable, net to current portion	-	42	(42)	-	-
Interest accrual	(13)				(13)
Principal payments on notes payable	-	-	(800)	-	(800)
Distributions	-	-	-	(1,229)	(1,229)
Total changes from financing cash flows	(13)	42	(790)	(1,229)	(1,990)
Liability related:					
Other payable increases	743				743
Members' equity related:					
Comprehensive Income (loss)	-	-	-	3,242	3,242
Balance September 30, 2018	$ 2,697	$ 1,104	$ 68,639	$ (32,231)	$ 40,209

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company sold the Property to NHT Nashville, LLC, a subsidiary of NexPoint Multifamily Capital Trust, Inc. ("NMCT") for $117,500. Immediately after the purchase of the Property was complete, the shareholders of NMCT contributed 100% of the units of NMCT to NHT Holdco, LLC in exchange for 6,756,364 units.

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC

Consolidated Financial Statements

As at December 31, 2017, December 31, 2016, December 31, 2015 and January 1, 2015 and for the years ended December 31, 2017, December 31, 2016 and December 31, 2015

(With Independent Auditors' Report Thereon)

Independent Auditor's Report

To the Members
Birchmont H.I. Nashville Partners, LLC
Los Angeles, California

We have audited the accompanying consolidated financial statements of Birchmont H.I. Nashville Partners, LLC and subsidiary, which comprise the consolidated statements of financial position as of December 31, 2017, 2016 and 2015, and January 1, 2015, and the related consolidated statements of net income and comprehensive income, members' deficit and cash flows for the years ended December 31, 2017, 2016 and 2015, and the related notes to the consolidated financial statements.

We are independent of the Company in accordance with the ethical requirements that are relevant to our audits of the consolidated financial statements in the United States of America, together with the International Ethics Standards Board for Accountants' *Code of Ethics for Professional Accountants*, and we have fulfilled our other ethical responsibilities in accordance with these requirements.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

Management is responsible for the preparation and fair representation of these consolidated financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern; disclosing, as applicable, matters related to going concern; and using the going concern basis of accounting, unless management either intends to liquidate the Company or cease operations or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and in accordance with International Standards on Auditing. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance but it is not a guarantee that an audit will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decision of users taken on the basis of these consolidated financial statements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. We design audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error because fraud may involve collusion, forgery, intentional omissions, misrepresentations, or other override on internal control.

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In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements, including disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

As part of an audit, we exercise professional judgement and maintain professional skepticism throughout the audit. We also conclude on the appropriateness of managements use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast a significant doubt on the Company's ability to continue as a going concern. If we conclude that material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies or material weaknesses in internal control that we identify during our audit.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Birchmont H.I. Nashville Partners, LLC and subsidiary as of December 31, 2017, 2016 and 2015, and January 1, 2015, and the results of their operations and their cash flows for the years ended December 31, 2017, 2016 and 2015, in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

Sale of Property

As discussed in Note 1 to the consolidated financial statements, the Holiday Inn Express hotel property located in Nashville, Tennessee held by the Company was sold on January 8, 2019, and the Company is expected to be dissolved in accordance with the provisions of the limited liability company agreement. Our opinion is not modified with respect to this matter.

March 27, 2019

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016, DECEMBER 31, 2015 AND JANUARY 1, 2015
(Amounts in thousands of U.S. dollars)

	Notes	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
ASSETS					
Current assets					
Cash and cash equivalents		$ 1,310	$ 894	$ 1,334	$ 1,049
Restricted cash	5	871	845	1,082	1,098
Trade and other receivables		801	192	430	249
Prepaid and other assets		624	368	198	218
Total current assets		3,606	2,299	3,044	2,614
Non-current assets					
Property and equipment, net	4	34,608	33,754	32,514	33,569
Total non-current assets		34,608	33,754	32,514	33,569
TOTAL ASSETS		$ 38,214	$ 36,053	$ 35,558	$ 36,183
LIABILITIES AND MEMBERS' EQUITY					
Current liabilities					
Accounts payable and other accrued liabilities	8	$ 1,967	$ 1,256	$ 1,202	$ 1,186
Current portion of note payable	9	1,062	1,017	—	682
Total current liabilities		3,029	2,273	1,202	1,868
Non-current liabilities					
Note payable, net	9	69,429	70,420	31,371	31,366
Total non-current liabilities		69,429	70,420	31,371	31,366
Total Liabilities		72,458	72,693	32,573	33,234
Members' Deficit		(34,244)	(36,640)	2,985	2,949
TOTAL LIABILITIES AND MEMBERS' EQUITY		$ 38,214	$ 36,053	$ 35,558	$ 36,183

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
FOR THE YEARS ENDED DECEMBER 31, 2017, 2016 AND 2015
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016	2015
Revenues				
Rooms		$ 18,171	$ 17,323	$ 17,460
Food and beverage		187	96	136
Other		1,779	1,324	1,119
Total revenues		20,137	18,743	18,715
Expenses				
Operating expenses	6	9,138	8,689	8,421
General and administrative expenses	7	1,080	894	763
Depreciation and amortization		1,242	1,284	1,222
Total expenses		11,460	10,867	10,406
Operating income		8,677	7,876	8,309
Interest expense, net	10	(3,781)	(4,152)	(1,867)
Income before income taxes		4,896	3,724	6,442
Income tax expense		-	—	—
Net income and comprehensive income		$ 4,896	$ 3,724	$ 6,442

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF MEMBERS' DEFICIT
AS OF DECEMBER 31, 2017, DECEMBER 31, 2016, DECEMBER 31, 2015 AND JANUARY 1, 2015
(Amounts in thousands of U.S. dollars)

	Members' Deficit
Balances, January 1, 2015	$ 2,949
Net income and comprehensive income	6,442
Distributions	(6,406)
Balances, December 31, 2015	2,985
Net income and comprehensive income	3,724
Distributions	(43,349)
Balances, December 31, 2016	(36,640)
Net income and comprehensive income	4,896
Distributions	(2,500)
Balances, December 31, 2017	$ (34,244)

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2017, 2016 AND 2015
(Amounts in thousands of U.S. dollars)

	Notes	For the Year Ended December 31, 2017	2016	2015
Cash flows from operating activities				
Net income		$ 4,896	$ 3,724	$ 6,442
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation and amortization		1,242	1,284	1,222
Interest expense, net	10	3,781	4,152	1,867
Changes in operating assets and liabilities:				
Operating assets		(872)	7	(181)
Operating liabilities		715	(163)	19
Net cash provided by operating activities		9,762	9,004	9,369
Cash flows from investing activities				
Additions to property and equipment	4	(2,088)	(2,463)	(148)
Change in restricted cash		(26)	237	15
Net cash used in investing activities		(2,114)	(2,226)	(133)
Cash flows from financing activities				
Mortgage proceeds received	9	—	72,500	—
Principal payments on note payable	9	(1,017)	(31,778)	(682)
Deferred financing costs paid	9	—	(703)	—
Contributions		—	—	—
Distributions		(2,500)	(43,349)	(6,406)
Interest paid		(3,715)	(3,888)	(1,863)
Net cash used in financing activities		(7,232)	(7,218)	(8,951)
Net increase (decrease) in cash and cash equivalents		416	(440)	285
Cash and cash equivalents, beginning of period		894	1,334	1,049
Cash and cash equivalents, end of period		$ 1,310	$ 894	$ 1,334

See accompanying notes to these consolidated financial statements

BIRCHMONT H.I. NASHVILLE PARTNERS, LLC
NOTES TO THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands of U.S. dollars except unit counts)

Note 1. General Information

Birchmont H.I. Nashville Partners, LLC (the "Company") is a limited liability company registered in Delaware and was established on April 2, 2007. The Company was formed to invest in a Holiday Inn Express hotel property located in Nashville, Tennessee (the "Property"). The Property was owned by the Company through a wholly owned subsidiary, with the Company formed as a title holding company with no operations.

NexPoint Hospitality Trust (the "REIT") is a newly-created, unincorporated, real estate investment trust established under the laws of the Province of Ontario. The REIT was formed to aggregate eleven hospitality properties (the "Initial Portfolio") and list its shares on the TSX Venture Exchange (the "Listing"). The REIT will own its properties through its subsidiary NHT Operating Partnership, LLC, (the "OP"). The Initial Portfolio will be contributed prior to the Listing by various entities that currently own such properties (the "Transaction"). On January 8, 2019, through subsidiaries, NexPoint Multifamily Capital Trust, Inc. ("NMCT"), purchased the Property from the Company for $117,500. Simultaneously with the purchase of the Property, the shareholders of NMCT contributed NMCT, and thus, the Property, as a part of the Transaction in exchange for units in NHT Holdco LLC, which in turn contributed the Property to the REIT which, through a series of transactions, contributed the property to the OP in exchange for Class A units of the OP. In order to consummate the Listing, the REIT filed a preliminary prospectus with the Ontario Securities Commission (the "OSC") on December 12, 2018 (the "Offering") to register the units of the REIT. Upon closing of the Listing discussed in the Offering, the Initial Portfolio will be owned indirectly by the REIT.

These consolidated financial statements of the Company (the "Financials") have been prepared for the specific purpose of reporting on the assets, liabilities, members' equity, revenues and expenses of the Company included in, and for the inclusion in, a final prospectus to be filed with the OSC by the REIT. The Financials present the consolidated financial position, results of operations and cash flows of the Company for the periods presented. The Financials are not necessarily indicative of future operating results.

Note 2. Basis of Preparation

(a) Statement of Compliance

The Financials have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). These are the Company's first consolidated financial statements prepared in accordance with IFRS; the Company adopted IFRS in accordance with IFRS 1, *First-Time Adoption of International Reporting Standards*. An explanation or reconciliation of how the transition to IFRS has affected the Company's consolidated financial position, results of operations and cash flows has not been presented as the Company has not presented its consolidated financial statements in previous years. The date of transition to IFRS was January 1, 2015.

(b) Basis of Measurement

These consolidated financial statements have been prepared on a historical cost basis.

(c) Basis of Presentation

These consolidated financial statements have been prepared in accordance with IFRS as issued by the IASB. These consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All significant intercompany accounts and transactions have been eliminated in consolidation. These consolidated financial statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousands, except when otherwise indicated.

(d) Use of estimates, assumptions and judgements

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

These consolidated financial statements were authorized for issue by the members of the Company and the board of directors of the REIT on March 27, 2019.

Note 3. Summary of Significant Accounting Policies

The significant accounting policies used in the preparation of these consolidated financial statements are described below and have been applied consistently to all periods presented:

(a) Basis of consolidation

The consolidated financial statements comprise the financial statements of the Company. Intra-company transactions and balances are eliminated in preparing the consolidated financial statements. The consolidated financial statements reflect the consolidated financial position, results of operations and cash flows of the Company.

(b) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset. The cost of self-constructed assets includes the cost of materials and direct labor, any other costs directly attributable to bringing the assets to a working condition for their intended use, and borrowing costs on qualifying assets.

When parts of an item of property and equipment have different useful lives, they are accounted for as separate items (major components) of property and equipment.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing.

Gains/losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

(c) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. When an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an

impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

(d) Financial instruments

(i) Financial assets

The Company's financial assets are comprised of cash and cash equivalents, restricted cash, trade and other receivables and prepaid and other assets. The Company classifies these financial assets as loans and receivables. The Company initially recognizes loans and receivables on the date that they are originated. Loans and receivables are financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are recognized initially at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, loans and receivables are measured at amortized cost using the effective interest method, less any impairment losses.

(ii) Financial liabilities

The Company has the following non-derivative financial liabilities: accounts payable and other accrued liabilities and note payable. The Company classifies each of its non-derivative financial liabilities as other financial liabilities. Initial measurement is at fair value plus any directly attributable transaction costs. Subsequent to initial recognition, these non-derivative financial liabilities are measured at amortized cost using the effective interest method. All non-derivative financial liabilities are initially recognized on the date that the Company becomes a party to the contractual provisions of the instrument. The Company derecognizes a financial liability when its contractual obligations are discharged or cancelled or expire.

(iii) Impairment of financial assets

Loans and receivables are assessed at each reporting date to determine whether there is objective evidence that they are impaired. A financial asset is impaired if objective evidence indicates that a loss event has occurred after the initial recognition of the asset, and that the loss event had a negative effect on the estimated future cash flows of that asset that can be estimated reliably. Objective evidence that financial assets are impaired can include default or delinquency by a debtor, restructuring of an amount due to the Company on terms that the Company would not consider otherwise, or indications that a debtor or issuer will enter bankruptcy.

The Company considers evidence of impairment for loans and receivables at both a specific asset and collective level. All individually significant loans and receivables are assessed for specific impairment. All individually significant loans and receivables found not to be specifically impaired are then collectively assessed for any impairment that has been incurred but not yet identified. Loans and receivables that are not individually significant are collectively assessed for impairment by grouping together loans and receivables with similar risk characteristics.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows, discounted using the instrument's original effective interest rate. Losses are recognized in profit or loss and reflected in an allowance account against receivables. Interest on the impaired asset continues to be recognized through the unwinding of the discount. When a subsequent event causes the amount of impairment loss to decrease, the decrease in impairment loss is reversed through profit or loss.

(e) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

(f) Restricted cash

Restricted cash primarily consists of operating funds set aside as required by the lenders of the Company's mortgage notes for repairs, insurance, property taxes, and investing funds set aside for capital improvements. The lenders hold a security interest in these restricted funds and the release of these funds are subject to the lenders' supervision and approval.

(g) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

(h) Revenue recognition

Revenue is generated primarily from the operation of the Company's hotel, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded in accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

(i) Interest expense, net

Net interest expense consists of interest expense on outstanding debt and the amortization of deferred financing costs, net of interest income. Net interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's consolidated statements of financial position.

(j) Income taxes

The Company is a limited liability company and is treated like a partnership for U.S. federal income tax purposes. As such, the Company has not recorded a provision for income taxes on its taxable income, as the members of the Company are required to report their share of the Company's earnings in their respective income tax returns. The Company's tax returns and the amounts of allocable income or loss are subject to examination by federal and state taxing authorities. If such examinations result in changes to income tax or loss, the tax liability of the members of the Company could be changed accordingly. In certain instances, the Company may be subject to certain state and local taxes.

The Company evaluates the uncertainties of tax positions taken or expected to be taken on a return based on the probability of whether the position taken will be sustained upon examination by tax authorities. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company had no amounts related to unrecognized income tax benefits and no amounts related to accrued interest and penalties. The Company recognizes tax positions taken or to be taken in a tax return when they become probable. The Company concluded that it had no material uncertain tax liabilities to be recognized as of December 31, 2017, 2016 and 2015 and January 1, 2015.

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire in seven years (at the end of 2025). The Company does not expect the 2017 Tax Act to have a significant impact on its consolidated financial statements.

(k) Operating segments

The Company operated in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

(l) Levies

In accordance with IFRS Interpretations Committee (IFRIC) 21, *Levies*, the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

(m) Use of estimates and assumptions

The preparation of financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

(n) Critical judgments

Management must assess whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The REIT's acquisitions are generally determined to be business combinations as the REIT acquires an integrated set of processes as part of the acquisition transaction.

Management must assess whether or not it controls entities in which it has an interest. This involves evaluating the REIT's ability to make decisions over the relevant activities of such entities and to determine to what extent the REIT is exposed to the variable returns of the entities. This assessment impacts the identification of the REIT's subsidiaries and as a result which entities it consolidates.

(o) Recent accounting pronouncements

(i) IAS 7 – Statement of Cash Flows

In January 2016, the IASB issued amendments to International Accounting Standards ("IAS") 7, *Statement of Cash Flows* ("IAS 7"). The amendments apply prospectively for annual periods beginning on or after January 1, 2017 and require disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes. The Company implemented the amendments to IAS 7 on January 1, 2017 and there was no material impact on its consolidated financial statements.

(ii) IFRS 9 – Financial Instruments

In July 2014, the IASB issued the final publication of the IFRS 9 standard, superseding the current IAS 39, *Financial Instruments: Recognition and Measurement* ("IAS 39") standard ("IFRS 9"). IFRS 9 includes revised guidance on the classification and measurement of financial instruments, including a new expected credit loss model for calculating impairment on financial assets, and the new general hedge accounting requirements. It also carries forward the guidance on recognition and de-recognition of financial instruments from IAS 39. The standard is effective for annual periods beginning on or after January 1, 2018 with early adoption permitted. The Company adopted IFRS 9 in its consolidated financial statements for the annual period beginning on January 1, 2017 and there was no material impact on its consolidated financial statements.

(iii) IFRS 15 – Revenue from Contracts with Customers

In May 2014, the IASB issued IFRS 15, *Revenue from Contract with Customers* ("IFRS 15"), which establishes a new five step model that applies to revenue arising from contracts with customers. The principles in IFRS 15 provide a more structured approach to measuring and recording revenue allowing greater comparability of revenues across industries. The new revenue standard is applicable to all entities and will supersede all current revenue recognition requirements under IFRS. Either a full or modified retrospective application is required for annual periods beginning on or after January 1, 2018, with early adoption permitted. The Company intends to adopt IFRS 15 in its consolidated financial statements for the annual period beginning on January 1, 2018. The Company has performed an in-depth assessment of IFRS 15 to determine what the impact of the adoption of the new standard will have on the Company's consolidated financial statements. Based on the nature of the Company's operations to own and operate a hotel, the Company does not expect there to be a material impact on the timing and measurement of revenue recognized as compared to the previous standard. Additional disclosures will be required to comply with IFRS 15.

(iv) IFRS 16 – Leases

IFRS 16, *Leases* ("IFRS 16") was issued in January 2016 and sets out a new model for lease accounting, replacing IAS 17, *Leases*. The most significant effect of the new standard will be the recognition of the initial present value of unavoidable future lease payments as lease assets and lease liabilities on the statement of financial position, including those for most leases that would be currently accounted for as operating leases. Leases with durations of 12 months or less and leases for low value assets may be exempted. IFRS 16 will be effective for accounting periods beginning on or after January 1, 2019. Early adoption will be permitted provided the Company has adopted IFRS 15. The Company intends to adopt IFRS 16 in its consolidated financial statements for the annual period beginning on January 1, 2019 and does not expect the new standard to have a material impact on its consolidated financial statements.

Note 4. Property and Equipment, Net

	Land	Buildings and improvements	Furniture, fixtures and equipment	Construction in progress	Total
Cost:					
Balance, January 1, 2015	$ 5,440	$ 34,118	$ 4,464	$ —	$ 44,022
Additions		—	148	—	148
Disposals	—	—	—	—	—
Balance, December 31, 2015	5,440	34,118	4,612	—	44,170
Additions	—	—	290	2,173	2,463
Disposals	—	—	—	—	—
Balance, December 31, 2016	5,440	34,118	4,902	2,173	46,633
Additions	—	—	3,688	(1,600)	2,088
Disposals	—	—	—	—	—
Balance, December 31, 2017	$ 5,440	$ 34,118	$ 8,590	$ 573	$ 48,721
Accumulated depreciation:					
Balance, January 1, 2015	$ —	$ 10,453	$ —	$ —	$ 10,453
Depreciation	—	1,060	143	—	1,203
Disposals	—	—	—	—	—
Balance, December 31, 2015	—	11,513	143	—	11,656
Depreciation	—	1,068	155	—	1,223
Disposals	—	—	—	—	—
Balance, December 31, 2016	—	12,581	298	—	12,879
Depreciation	—	985	249	—	1,234
Disposals	—	—	—	—	—
Balance, December 31, 2017	$ —	$ 13,566	$ 547	$ —	$ 14,113
Carrying amount, January 1, 2015	$ 5,440	$ 23,665	$ 4,464	$ —	$ 33,569
Carrying amount, December 31, 2015	5,440	22,605	4,469	—	32,514
Carrying amount, December 31, 2016	5,440	21,537	4,604	2,173	33,754
Carrying amount, December 31, 2017	5,440	20,552	8,043	573	34,608

The Company's fixed asset additions are primarily related to improvements and upgrades required by the Company's franchise agreement.

Note 5. Restricted Cash

Restricted cash primarily consists of operating funds set aside as required by the lenders of the Company's mortgage notes for repairs, insurance, property taxes, and investing funds set aside for capital improvements. The lenders hold a security interest in these restricted funds and the release of these funds are subject to the lenders' supervision and approval. As of December 31, 2017, 2016, 2015 and January 1, 2015, the Company had $871, $845, $1,082, and $1,098 of restricted cash, respectively.

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Note 6. Operating Expenses

	For the Year Ended December 31,		
	2017	2016	2015
Payroll and employee related costs	$ 2,594	$ 2,394	$ 2,001
Property management fees	1,007	937	936
Repairs and maintenance	178	183	165
Utilities	396	435	424
Property taxes and insurance	851	422	405
Cost of goods sold	2,388	2,285	2,269
Franchise fees	1,461	1,484	1,573
Franchise and excise taxes	135	423	528
Other operating expenses	128	126	120
Operating expenses	$ 9,138	$ 8,689	$ 8,421

Note 7. General and Administrative Expenses

	For the Year Ended December 31,		
	2017	2016	2015
Marketing	$ 584	$ 534	$ 440
Asset management fees	208	208	208
Other administrative expenses	288	152	115
General and administrative expenses	$ 1,080	$ 894	$ 763

Note 8. Accounts Payable and Other Accrued Liabilities

	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
Trade payables	$ 18	$ 111	$ 56	$ 49
Payroll and employee related costs	107	78	48	70
Property taxes	743	265	267	267
Sales and local taxes	183	118	309	297
Interest on note payable	313	317	101	103
Franchise fees	164	104	142	138
Deposits	247	189	227	165
Other payables	192	74	52	97
Accounts payable and other accrued liabilitie	$ 1,967	$ 1,256	$ 1,202	$ 1,186

Note 9. Note Payable, Net

	December 31, 2017	December 31, 2016	December 31, 2015	January 1, 2015
Note payable	$ 71,084	$ 72,101	$ 31,379	$ 32,062
Less: current maturities	(1,062)	(1,017)	—	(682)
Less: unamortized portion of deferred financing costs	(593)	(664)	(8)	(14)
Note payable, net	$ 69,429	$ 70,420	$ 31,371	$ 31,366

On May 8, 2007, in connection with the acquisition of the Property by the Company, the Company entered into a $33,600 term loan (the "Loan") with a large financial institution. The Loan was secured by the Property and bore interest at a fixed rate equal to 5.79%. The Loan's first 60 monthly payments were interest only. The Loan was refinanced on June 10, 2016, increasing the commitment amount to $72,500 (the "Amended Loan"). The Amended Loan is secured by the Property and bears interest at fixed rate equal to 5.12% and requires monthly principal and interest payments of $394, with a balloon payment due at maturity on July 1, 2026.

The Company's Amended Loan agreement contains customary representations, warranties, and events of default, which requires the Company to comply with affirmative and negative covenants. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company was in compliance with all covenants of its Loan agreement and Amended Loan agreement.

Costs related to obtaining debt financing are capitalized and amortized over the term of the related debt using the straight-line method, which approximates the effective interest method, and are included in net interest expense. The unamortized balance of the costs is shown as a reduction of the related debt on the consolidated statements of financial position.

Future principal payments on the Loan, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to December 31, 2017 are as follows:

	Note payable
2018	$ 1,062
2019	1,118
2020	1,168
2021	1,240
2022	1,306
Thereafter	65,190
Total	$ 71,084

Note 10. Interest Expense, Net

	For the Year Ended December 31,		
	2017	2016	2015
Interest on debt	$ 3,711	$ 4,105	$ 1,861
Amortization of deferred financing costs	70	47	6
Interest expense, net	$ 3,781	$ 4,152	$ 1,867

Note 11. Members' Capital

The members of the Company have made cash contributions and received cash distributions based on their respective ownership percentages. As of December 31, 2017, cash contributions totaled $8,160 and cash distributions totaled $69,758. All income or loss allocations are based on the member's respective ownership percentage.

Note 12. Financial Instruments

(a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the consolidated statements of financial position are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2017, 2016 and 2015 and January 1, 2015, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, prepaid and other assets, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of note payable is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. Discount rates are either provided by lenders or are observable in the open market. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the carrying amount of the Company's note payable approximated its fair value.

(b) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

The Company's Amended Loan bears interest at a fixed rate, so fluctuations in interest rates will not impact the cost of financing incurred in the future but may impact the carrying value of the Amended Loan. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument.

The Company is exposed to credit risk with respect to trade and other receivables. For the years ended December 31, 2017, 2016 and 2015, the Company had no bad debt expense. Credit risk of trade and other receivables is mitigated by initiating a prompt collection process.

(iii) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the Property, the proceeds to the Company may be significantly less than the Property's carrying amount.

The Company manages liquidity risk through monitoring the repayment date and refinancing date of its note payable, monitoring its debt covenants and managing its cash flows. The Company's objective is to maintain sufficient available access to capital to fund ongoing operational and capital requirements. As of December 31, 2017, 2016 and 2015 and January 1, 2015, the Company had cash and cash equivalents of $1,310, $894, $1,334 and $1,049, respectively.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the fixed rate of the Loan of 5.12% as of December 31, 2017:

	Carrying amount	Contractual cash flows	1 Year	More than 1 Year
Note payable	$ 71,084	$ 71,084	$ 1,062	$ 70,022
Interest payable on note	313	313	313	—
Accounts payable and other accrued liabilities	1,654	1,654	1,654	—
Total	$ 73,051	$ 73,051	$ 3,029	$ 70,022

Note 13. Capital Management

The Company defines capital as the aggregate of members' equity and note payable. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 14. Segment Reporting

The Company currently operates in one business segment, owning and operating one hotel property in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's

chief operating decision-maker. Accordingly, the Company has a single reportable segment for disclosure purposes in accordance with IFRS.

Note 15. Related Party Transactions

(a) Asset management fees

The Company has an asset management agreement with an affiliate of the member. Under this agreement, the Company is initially charged an annual asset management fee of $208 and after the occurrence of any Financing Event, as defined, the annual asset management fee shall be readjusted to 0.5% of the appraised value of the Property at the time of the Financing Event. This agreement will terminate upon the sale of the Property or can be terminated with cause. For the years ended December 31, 2017, 2016 and 2015, asset management fees were $208 for each year and are included in general and administrative expenses in the consolidated statements of comprehensive income.

(b) Property management fees

The Company has a property management agreement with an affiliate of the member. Under this agreement, the Company is charged a property management fee and an oversight management fee of 3.0% and 2.0%, respectively, of the property's gross revenue, as defined. For the years ended December 31, 2017, 2016 and 2015, property management fees and oversight management fees totaled $1,007, $937, and $936, respectively, and are included in operating expenses in the consolidated statements of comprehensive income. This agreement is cancellable by either party with a 30-day written notice.

(c) Labor costs

Certain labor costs are reimbursed to entities affiliated with the member. The labor costs are mainly for on-site maintenance and other labor costs related to property management and hotel services. For the years ended December 31, 2017, 2016 and 2015, labor costs incurred totaled to $2,594, $2,394, and $2,001 and are included in operating expenses in the consolidated statements of comprehensive income.

Note 16. Commitments and Contingencies

(a) Franchise agreement

The Property is operated under a franchise agreement (the "Franchise Agreement") with a subsidiary of Hilton Worldwide (the "Franchisor"). The Franchise Agreement was executed on June 2, 2016 and expires on January 7, 2028. The current Franchise Agreement requires the payment of a monthly royalty fee of 5% (6% prior to June 10, 2016) and a monthly program fee of 3% of the Property's gross room revenue, as defined. For the years ended December 31, 2017, 2016 and 2015, franchise fees were $1,461, $1,484, and $1,573, respectively, and are included in operating expenses in the consolidated statements of comprehensive income.

During 2007, the Company paid a license application fee of $500 per guest room, which amounted to $141. This amount was being amortized over a license period of 10 years on a straight-line basis and became fully amortized during 2017.

(b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. The Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company believes that the aggregate amount of such liabilities, if any, in excess of amounts provided or covered by insurance, will not have a material adverse effect on these consolidated financial statements. The Company is not involved in any material litigation nor, to the Company's knowledge, is any material litigation currently threatened against the Company or the Property.

Note 17. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities and members' equity, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2017 was as follows:

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	Liabilities				
	Accounts payable and other accrued liabilities	Current portion of note payable	Note payable, net	Members' equity	Total
Balance January 1, 2017	$ 1,256	$ 1,017	$ 70,420	$ (36,640)	$ 36,053
Changes from financing cash flows:					
Amortization of deferred financing costs	-	-	71	-	71
Reclass from note payable, net to current portion	-	45	(45)	-	-
Distributions	-	-	-	(2,500)	(2,500)
Interest accrual	(4)	-	-	-	(4)
Principal payments on notes payable		-	(1,017)	-	(1,017)
Total changes from financing cash flows	(4)	45	(991)	(2,500)	(3,450)
Liability related:					
Other payable increases	715				715
Members' equity related:					
Comprehensive Income (loss)	-	-	-	4,896	4,896
Balance December 31, 2017	$ 1,967	$ 1,062	$ 69,429	$ (34,244)	$ 38,214

Note 18. Subsequent Events

The Company evaluated subsequent events through March 27, 2019 to determine if any significant events occurred subsequent to the balance sheet dates that would have a material impact on these consolidated financial statements. On January 8, 2019, the Company sold the Property to NHT Nashville, LLC, a subsidiary of NexPoint Multifamily Capital Trust, Inc. ("NMCT") for $117,500. Immediately after the purchase of the Property was complete, the shareholders of NMCT contributed 100% of the units of NMCT to NHT Holdco, LLC in exchange for 6,756,364 units.

APPENDIX A
NEXPOINT HOSPITALITY TRUST

CHARTER OF THE AUDIT COMMITTEE

(the "Charter")

1. General

A. Purpose

The Audit Committee (the "**Committee**") is a committee of the board of trustees (the "**Board**") of NexPoint Hospitality Trust (the "**REIT**"). The members of the Committee and the chair of the Committee (the "**Chair**") are appointed by the Board on an annual basis (or until their successors are duly appointed) for the purpose of overseeing the REIT's financial controls and reporting and monitoring whether the REIT complies with financial covenants and legal and regulatory requirements governing financial disclosure matters and financial risk management.

2. Composition

(1) The Committee should be comprised of a minimum of three trustees, and a maximum of five trustees.

(2) The Committee must be constituted as required under National Instrument 52-110 — *Audit Committees*, as it may be amended or replaced from time to time ("**NI 52-110**").

(3) All members of the Committee must (except to the extent permitted by NI 52-110) be independent (as defined by NI 52-110), and free from any relationship that, in the view of the Board, could be reasonably expected to interfere with the exercise of his or her independent judgment as a member of the Committee.

(4) No members of the Committee shall receive, other than for service on the Board or the Committee or other committees of the Board, any consulting, advisory, or other compensatory fee from the REIT or any of its related parties or subsidiaries.

(5) All members of the Committee must (except to the extent permitted by NI 52-110) be financially literate (which is defined as the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the REIT's financial statements).

(6) Any member of the Committee may be removed or replaced at any time by the Board and shall cease to be a member of the Committee on ceasing to be a trustee. The Board may fill vacancies on the Committee by election from among the Board. If and whenever a vacancy shall exist on the Committee, the remaining members may exercise all powers of the Committee so long as a quorum remains.

3. Limitations on Committee's Duties

In contributing to the Committee's discharge of its duties under this Charter, each member of the Committee shall be obliged only to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Nothing in this Charter is intended or may be construed as imposing on any member of the Committee a standard of care or diligence that is in any way more onerous or extensive than the standard to which any member of the Board may be otherwise subject.

Members of the Committee are entitled to rely, absent actual knowledge to the contrary, on (i) the integrity of the persons and organizations from whom they receive information, (ii) the accuracy and completeness of the information provided, (iii) representations made by management of the REIT ("**Management**") as to the non-audit services provided to the REIT by the external auditor, (iv) financial statements of the REIT represented to them by a member of Management or in a written report of the external auditors to present fairly the financial position of the REIT in accordance with applicable generally accepted accounting principles, and (v) any report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person.

4. Meetings

The Committee should meet not less than four times annually. The Committee should meet within 45 days following the end of the first three financial quarters of the REIT and shall meet within 90 days following the end of the fiscal year of the REIT. A quorum for the transaction of business at any meeting of the Committee shall be a majority of the members of the Committee or such greater number as the Committee shall by resolution determine. The Committee shall keep minutes of each meeting of the Committee. A copy of the minutes shall be provided to each member of the Committee.

Meetings of the Committee shall be held from time to time and at such place as any member of the Committee shall determine upon two day's prior notice to each of the other Committee members. The members of the Committee may waive the requirement for notice. In addition, each of the Chief Executive Officer, the Chief Financial Officer and the external auditor shall be entitled to request that the Chair call a meeting.

The Committee may ask members of Management and employees of the REIT (including, for greater certainty, its affiliates and subsidiaries) or others (including the external auditor) to attend meetings and provide such information as the Committee requests. Members of the Committee shall have full access to information of the REIT (including, for greater certainty, its affiliates, subsidiaries and their respective operations) and shall be permitted to discuss such information and any other matters relating to the results of operations and financial position of the REIT with Management, employees, the external auditor and others as they consider appropriate.

The Committee or its Chair should meet at least once per year with Management and the external auditor in separate sessions to discuss any matters that the Committee or either of these groups desires to discuss privately. In addition, the Committee or its Chair should meet with Management quarterly in connection with the REIT's interim financial statements.

The Committee shall determine any desired agenda items.

5. Committee Activities

As part of its function in assisting the Board in fulfilling its oversight responsibilities (and without limiting the generality of the Committee's role), the Committee will have the power and authority to:

A. Financial Disclosure

(1) Review, approve and recommend for Board approval the REIT's interim financial statements, including any certification, report, opinion or review rendered by the external auditor and the related management's discussion & analysis and press release.

(2) Review, approve and recommend for Board approval the REIT's annual financial statements, including any certification, report, opinion or review rendered by the external auditor, the annual information form, and the related management's discussion & analysis and press release.

(3) Review and approve any other press releases that contain financial information and such other financial information of the REIT provided to the public or any governmental body as the Committee requires.

(4) Satisfy itself that adequate procedures have been put in place by Management for the review of the REIT's public disclosure of financial information extracted or derived from the REIT's financial statements and the related management's discussion & analysis.

(5) Review any litigation, claim or other contingency and any regulatory or accounting initiatives that could have a material effect upon the financial position or operating results of the REIT and the appropriateness of the disclosure thereof in the documents reviewed by the Committee.

(6) Receive periodically Management reports assessing the adequacy and effectiveness of the REIT's disclosure controls and procedures.

B. Internal Control

(1) Review Management's process to identify and manage the significant risks associated with the activities of the REIT.

(2) Review the effectiveness of the internal control systems for monitoring compliance with laws and regulations.

(3) Have the authority to communicate directly with the internal auditor if one is present.

(4) Receive periodical Management reports assessing the adequacy and effectiveness of the REIT's internal control systems.

(5) Assess the overall effectiveness of the internal control and risk management frameworks through discussions with Management and the external auditors and assess whether recommendations made by the external auditors have been implemented by Management.

C. Relationship with the External Auditor

(1) Recommend to the Board the selection of the external auditor and the fees and other compensation to be paid to the external auditor.

(2) Have the authority to communicate directly with the external auditor and arrange for the external auditor to be available to the Committee and the Board as needed.

(3) Advise the external auditor that it is required to report to the Committee, and not to Management.

(4) Monitor the relationship between Management and the external auditor, including reviewing any Management letters or other reports of the external auditor, discussing any material differences of opinion between Management and the external auditor and resolving disagreements between the external auditor and Management.

(5) If considered appropriate, establish separate systems of reporting to the Committee by each of management and the external auditor.

(6) Review and discuss on an annual basis with the external auditor all significant relationships they have with the REIT, Management or employees that might interfere with the independence of the external auditor.

(7) Pre-approve all non-audit services (or delegate such pre-approval, as the Committee may determine and as otherwise permitted by applicable securities laws) to be provided by the external auditor.

(8) Review the performance of the external auditor and recommend any discharge of the external auditor when the Committee determines that circumstances warrant.

(9) Periodically consult with the external auditor out of the presence of Management about (a) any significant risks or exposures facing the REIT, (b) internal controls and other steps that Management has taken to control such risks, and (c) the fullness and accuracy of the financial statements of the REIT, including the adequacy of internal controls to expose any payments, transactions or procedures that might be deemed illegal or otherwise improper.

(10) Review and approve any proposed hiring of current or former partners or employees of the current (and any former) external auditor of the REIT.

D. Audit Process

(1) Review the scope, plan and results of the external auditor's audit and reviews, including the auditor's engagement letter, the post-audit management letter, if any, and the form of the audit report. The Committee may authorize the external auditor to perform supplemental reviews, audits or other work as deemed desirable.

(2) Following completion of the annual audit and quarterly reviews, review separately with each of Management and the external auditor any significant changes to planned procedures, any difficulties encountered during the course of the audit and, if applicable, reviews, including any restrictions on the scope of work or access to required information and the cooperation that the external auditor received during the course of the audit and, if applicable, reviews.

(3) Review any significant disagreements among Management and the external auditor in connection with the preparation of the financial statements.

(4) Where there are significant unsettled issues between Management and the external auditor that do not affect the audited financial statements, the Committee shall seek to ensure that there is an agreed course of action leading to the resolution of such matters.

(5) Review with the external auditor and Management significant findings and the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented.

(6) Review the system in place to seek to ensure that the financial statements, management's discussion & analysis and other financial information disseminated to regulatory authorities and the public satisfy applicable requirements.

E. Financial Reporting Processes

(1) Review the integrity of the REIT's financial reporting processes, both internal and external, in consultation with the external auditor.

(2) Periodically consider the need for an internal audit function, if not present.

(3) Review all material balance sheet issues, material contingent obligations and material related party transactions.

(4) Review with Management and the external auditor the REIT's accounting policies and any changes that are proposed to be made thereto, including all critical accounting policies and

practices used, any alternative treatments of financial information that have been discussed with Management, the ramification of their use and the external auditor's preferred treatment and any other material communications with Management with respect thereto. Review the disclosure and impact of contingencies and the reasonableness of the provisions, reserves and estimates that may have a material impact on financial reporting.

F. General

(1) Inform the Board of matters that may significantly impact on the financial condition or affairs of the business.

(2) Respond to requests by the Board with respect to the functions and activities that the Board requests the Committee to perform.

(3) Periodically review this Charter and, if the Committee deems appropriate, recommend to the Board changes to this Charter.

(4) Review the public disclosure regarding the Committee required from time to time by NI 52-110.

(5) The Committee may at its discretion retain independent counsel, accountants and other professionals to assist it in the conduct of its activities and to set and pay (as an expense of the REIT) the compensation for any such advisors.

(6) Review in advance, and approve, the hiring and appointment of the REIT's Chief Financial Officer and any other senior officers responsible for financial reporting.

(7) Perform any other activities as the Committee or the Board deems necessary or appropriate.

6. Complaint Procedures

(1) Anyone may submit a complaint regarding conduct by the REIT or its employees or agents (including its external auditor) reasonably believed to involve questionable accounting, internal accounting controls, auditing or other matters. The Chair will have the power and authority to oversee treatment of such complaints.

(2) Complaints are to be directed to the attention of the Chair.

(3) The Committee should endeavour to keep the identity of the complainant confidential.

(4) The Chair will have the power and authority to lead the review and investigation of a complaint. The Committee should retain a record of all complaints received. Corrective action may be taken when and as warranted.

CERTIFICATE OF THE REIT AND THE PROMOTER

Dated: March 27, 2019

This prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of each of the provinces of Canada (other than Quebec).

NEXPOINT HOSPITALITY TRUST

(Signed) **JAMES DONDERO**
Chief Executive Officer

(Signed) **BRIAN MITTS**
Chief Financial Officer

On behalf of the Board of Trustees

(Signed) **NEIL LABATTE**
Trustee

(Signed) **GRAHAM D. SENST**
Trustee

NEXPOINT REAL ESTATE ADVISORS VI, L.P.
(as Promoter)

(Signed) **BRIAN MITTS**
Authorized Signatory

CERTIFICATE OF THE AGENT

Dated: March 27, 2019

To the best of our knowledge, information and belief, this prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of each of the provinces of Canada (other than Quebec).

RAYMOND JAMES LTD.

(Signed) **LUCAS ATKINS**
Managing Director

TAB 2

NEXPOINT HOSPITALITY TRUST

Interim Consolidated Financial Statements

For the three months and six months ended June 30, 2023 and June 30, 2022

(Expressed in U.S. dollars)

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	NOTES	June 30, 2023	December 31, 2022	January 1, 2022
ASSETS			**(Restated)**	**(Restated)**
Current assets				
Cash and cash equivalents		$ 16,351	$ 3,174	$ 1,532
Restricted cash	8	8,341	7,350	7,055
Trade and other receivables		1,342	1,608	3,802
Prepaid and other assets		864	1,517	2,573
Assets held for sale	6	117,413	14,956	—
Total current assets		144,311	28,605	14,962
Non-current assets				
Right-of-use asset	7	3,153	3,240	2,129
Interest rate caps		1,879	1,988	—
Property and equipment, net	7	149,636	269,536	297,564
Deferred tax assets	16	5,309	4,836	2,606
Total non-current assets		159,977	279,600	302,299
TOTAL ASSETS		$ 304,288	$ 308,205	$ 317,261
LIABILITIES AND UNITHOLDERS' DEFICIT				
Current liabilities				
Accounts payable and other accrued liabilities[1]	12	$ 28,681	$ 25,539	$ 28,148
Current portion of notes payable	13	77,353	1,386	85,484
Current portion of mezzanine loan	13	16,530	18,000	20,000
Liabilities directly associated with the assets held for sale	6	67,861	331	—
Total current liabilities		190,425	45,256	133,632
Non-current liabilities				
PPP Loan	13	—	—	4,000
Lease liability	7	983	1,063	1,224
Notes payable, net	13	35,540	176,272	119,569
Mezzanine loan, net	13	—	—	13,063
Convertible affiliate notes	13	82,723	82,723	50,068
Accrued Profit Sharing	23	1,520	1,816	—
Class B redeemable units of OP	14	105	309	432
Total non-current liabilities		120,871	262,183	188,356
Total Liabilities		311,296	307,439	321,988
Unitholders' Equity (Deficit)[1]		(7,008)	766	(4,727)
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 304,288	$ 308,205	$ 317,261

Note: Adjusted for the effect of the Misstatement as described in Note 24.

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF LOSS AND COMPREHENSIVE LOSS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	Notes	For the Three Months Ended June 30, 2023	For the Three Months Ended June 30, 2022 (Restated)	For the Six Months Ended June 30, 2023	For the Six Months Ended June 30, 2022 (Restated)
Revenues					
Rooms		$ 14,228	$ 13,860	$ 31,661	$ 26,107
Food and beverage		753	860	1,876	1,682
Other income		936	697	1,851	1,336
Asset management fee income		113	—	224	—
Total revenues		16,030	15,417	35,612	29,125
Hotel Operating Expenses					
Operating expenses	9	(7,735)	(6,905)	(19,366)	(16,363)
Operating general and administrative expenses	10	(2,520)	(2,433)	(5,362)	(4,374)
Total hotel operating expenses		(10,255)	(9,338)	(24,728)	(20,737)
Operating income		5,775	6,079	10,884	8,388
Other income and (expenses)					
Depreciation of property and equipment	7	(1,859)	(2,716)	(3,706)	(5,510)
Depreciation of right-of-use asset	7	(40)	(84)	(87)	(167)
Amortization of advanced bookings from acquisitions		(9)	(122)	(9)	(218)
Corporate general and administrative expenses	11	(177)	(741)	(535)	(1,486)
Advisory fees	12	(552)	(560)	(1,096)	(1,046)
Acquisition costs	12	—	(86)	—	(364)
Casualty gain, net of insurance proceeds	7	26	147	130	147
Finance costs from operations[1]	15	(4,356)	(4,152)	(10,408)	(8,301)
Fair value adjustment of Class B Units	14,15	103	218	204	507
Impairment recovery/(loss)	3,7	—	570	—	(1,217)
Forgiveness of PPP loans	13	—	—	—	4,000
Income related to forbearance agreement	13	—	—	—	4,612
Refund of brand fees		3	168	3	168
Total other income and (expenses)		(6,861)	(7,358)	(15,504)	(8,875)
Loss before income taxes		(1,086)	(1,279)	(4,620)	(487)
Penalties and interest, gross receipts tax		(152)	(44)	(152)	(70)
Income taxes	16	196	(487)	(46)	(544)
Deferred income tax benefit (expense)	16	(11)	151	9	272
Net loss and comprehensive loss from continuing operations		$ (1,053)	$ (1,659)	$ (4,809)	$ (829)
Discontinued operations					
Net loss and comprehensive loss from discontinued operations		(2,977)	(698)	(2,965)	(1,182)
Net loss and comprehensive loss		$ (4,030)	$ (2,357)	$ (7,774)	$ (2,011)
Basic and diluted income per unit					
Continuing operations		(0.04)	(0.06)	(0.16)	(0.03)
Discontinued operations		(0.10)	(0.02)	(0.10)	(0.04)
Loss per unit		$ (0.14)	$ (0.08)	$ (0.26)	$ (0.07)
Basic and diluted weighted average number of Units outstanding		29,901,742	29,901,742	29,901,742	29,901,742

Note: Adjusted for the effect of the Misstatement as described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF UNITHOLDERS' DEFICIT
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

Six Months Ended June 30, 2023	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2022[1] (Restated)		$ 99,007	$ (98,241)	$ 766
Net loss		—	(7,774)	(7,774)
Balances, June 30, 2023		$ 99,007	$ (106,015)	$ (7,008)

Six Months Ended June 30, 2022	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2021[1] (Restated)		$ 99,007	$ (103,734)	$ (4,727)
Net loss[1]		—	(2,011)	(2,011)
Balances, June 30, 2022[1]		$ 99,007	$ (105,745)	$ (6,738)

Note: Adjusted for the effect of the Misstatement as described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	Notes	For the Three Months Ended June 30, 2023	For the Three Months Ended June 30, 2022 (Restated)	For the Six Months Ended June 30, 2023	For the Six Months Ended June 30, 2022 (Restated)
Cash flows - operating activities					
Net loss		$ (4,030)	$ (2,357)	$ (7,774)	$ (2,011)
Adjustments to reconcile net loss to net cash provided by operating activities:					
Depreciation of property and equipment	7	1,859	2,716	3,706	5,510
Depreciation of right-of-use asset	7	40	84	87	167
Amortization of advanced bookings from acquisitions		9	122	9	218
Franchise fee amortization		—	(16)	—	—
Deferred income tax benefit	16	11	(151)	(9)	(272)
Finance costs from operations[1]	15	4,356	4,152	10,408	8,301
Fair value adjustment of Class B Units	15	(103)	(218)	(204)	(507)
Forgiveness of PPP Loans	13	—	—	—	(4,000)
Stock compensation expense	23	(32)	—	(296)	—
Impairment loss/(recovery)	3,7	—	(570)	—	1,217
Income related to forbearance agreement	13	—	—	—	(4,612)
Casualty gain, net of insurance proceeds		(26)	(147)	(130)	(147)
Changes in non-cash working capital items:					
Operating assets		77	(2,466)	836	(630)
Operating assets held for sale		154	982	(779)	—
Operating liabilities[1]		43	5,200	599	6,640
Operating liabilities directly related to assets held for sale		(349)	(2,912)	2,632	—
Income taxes		44	(531)	(198)	(614)
Changes in operating activities from discontinued operations		115	2,738	117	4,201
Net cash provided by operating activities		2,168	6,626	9,004	13,461
Cash flows - investing activities					
Additions to property and equipment	7	(1,142)	(1,419)	(1,636)	(1,768)
Disposals of property and equipment	7	—	—	—	—
Acquisitions of property and equipment	7	—	—	—	(53,911)
Additions to right of use assets	7	—	—	—	(1,445)
Insurance proceeds related to casualty loss		—	940	—	940
Change in restricted cash	8	(567)	(3,192)	(991)	(4,481)
Changes in investing activities from discontinued operations		16,282	—	16,282	—
Net cash provided by (used in) investing activities		14,573	(3,671)	13,655	(60,665)
Cash flows - financing activities					
Lease liability paid	7	(37)	(39)	(80)	(79)
Due to affiliate	13	—	1,000	—	23,925
Proceeds from notes payable	13	—	—	—	36,829
Principal payments on notes payable	22	(229)	(320)	(689)	(1,070)
Principal payments on Mezz Facility		(900)	—	(1,500)	—
Deferred financing costs accrued	22	56	(520)	56	(2,445)
Interest paid on outstanding debt		(3,886)	(4,650)	(7,269)	(8,106)
Net cash provided by (used in) financing activities		(4,996)	(4,529)	(9,482)	49,054
Net increase in cash and cash equivalents		11,745	(1,574)	13,177	1,850
Cash and cash equivalents, beginning of period		4,606	4,956	3,174	1,532
Cash and cash equivalents, end of period		$ 16,351	$ 3,382	$ 16,351	$ 3,382

Note: Adjusted for the effect of the Misstatement as described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

		For the Three Months Ended		For the Six Months Ended	
	Notes	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Supplemental disclosure of cash flow information					
Non-cash items					
Forgiveness of PPP loans	13	—	—	—	4,000

See accompanying notes to the interim consolidated financial statements

Note 1. Overview

NexPoint Hospitality Trust ("NHT" or the "Company") is an unincorporated, open-ended real estate investment trust ("REIT") established pursuant to a declaration of trust dated December 12, 2018 under the laws of the Province of Ontario. The registered office of the Company is at 333 Bay Street, Suite 3400, Toronto, Ontario. NHT was created for the purpose of initially acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. NHT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "Advisor"), which was formed for the purpose of managing NHT and is related to the Company through common indirect ownership as well as common control.

NHT has elected to be treated as a REIT under U.S. tax laws. Substantially all of NHT's business will be conducted through NHT Operating Partnership, LLC (the "OP"), NHT's operating partnership, which is a Delaware limited liability company. NHT owns its properties through the OP and its subsidiaries. The OP and its subsidiaries lease the properties to taxable REIT subsidiaries of NHT (the "TRS Entities") to operate. For NHT to qualify as a REIT under the United States Internal Revenue Code of 1986, as amended (the "Code"), NHT cannot operate directly or indirectly any of the hotels it acquires and owns. Therefore, the OP and its subsidiaries lease the hotels to the TRS Entities who in turn engage eligible independent contractors (as defined in the Code), which for the current portfolio of 9 hospitality assets located in the United States (the "Current Portfolio") are affiliates of Aimbridge Hospitality Holdings, LLC, to manage the hotels.

The objectives of NHT are to: (a) provide unitholders with an opportunity to invest in a portfolio of extended-stay, select-service and efficient full service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of NHT's assets and maximize the long-term value of the Class A units of the OP (the "Class A Units"), Class B units of the OP (the "Class B Units") and trust units of NHT (the "Units"), collectively, through active asset and property management programs and procedures and a renovation program; and (d) expand the asset base of NHT primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

NHT's Units are listed on the TSX Venture Exchange (the "TSXV") under the symbol NHT.U.

Note 2. Basis of Preparation

a) Going Concern Uncertainty

The global response to the COVID-19 pandemic had a large negative impact on the Company's operations in 2020 and the first quarter of 2021. Public companies in the North American lodging sector generally saw a significant decline in their stock prices on average during 2020. The well-publicized impacts on the hospitality industry, including shelter-in-place orders in the markets in which the Company operates, as well as a reduction in transient business travel, which the Company relies upon, reduced the Company's room rates and occupancies, and had a significant impact on the Company's operations in 2020 and early 2021. Additionally, data shows that air travel, and consequently, hotel occupancy and average daily rates, were down significantly, with large groups having canceled events. Occupancy declined from an average of 75.1% across the portfolio in 2019 to a low of 12.17% across the portfolio during April 2020, and the Average Daily Rate ("ADR") declined from an average of $145.81 in 2019 to a low of $93.95 during April 2020.

Since the end of January 2021, the hospitality sector in general and the Company specifically have seen significant improvements in operations. Notwithstanding seasonality trends, the second quarter of 2023 was much improved over the second quarter of 2022, with an occupancy of 70.5% across the Portfolio compared to 68.8% in the second quarter of 2022. We have seen a rebound in occupancy and ADR as COVID-19 restrictions have loosened or have been removed altogether and people have resumed business and leisure travel. Large group and convention business and business transient bookings have returned to pre-COVID levels as most employees have returned to the office either full-time or in a hybrid model and businesses have removed travel restrictions, enabling the transient segment to recover to pre-COVID levels.

As of June 30, 2023, the Company had a working capital deficit of $46,114, of which $16,530 relates to the principal balance on the Mezz Facility (as defined in Note 13) which was originally due on January 8, 2020. The impact to the global economy caused by the response to the COVID-19 pandemic negatively impacted the Company's ability to obtain new financing, and as a result, the Company was unable to refinance the principal balance of the Mezz Facility. As of the date of the interim consolidated financial statements (the "Interim Consolidated Financial Statements"), the Company has obtained an extension for the maturity of the Mezz Facility until December 8, 2023. The Company's held for sale assets are expected to generate sufficient cash proceeds to repay the Mezz Facility. The Company also has $77,353 of notes coming due within the next twelve months.

As of June 30, 2023, the Company had the total amount of the Mezz Facility being $16,530, $1,413 of amortizing principal payments, $28,681 of other liabilities, as well as the Note A and Note B loans of $52,213 and $25,140, respectively due over the next twelve months through June 30, 2024. Of the liabilities, the Company has payment plans in place for $1,171 of these liabilities and continues to work with vendors for the remainder to make repayment by June 30, 2024.

As of June 30, 2023, the Company is in good standing with the lenders on all of its outstanding Loans (as defined in Note 13). Covenant waivers have been granted at various dates on each loan or the lender has informally, or formally, agreed not to pursue available remedies currently.

Management is actively working towards addressing the matters noted above that create uncertainty for the Company as a going concern, which includes the following:

i) The Company has been granted extensions of the maturity of the Mezz Facility while each party continues in good faith discussions to restructure the facility.

ii) On March 24, 2020, the board of the Company agreed to temporarily suspend distributions for the foreseeable future to conserve cash.

iii) The Company expects to settle most of its amounts due to affiliates through the issuance of additional Class B Units, most of which do not mature for 20 years. See Notes 13, 14, and 21.

iv) On March 24, 2020, the Advisor agreed to defer the advisory fee until such time as the Company is able to resume payments while remaining cash flow positive. The Advisor did not collect any fees in 2020, 2021, 2022 or for the six months ended June 30, 2023.

v) Marriott has revised the required property improvement plan (the “PIP”) for the St. Pete property, which is now expected to cost $7,200 in total and has granted an extension for completion in two phases throughout 2021 and 2022. As of June 30, 2023 the Company has $175 in reserves with the lender that can be used toward the PIP. The first phase of the PIP was completed in November 2021 and the Company started the second phase of the renovation in December 2022 and was completed in the second quarter of 2023.

vi) Affiliates of the Advisor have not provided any funds to the Company in the second quarter of 2023, so no further convertible notes were issued. The Company does not anticipate needing cash infusions any longer as management believes the Company will be cash flow positive in 2023. See Note 13 and Note 21.

vii) On March 8, 2023, we launched a process to market the DT Portfolio and HIX Portfolio for sale, which we expect to close in the third and fourth quarters of 2023. The properties that are classified as Held for Sale are DT Tigard and Holiday Inn in Nashville. The proceeds will be used to de-lever the Company. See Note 6.

There can be no assurance that the Company will continue to generate positive cash flows from operations, whether any of these required measures may be completed, or whether they will provide the Company with sufficient liquidity. In order to continue as a going concern, the Company needs to (i) generate positive cash flows, which assumes the continuance of current operations, (ii) be successful in obtaining the concessions from its creditors as noted above, and such concessions must provide the Company with sufficient liquidity to fund its cash flow deficits in the intervening period, and (iii) be successful in refinancing its notes and mezzanine loans payable as they come due. As a result of these facts, the Company has determined there is a potential risk about the Company’s ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business.

These Interim Consolidated Financial Statements have been prepared on a going concern basis, which assumes the Company will continue its operations in the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. The Interim Consolidated Financial Statements do not include any adjustments to classification of assets and liabilities and reported expenses that may be necessary if the going concern basis was not appropriate for these Interim Consolidated Financial Statements. If the Company is unable to continue as a going concern, material write-downs to the carrying values of the Company’s assets could be required.

Although management believes it could continue as a going concern if the plan outlined above comes to fruition, it is important to note that many of the assumptions included in management's internal cash flow projections are out of its control. For these reasons, it is difficult for the Company to estimate the likelihood of these events occurring, the timing of when they may occur or the impact they will have once they occur. The Company is optimistic but proceeds with caution in determining recovery assumptions in management's internal cash flow projections as there are many factors to consider.

b) Statement of Compliance

These Interim Consolidated Financial Statements have been prepared by management in accordance with IAS 34 Interim Financial Reporting. The Interim Consolidated Financial Statements should be read in conjunction with the notes to the Company's Consolidated Financial Statements as of December 31, 2022 and the year then ended, which have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), since the Interim Consolidated Financial Statements do not contain all disclosures as required by IFRS for annual financial statements. These Interim Consolidated Financial Statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousandth, except when otherwise indicated, such as unit counts and per unit amounts.

The Interim Consolidated Financial Statements were authorized for issue by the Board of NHT on August 29, 2023.

c) Basis of presentation

The Initial Portfolio was acquired by the Company on March 27, 2019, as a result of the contribution of the common and preferred interests in Intermediary to the Company by the Holdings Company (the "Holdco") in exchange for Units. On January 8, 2019, these assets were contributed to entities under the control of Holdco. The Company and Intermediary are considered to be under common control since at the time of contribution Holdco owned 100% of the interests in Intermediary and subsequent to the completion of the contribution of Intermediary owned 100% of the Company. The Interim Consolidated Financial Statements reflect the financial position and results of operations as if the Company had owned the Initial Portfolio since January 8, 2019.

d) Basis of Measurement

The Interim Consolidated Financial Statements have been prepared on a historical cost basis, except for Class B Units and interest rate caps which are recorded at fair value through profit and loss.

e) Use of estimates and judgments

The preparation of the Interim Consolidated Financial Statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the Interim Consolidated Financial Statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected. Assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the future financial year relate to interest rate caps and the assessment of impairment of property and equipment as described in Note 3(e).

In the process of applying the accounting policies, the Company makes various judgments, apart from those involving estimations, that can significantly affect the amounts it recognized in the Interim Consolidated Financial Statements. Information about critical judgments in applying accounting policies that have the most significant effect on the amounts recognized in the Financial Statements relate to the following:

i) The componentization of property and equipment as described in Note 3(d).
ii) Impairment of property and equipment or the recovery of prior impairment as described in Note 3(e).
iii) Management's assessment of whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The Company's acquisitions are generally determined to be business combinations as the Company acquires an integrated set of processes as part of the acquisition transaction.
iv) Management's assessment of whether or not the Company controls entities in which it has an interest. This involves evaluating the Company's ability to make decisions over the relevant activities of such entities and to determine to what extent the Company is exposed to the variable returns of the entities. This assessment impacts the identification of the Company's subsidiaries and as a result which entities it consolidates.

v) The Company's ability to continue as a going concern as detailed in Note 2(a). This determination involves making assumptions about future events and about how third parties, which act independently of the Company and its assumptions, may react to current and future events that have an impact on the Company's ability to continue as a going concern.

Note 3. Significant Accounting Policies

The significant accounting policies used in the preparation of the Interim Consolidated Financial Statements are described below and have been applied consistently to all periods presented:

a) Basis of Consolidation

The Interim Consolidated Financial Statements include the accounts of the Company and its wholly owned subsidiaries including NHT Holdings LLC, the OP and subsidiaries of the OP, which are controlled by the Company in accordance with IFRS 10, *Consolidated Financial Statements*. Control exists when the Company is exposed to or has the right to variable returns from its involvement with the entity and has the ability to affect those returns through its power. All significant intercompany accounts and transactions have been eliminated on consolidation.

b) Business combinations

At the time of acquisition of a property, whether through a controlling share investment or directly, the Company considers whether the acquisition represents the acquisition of a business. The Company accounts for an acquisition as a business combination where an integrated set of activities is acquired in addition to the property. More specifically, the extent to which significant processes are acquired is considered. If no significant processes, or only insignificant processes, are acquired, the acquisition is treated as an asset acquisition rather than a business combination. The Company generally considers the acquisition of a hospitality asset to be a business combination as an integrated set of activities with significant processes are acquired in the transaction.

The purchase price of a business combination is measured as the fair value of the assets given, equity instruments issued, and liabilities incurred or assumed at the acquisition date. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at fair value at the date of acquisition. The Company recognizes assets or liabilities, if any, resulting from a contingent consideration arrangement at their acquisition date fair value and such amounts form part of the purchase price of the business combination. Subsequent changes in the fair value of contingent consideration arrangements are recognized in profit or loss. The difference between the purchase price and the fair value of the acquired identifiable net assets and liabilities is goodwill. On the date of acquisition, positive goodwill is recorded as an asset in the Company's Consolidated Statement of Financial Position. Negative goodwill is immediately recognized in profit or loss. The Company expenses transaction costs associated with business combinations in the period incurred.

When an acquisition does not meet the criteria for business combination, it is accounted for as an acquisition of a group of assets and liabilities. The purchase price of the acquisition, including transaction costs, are allocated to the assets and liabilities acquired based upon their relative fair values. No goodwill is recognized for asset acquisitions.

c) Functional currency

The functional and presentation currency of the Company and its subsidiaries is the U.S. dollar. All amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

d) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes initial acquisition costs and other direct costs. Significant parts of the buildings are accounted for as separate components of the property, based on management's judgment of what components constitute a significant cost in relation to the total cost of an asset and whether these components have similar or dissimilar patterns of consumption and useful lives for purposes of calculating depreciation.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience and take into consideration the anticipated physical life of the asset and its components and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate and are also reviewed in conjunction with impairment testing. Gains or losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honor its obligation.

Asset	Useful Life (Years)
Building structure	40
Buildings - mechanical, electrical and elevators	30
Buildings - roof, windows, and doors	20
Building improvements	5 - 15
Interior upgrades	3
Furniture, fixtures and equipment	5 - 7
Leases	Length of lease

e) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment or recovery. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. However, when an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

f) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized through profit or loss. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through profit or loss.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the

credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in profit or loss.

The Company has made the following classifications for its financial instruments:

Financial Instrument	Classification Under IFRS 9
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Lease liability	Amortized cost
Interest rate caps	FVTPL
Accounts payable and other accrued liabilities	Amortized cost
Note payable	Amortized cost
Mezzanine loan	Amortized cost
Class B redeemable units of OP	FVTPL
PIU redeemable units of OP	FVTPL

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized in profit or loss.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

Units that are redeemable at the option of the holder are considered puttable instruments in accordance with International Accounting Standards 32, *Financial Instruments – Presentation* ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32; in which case, the puttable instruments may be presented as equity. Units meet the exemption conditions of IAS 32 and are, therefore, presented as equity.

The Class B Units are redeemable for cash or Units on a one-for-one basis subject to customary anti-dilution adjustments at the option of the Company and, therefore, the Class B Units meet the definition of a financial liability under IAS 32. Further, the Class B Units are designated as financial liabilities at FVTPL and are measured at fair value at each reporting period with any changes in fair value recorded in profit or loss. The Class B Units are, in all material aspects, economically equivalent to Units on a per unit basis. The distributions paid on Class B Units are accounted for as finance costs.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. NHT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in profit or loss with the carrying amount of the financial asset or group of financial assets reduced.

g) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

h) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with, or under the control of, lenders in respect of future capital expenditures, insurance, and taxes.

i) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability and the increase to the provision due to the passage of time will be recognized as a finance cost.

j) Revenue recognition

IFRS 15, Revenue *from Contracts with Customers,* establishes a comprehensive framework for determining whether, how much and when revenue is recognized. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded as a component of accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

k) Finance costs from operations

Finance costs from operations consist primarily of interest expense on outstanding debt, the amortization of deferred financing costs, net of interest income and distributions made to Class B unitholders. Interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the effective interest method and are included in finance costs from operations. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's Consolidated Statement of Financial Position.

l) Income taxes

(i) Canadian mutual fund status

NHT is a mutual fund trust pursuant to the Income Tax Act (Canada). Under current tax legislation, a mutual fund trust that is not a Specified Investment Flow-Through Trust ("SIFT") pursuant to the Income Tax Act (Canada) is entitled to deduct distributions of taxable income such that it is not liable to pay income taxes provided that its taxable income is fully distributed to unitholders. NHT intends to qualify as a mutual fund trust that is not a SIFT trust and to make distributions not less than the amount necessary to ensure that NHT will not be liable to pay income taxes.

(ii) U.S REIT Status

The Company expects to be classified as a corporation for U.S. federal income tax purposes pursuant to section 7874 of the Code. Further, the Company expects to be treated as a U.S. corporation for all purposes under the Code and, as a result, it would be permitted to elect to be treated as a REIT under the Code, notwithstanding it will be organized as a Canadian entity. In general, a company that elects REIT status, distributes at least 90% of its REIT taxable income to its shareholders in any taxable year, and complies with certain other requirements is not subject to U.S. federal income taxation to the extent of the income it distributes. If it fails to qualify as a REIT in any taxable year, it will be subject to U.S. federal income tax at regular corporate income tax rates on its taxable income. Even if it qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed income. The Company

has reviewed the REIT requirements and expects that it will qualify as a REIT under the Code. Accordingly, no provision for U.S. federal income or excise taxes has been made with respect to the income of the Company.

The Company, through wholly owned subsidiaries, leases the Initial Portfolio and will lease any future acquisitions to the TRS Entities, which are taxable in the U.S. A TRS is a corporation that has not elected REIT status and has made a joint election with a REIT to be treated as a TRS. As such, it is subject to U.S. federal and state corporate income tax. The income tax effects on the results of the TRS Entities accrue directly to the unitholders of the Company.

For these entities, income tax expense comprises current and deferred taxes. Current tax and deferred tax are recognized in profit or loss except to the extent that they relate to a business combination, or to items recognized directly in equity or in other comprehensive income.

(iii) Current taxes

Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years. The amount of current tax payable or receivable is the best estimate of the tax amount expected to be paid or received that reflects uncertainty related to income taxes, if any.

(iv) Deferred taxes

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: (a) the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, (b) differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future and (c) for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date.

(v) Tax uncertainties

Judgement is required to assess the interpretation of tax legislation when recognizing and measuring current and deferred tax assets and liabilities. The impact of different interpretations and applications could potentially be material. The Company recognizes a tax benefit from an uncertain tax position when it is probable that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of technical merits.

(vi) 2017 Tax Act

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire at the end of 2025.

m) Operating segments

The Company currently operates in one business segment, owning and operating hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

n) Leases

Under IFRS 16, *Leases*, the Company records the initial present value of unavoidable future lease payments as right-of-use assets and lease liabilities on the Company's Consolidated Statement of Financial Position. The right-of-use assets are initially measured at cost and subsequently measured at cost less accumulated depreciation and impairment losses, adjusted for any remeasurement of the lease liabilities. The lease liabilities are initially measured at the present value of the unavoidable future lease payments discounted using the discount rate implicit in the lease (or if that rate cannot be readily determined, the lessee's incremental borrowing rate). Subsequently, the lease liabilities are adjusted for interest and lease payments, and impact of lease modifications, if any.

o) Levies

In accordance with International Financial Reporting Interpretations Committee ("IFRIC") 21, *Levies* ("IFRIC 21"), the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

p) Government assistance

The Company may receive financial grants from the government in return for past or future compliance with certain conditions relating to its operating activities. These financial grants are recorded in income by the Company when there is reasonable assurance that the Company will comply with the relevant conditions and the financial grant is received. If these conditions are not met, grants received are recognized as a liability.

The Company requested and was granted forgiveness of the first PPP loans in 2021. The Company recognized the balance of the forgiven loans and forgiven accrued interest in profit or loss in 2021 in accordance with IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance.* In 2022 the Company recognized an additional $4,000 of forgiven loans in profit or loss in accordance with IAS 20.

q) Reclassification of items in the financial statements

The Company may, from time to time, record reclassifications of certain items in the Financial Statements to ensure proper representation based on facts and circumstances of the Company.

Note 4. Investment in Subsidiaries and Special Purpose Entities

In connection with its indirect equity investments in real estate assets acquired, the Company, through NHT Holdings, LLC and the OP, indirectly holds an ownership interest in the properties, through the OP's 100% ownership of the membership interests in special purpose LLCs ("SPEs") that directly own the properties. All of the properties the Company has acquired are consolidated in the Company's Interim Consolidated Financial Statements. Under the terms of each respective mortgage payable, the lender has a perfected security interest in each real estate asset and related personal property.

The loans to NHT 2325 Stemmons, LLC ("NHT 2325 Stemmons"), NHT DFW Portfolio, LLC ("NHT DFW") and NHT SP, LLC ("NHT SP") are cross-collateralized and thus the assets of each entity are subject to recourse in the event of default. Additionally, the Note A Loan and Note B Loan (as defined in Note 13) are cross defaulted with the Mezz Facility. The lender on the Mezz Facility has a perfected security interest in the membership interest of NHT 2325 Stemmons, NHT DFW Portfolio and NHT SP.

As of June 30, 2023, the Company, through the OP, owned 9 properties through SPE subsidiaries of the OP, with the sale of DT Olympia property sold on June 29, 2023, see Note 6. The following table presents each SPE that directly owns the title to each property as of June 30, 2023:

Subsidiary	Ownership	Parent	Properties Owned	SPE Subsidiaries Owned	TRS Subsidiaries Owned	Gross Assets	Gross Allocable Notes Payable and Mezzanine Debt
NHT Holdings, LLC	100.0%	NexPoint Hospitality Trust (the Company)	n/a	n/a	n/a	$ 304,288	$ 195,138
NHT Operating Partnership, LLC (the OP)	100.0%	NHT Holdings, LLC	n/a	n/a	n/a	304,288	195,138
NHT 2325 Stemmons, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Dallas Hilton Garden Inn	1	1	34,002	19,021
NREO NW Hospitality, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	DoubleTree Portfolio	1	1	15,756	—
NHT DFW Portfolio, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	HomeWood Suites Portfolio	3	3	32,619	29,216
NHT SP, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Marriott St. Petersburg	1	1	38,426	29,116
NexPoint Multifamily Capital Trust, Inc.	100.0%	NHT Operating Partnership, LLC (the OP)	Holiday Inn Express Nashville	1	1	108,565	64,456
NHT Bradenton, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Bradenton Hampton Inn & Suites	1	1	26,725	17,305
NHT Park City, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Hyatt Place Park City	1	1	30,704	19,525

Note 5. Business Combinations, Contributions of Net Assets and Asset Acquisitions

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were considered to be asset acquisitions and were accounted for using the purchase method of accounting in accordance with IFRS 3 Business Combinations. The Initial Portfolio together with the Park City and Bradenton properties constitutes the Current Portfolio.

On February 14, 2022, the Company made a $200 deposit on a tract of land at the HUB Research Triangle Park in North Carolina. The Company plans to develop a hotel on this site in partnership with a developer that the Advisor has collaborated with previously.

There were no contributions of net assets for the six months ended June 30, 2023.

Purchase Accounting

The following table summarizes the fair values of the assets acquired and liabilities assumed for the acquisitions accounted for using the purchase method of accounting in 2022:

	NHT Bradenton, LLC	NHT Park City, LLC	Total
Fair value of consideration transferred:	$ 25,973	$ 29,616	$ 55,589
	25,973	29,616	55,589
Property and equipment	24,251	29,660	53,911
Right of use asset	1,445	—	1,445
Intangible assets	304	340	644
Other liabilities	(27)	(384)	(411)
Fair value of net assets acquired and liabilities assumed	$ 25,973	$ 29,616	$ 55,589

The Company acquired the Park City and Bradenton properties for $56,000 and received a credit from the seller of the Park City property in the amount of $200.

Descriptions of the net assets acquired

NHT Park City, LLC

On February 15, 2022, the OP acquired 100% of the LLC interests in NHT Park City, LLC, which owns the Hyatt Place hotel in Park City, Utah ("Park City"). The Park City property is a 122-room hotel located near Park City ski mountain. Originally built in 2016, the property is almost exclusively focused on leisure travel. Additionally, we requested, and Hyatt granted, the addition of a destination fee for all guests, which should materially increase NOI achieved pre-pandemic.

NHT Bradenton, LLC

On February 23, 2022, the OP acquired 100% of the LLC interests in NHT Bradenton, LLC, which owns the Hampton Inn & Suites hotel in Bradenton, Florida ("Bradenton"). The Bradenton property is a 119-room hotel that hosts multiple major league baseball teams during spring training and is a leisure destination area year-round given the temperate climate in the winter and access to the beach. This property represents a traditional value-add opportunity for NHT. Over the last several years this property has lost RevPAR index to the competitor set, however we believe that with the right renovations, Bradenton should be able to close the gap on the competitor set while sitting in the heart of a growing economy in southern Florida.

Note 6. Dispositions and Assets Held for Sale

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Revenues				
Rooms	$ 3,070	$ 5,412	$ 3,736	$ 8,518
Food and beverage	262	262	306	387
Other income	42	144	60	239
Total revenues	3,374	5,818	4,102	9,144
Hotel operating expenses				
Operating expenses	(1,787)	(3,138)	(2,327)	(4,851)
Operating general and administrative expenses	(650)	(1,214)	(824)	(1,865)
Total hotel operating expenses	(2,437)	(4,352)	(3,151)	(6,716)
Operating income	937	1,466	951	2,428
Other income and (expenses)				
Loss on sale of real estate	(3,799)	—	(3,799)	—
Depreciation of property and equipment	—	(1,263)	—	(2,156)
Finance costs from operations	(106)	(920)	(108)	(1,473)
Total other income and (expenses)	(3,905)	(2,183)	(3,907)	(3,629)
Loss from discontinued operations before income taxes	(2,968)	(717)	(2,956)	(1,201)
Deferred income tax (expense) benefit	(9)	19	(9)	19
Net loss and comprehensive loss from discontinued operations	$ (2,977)	$ (698)	$ (2,965)	$ (1,182)

On August 24, 2022, the Company sold the DT Vancouver Property for $14,500, on September 30, 2022, the Company sold the DT Beaverton Property for $14,500, and on December 8, 2022, the Company sold the DT Bend Property for $38,500. The Company used the proceeds from the sale of the DT Bend Property to retire the outstanding debt on the DT Portfolio (DT Loan, Mezz A Loan and Mezz B Loan).

On March 8, 2023, the Company began the marketing process to sell the remaining DoubleTree property of Tigard and the Holiday Inn in Nashville. The Company expects the transactions to close in the third and fourth quarters of 2023.

On June 29, 2023, the Company sold the DT Olympia property for $12,750. The Company will use the proceeds from the sale to retire the outstanding debt on the Mezz Facility.

	June 30, 2023	December 31, 2022
Trade and other receivables	$ 494	$ 28
Prepaid and other assets	412	173
Property and equipment, net	116,507	14,755
Assets held for sale	$ 117,413	$ 14,956
Accounts payable and other accrued liabilities	$ 3,405	$ 331
HIX Loan	64,456	—
Liabilities directly associated with assets held for sale	$ 67,861	$ 331

Note 7. Fixed Assets and Leases

a) Property and Equipment, Net

	Land and Land Improvements	Buildings and Improvements	Construction in Progress	Furniture, Fixtures and Equipment	Total
Cost:					
Balance, December 31, 2021	$ 40,836	$ 254,449	$ 588	$ 43,808	$ 339,681
Additions - during the period	4	103	2,239	1,105	3,451
Additions - acquired	4,730	42,298	—	6,486	53,514
Assets sold	(7,769)	(51,270)	(84)	(6,452)	(65,575)
Assets held for sale	(1,478)	(13,451)	(36)	(2,234)	(17,199)
Casualty loss	—	(850)	—	(25)	(875)
Impairment recovery (loss) - during the period	273	734	(144)	7	870
Balance, December 31, 2022	$ 36,596	$ 232,013	$ 2,563	$ 42,695	$ 313,867
Additions - during the period	—	537	831	268	1,636
Assets sold	(1,934)	(14,057)	(1,111)	(1,671)	(18,773)
Assets held for sale	(12,214)	(93,429)	(60)	(14,058)	(119,761)
Balance, June 30, 2023	$ 22,448	$ 125,064	$ 2,223	$ 27,234	$ 176,969
Accumulated depreciation:					
Balance, December 31, 2021	$ 4	$ 22,011	$ —	$ 20,102	$ 42,117
Depreciation expense - during the period	2	6,316	—	5,786	12,104
Depreciation expense - assets held for sale	—	66	—	70	136
Depreciation expense - assets sold during the period	—	697	—	549	1,246
Accumulated depreciation - assets sold	—	(67)	—	(16)	(83)
Accumulated depreciation - assets held for sale	—	(4,621)	—	(4,124)	(8,745)
Adjustment for casualty loss during the period	—	(1,132)	—	(1,312)	(2,444)
Balance, December 31, 2022	$ 6	$ 23,270	$ —	$ 21,055	$ 44,331
Depreciation expense - during the period	—	1,851	—	1,855	3,706
Depreciation expense - assets sold during the period	—	85	—	—	85
Accumulated depreciation - assets sold	(4)	(1,545)	—	(1,157)	(2,706)
Accumulated depreciation - assets held for sale	—	(10,331)	—	(7,752)	(18,083)
Balance, June 30, 2023	$ 2	$ 13,330	$ —	$ 14,001	$ 27,333
Carrying amount, December 31, 2022	$ 36,590	$ 208,743	$ 2,563	$ 21,640	$ 269,536
Carrying amount, June 30, 2023	$ 22,446	$ 111,734	$ 2,223	$ 13,233	$ 149,636

The Company's fixed asset additions are primarily related to (i) various upgrades and improvements required by the Company's franchise agreements; (ii) the Company's renovation program; and (iii) typical ongoing capital maintenance items. Depreciation during the period includes depreciation of land improvements.

As mentioned in Note 3(e), non-financial assets are reviewed at each reporting date to determine if there is any indication of impairment or recovery. The Company recorded no impairment for the six months ended June 30, 2023. In assessing the value in use of the real estate assets, the cash flow estimates were derived from detailed financial forecasts prepared by the Company for 2023. The forecasted cash flow is extended through June 30, 2028 and asset values were determined using a discounted cash flow analysis with terminal cap rates and discount rates used in the most recent appraisals provided by a recognized national valuation firm and adjusted to take into account how various research analysts are now pricing other publicly traded hospitality REITs.

As of June 30, 2023, the Company has classified two assets as held for sale in the consolidated Statement of Financial Position. See Note 6.

b) Leases

The Company's leases consist of land and vehicles at June 30, 2023 and December 31, 2022.

Right of Use Asset	Land	Vehicles	Total
Balance, December 31, 2021	$ 3,013	$ 81	$ 3,094
Acquisitions	1,445	—	1,445
Balance, December 31, 2022	$ 4,458	$ 81	$ 4,539
Balance, June 30, 2023	$ 4,458	$ 81	$ 4,539
Accumulated depreciation:			
Balance, December 31, 2021	$ 900	$ 65	$ 965
Depreciation - During the period	318	16	334
Balance, December 31, 2022	$ 1,218	$ 81	$ 1,299
Depreciation - During the period	87	—	87
Balance, June 30, 2023	$ 1,305	$ 81	$ 1,386
Carrying amount, December 31, 2022	$ 3,240	$ —	$ 3,240
Carrying amount, June 30, 2023	$ 3,153	$ —	$ 3,153

Lease Liability	Land	Vehicles	Total
Balance, December 31, 2021	$ 1,207	$ 17	$ 1,224
Interest expense	4	—	4
Changes from financing cash flows:			
Lease liability paid	(148)	(17)	(165)
Balance, December 31, 2022	$ 1,063	$ —	$ 1,063
Interest expense	1	—	1
Changes from financing cash flows:			
Lease liability paid	(81)	—	(81)
Balance, June 30, 2023	$ 983	$ —	$ 983
Carrying amount, December 31, 2022	$ 1,063	$ —	$ 1,063
Carrying amount, June 30, 2023	$ 983	$ —	$ 983

Note 8. Restricted Cash

The Company funded restricted cash reserves for brand-mandated PIPs and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement and future insurance and property tax expenses. Restricted cash reserves for PIP programs are typically expected to be spent over an 18–24-month period once work begins. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. Additionally, the Company presents reserves and escrows for

taxes and insurance as restricted cash. Cash proceeds in reserve accounts are primarily held by a lender, though in some cases they are held by the Company. Cash reserves to be held by lenders are only available to meet the expenses for which they are reserved against and cannot be used to extinguish general liabilities. The funds for the renovation of the St. Pete Property are included in furniture, fixtures, and equipment ("FF&E") reserves in the table below.

The following table summarizes the amounts of cash reserves in each of these categories as of June 30, 2023 and December 31, 2022:

	June 30, 2023	December 31, 2022
PIPs reserve	$ 175	$ 175
FF&E Reserves	4,870	4,556
Property tax reserve	2,921	2,397
Insurance, cash collateral and other reserves	375	222
Total restricted cash	$ 8,341	$ 7,350

Note 9. Operating Expenses

The following table summarizes components of operating expenses for the three months and six months ended June 30, 2023 and June 30, 2022 which are included in the Interim Consolidated Statements of Loss and Comprehensive Loss:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Payroll	$ 3,577	$ 3,431	$ 7,493	$ 6,418
Franchise fees	1,045	1,004	2,420	1,907
Cost of goods sold	1,044	1,075	2,065	1,899
Utilities	400	379	847	721
Supplies and equipment	311	444	870	868
Property taxes and insurance	1,156	223	5,007	3,899
Other operating expenses	43	98	285	197
Repairs and maintenance	159	251	379	454
Operating expenses	$ 7,735	$ 6,905	$ 19,366	$ 16,363

The Company recognizes the property tax levy on January 1st of the calendar year in accordance with IFRIC 21.

Note 10. Operating General and Administrative Expenses

The following table summarizes components of general and administrative expenses for the three months and six months ended June 30, 2023 and June 30, 2022 which are included in the Interim Consolidated Statements of Loss and Comprehensive Loss:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Marketing	$ 1,201	$ 1,134	$ 2,442	$ 1,937
Operations G&A	706	722	1,550	1,322
Property management fees	416	405	912	767
Other administrative expenses	197	172	458	348
Operating general and administrative expenses	$ 2,520	$ 2,433	$ 5,362	$ 4,374

Note 11. Corporate General and Administrative Expenses

The following table summarizes components of corporate general and administrative expenses for the three months and six months ended June 30, 2023 and June 30, 2022 which are included in the Interim Consolidated Statements of Loss and Comprehensive Loss:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Audit fees and financial reporting	$ 180	$ 75	$ 355	$ 304
Tax preparation	147	9	111	34
Consulting fees	91	37	94	66
D&O Insurance	12	24	49	24
Legal fees	254	184	333	228
Trustee fees, stock and other compensation	(352)	367	(580)	738
TSXV listing fees	(126)	4	20	20
Other payroll/compensation	(29)	18	—	18
Other administrative expenses	—	23	153	54
Corporate general and administrative expenses	$ 177	$ 741	$ 535	$ 1,486

Note 12. Accounts Payable and Other Accrued Liabilities

The following table summarizes components of accounts payable and other accrued liabilities as of June 30, 2023 and December 31, 2022 which are included in the Interim Consolidated Statements of Financial Position:

	June 30, 2023	December 31, 2022
		(Restated)
Trade payables	$ 822	$ 2,390
Payroll and payroll taxes payable	464	637
Property taxes payable	3,735	1,291
Sales and occupancy tax payable	362	743
Property management fees payable	102	851
Interest payable on outstanding debt[1]	11,474	9,484
Franchise fees payable	164	259
Deposit liability and advanced bookings	183	(21)
Other payables	2,468	1,477
Professional service fees payable	905	117
Acquisition costs payable	—	475
Advisory fee payable	7,897	6,802
Distributions payable to Class B unitholders	105	1,034
Accounts payable and other accrued liabilities[1]	$ 28,681	$ 25,539

Note: The 2022 balances have been adjusted for the effect of the Misstatement (as defined herein) described in Note 24.

On November 15, 2019, the Company filed a prospectus registering $500 million of additional units, debt securities, subscription receipts and warrants with the intent to raise capital in a secondary offering of the Company's Units (the "Offering"). After launching the Offering, the Company abandoned the Offering on December 18, 2019.

Note 13. Notes Payable, Net, Mezzanine Loans, Net and PPP Loans

The following tables further describe mortgages and other debt instruments as of June 30, 2023 and December 31, 2022 which are included in the Interim Consolidated Statements of Financial Position:

Notes Payable

	June 30, 2023	December 31, 2022
Notes payable	$ 178,638	$ 179,327
Less: current maturities	(77,353)	(1,386)
Less: notes related to assets held for sale	(64,456)	—
Less: unamortized portion of deferred financing costs	(1,289)	(1,669)
Notes payable, net	$ 35,540	$ 176,272

Mezzanine Loans

	June 30, 2023	December 31, 2022
Mezzanine loans	$ 16,500	$ 18,000
Less: current maturities	(16,530)	(18,000)
Plus: accrued financing costs	30	—
Mezzanine loans, net	$ —	$ —

On January 8, 2019, in connection with the acquisition of the Nashville Property, the Company assumed the existing loan on the property of $72,500 with an outstanding balance of $64,456 (the "HIX Loan"). The HIX Loan is secured by the Nashville Property and bears interest at a fixed rate equal to 5.12% and matures on June 30, 2026.

The HIX Loan contains customary representations, warranties, and events of default, which require the HIX Borrowers to comply with affirmative and negative covenants. On September 18, 2020, the lender delivered a formal notice of default to the HIX Borrowers. On May 26, 2021, the HIX Borrowers executed a forbearance agreement with the lender. See Note 20(b) for further discussion surrounding the Nashville Property.

On January 8, 2019, the Company, through the OP, entered into a $35,000 mezzanine facility (the "Mezz Facility") with a large non-bank company. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville Property acquired on January 8, 2019. The Mezz Facility is secured by a pledge of the membership units in NHT 2325 Stemmons, NHT DFW Portfolio, and NHT SP, bears interest at a variable rate equal to the 30-day LIBOR plus 6.25% and had an original maturity date of January 8, 2020. As of June 30, 2023, the Company paid $859 in interest and $1,500 in principal on the Mezz Facility.

On February 28, 2019, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $59,400 Note A loan (the "Note A Loan") and a $28,600 Note B loan (the "Note B Loan"). The Note A Loan and Note B Loan are secured by the HGI Property, the HWS Portfolio and the St. Pete Property. The Note A Loan bears interest at a variable rate equal to the 30-day LIBOR plus 2.00% and matures on March 1, 2024. The Note B Loan bears interest at a variable rate equal to the 30-day LIBOR plus 6.46% and matures on March 1, 2024. As of June 30, 2023, the Note A Loan and the Note B Loan had an effective interest rate of 7.55% and 12.01%, respectively. For the period from January 1, 2023 to June 30, 2023, the Company paid $1,206 and $1,211 in interest on the Note A Loan and the Note B loan, respectively. See Note 24.

On February 15, 2022, in connection with the acquisition of the Park City and Bradenton properties, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $39,300 loan (the "PC & B Loan") with a large non-bank company. The outstanding balance on the PC & B Loan at June 30, 2023 is $36,829 with $2,471 available to draw on for renovation purposes. The Company has begun planning renovations at both properties to start in late 2023.

The PC & B Loan, the HIX Loan, the Note A Loan and Note B Loan (collectively referred to as the "Notes Payable"), and the Mezz Facility (collectively referred to as the "Mezzanine Loans" and together with the "Notes Payable" are referred to as the "Loans") contain customary representations, warranties, and events of default, which require the Company to comply with affirmative and negative covenants.

As discussed in Note 2, as of June 30, 2023, the Company is in good standing with the lenders on all of its outstanding Loans.

In February and March 2021, all 9 of our properties in the Initial Portfolio received a second loan from the PPP with total proceeds from the loans amounting to $4,000. In February 2022, the SBA granted forgiveness of the second loans. The Company recognized the loans and all accrued interest in profit or loss in 2022, with no remaining SBA forgiveness for the six months ended June 30, 2023.

The SBA, in consultation with the U.S. Department of the Treasury, has published guidance for borrowers concerning forgiveness of PPP loans. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the date of disbursement of the loan and the SBA remittance of the forgiveness amount. The borrower is also responsible for paying accrued interest on any amount of the loan that is not forgiven.

The table below shows future payments on the Loans, excluding amortization of deferred financing costs, payable within the next four calendar years subsequent to June 30, 2023:

	Notes Payable	Mezzanine Loans	Total
2023	$ 807	$ 16,530	$ 17,337
2024	78,803	—	78,803
2025	38,365	—	38,365
2026	60,663	—	60,663
Total	$ 178,638	$ 16,530	$ 195,168

As of June 30, 2023 and December 31, 2021, the Company has $82,723 of convertible notes due to its affiliates. The notes have rates ranging from 1.93% to 7.50% while outstanding and mature in 20 years in most cases. The Company's convertible notes conversion is subject to TSXV approval.

	June 30, 2023	December 31, 2022
Convertible affiliate notes	$ 82,723	$ 82,723

Note 14. Class B Units

On January 8, 2019, the OP issued Class B Units with a fair value of $67,881. The Class B Units of the OP are economically equivalent to Units and are entitled to receive distributions equal to those provided to holders of Units. These Class B Units have been classified as a liability in accordance with IAS 32, as they are redeemable instruments at the option of the holders.

Class B Units are measured at fair value with any changes in fair value recorded in profit or loss. The fair value adjustments of Class B Units are calculated using the Company's Unit closing price as of the end of the reporting period. An increase in the Unit closing price over the period results in a fair value loss whereas a decrease in the Unit closing price over the period results in a fair value gain.

As allowed under IFRS 13, *Fair Value Measurement,* if an asset or a liability measured at fair value has a bid price and an ask price, the price within the bid-ask spread that is the most representative of fair value in the circumstances shall be used to measure fair value. The Company has recorded Class B Units at their fair value, which has been assessed to equal the closing market price of the Units at each valuation date (Level 2).

The 10-day volume weighted average price ("VWAP") of the Units for the 10 trading days immediately preceding the end of the period is the basis of measurement the Company uses to record fair value adjustments of the Class B Units. The 10-day VWAP at June 30, 2023 was $0.50 and the fair value adjustment of the Class B Units for the six months ended June 30, 2023 was $204.

The Company's notes due to affiliates are, subject to TSXV approval, convertible at any time at the election of the holders into Class B Units.

On December 13, 2021, the Company granted 2,475,000 profit interest units ("PIUs") in the OP to officers of the Company and employees of the Advisor. Upon vesting, grantees will receive Class B Units of the OP. As of June 30, 2023, 883,125 of the PIU units have vested. See Note 23 for more information on PIUs granted and vesting schedules.

The following table presents the outstanding units and the change in fair value of the Class B Units for the six months ended June 30, 2023:

	Units	Fair value
Redeemable noncontrolling interests in the OP, January 1, 2023	205,597	$ 309
Net loss attributable to Class B redeemable Units of the OP	—	(33)
Change in fair value of Class B Units redeemable Units of the OP	—	(204)
Adjustment to reflect redemption value of redeemable Class B Units of the OP	—	33
Redeemable noncontrolling interests in the OP, June 30, 2023	205,597	$ 105

Note 15. Finance Costs

The following table summarizes finance costs for the three months and six months ended June 30, 2023 and June 30, 2022:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022 (Restated)	June 30, 2023	June 30, 2022 (Restated)
Interest on debt[1]	$ 3,365	$ 3,186	$ 8,418	$ 6,583
Amortization of deferred financing costs	188	292	398	573
Interest on due to affiliate	804	674	1,596	1,133
Fees related to Nashville forbearance agreement	(1)	—	(4)	12
Finance costs from operations[1]	$ 4,356	$ 4,152	$ 10,408	$ 8,301
Fair value adjustment of Class B Units	(103)	(218)	(204)	(507)
Total finance costs	$ 4,253	$ 3,934	$ 10,204	$ 7,794

Note: Adjusted for the effect of the Misstatement as described in Note 24.

Note 16. Income Taxes

(a) Income tax (expense)/recovery:

The Company has recorded current tax expense/recovery for taxes associated with its direct and indirect subsidiaries. The income tax expense/recovery in the Interim Consolidated Statements of Loss and Comprehensive Loss is as follows:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2023	June 30, 2022	June 30, 2023	June 30, 2022
Net loss before income tax	$ (1,086)	$ (1,279)	$ (4,620)	$ (487)
Less: loss relating to entities not subject to income tax	476	(1,189)	(3,293)	(2,447)
Net income before tax relating to taxable subsidiaries	(1,562)	(90)	(1,327)	1,960
Deferred income tax benefit	(11)	151	9	272
Income taxes	196	(487)	(46)	(544)
Income tax recovery (expense)	$ 185	$ (336)	$ (37)	$ (272)

(b) Deferred income tax benefit:

As of June 30, 2023 and December 31, 2022, the Company has an estimated tax asset of $5,309 and $4,836, respectively, recorded in the Consolidated Statement of Financial Position for certain temporary book-to-tax differences as well as net operating losses associated with its direct and indirect subsidiaries. A summary of the composition of such tax benefits is provided in the table below.

	June 30, 2023	December 31, 2022
Reserves not currently deductible	$ 276	$ 379
Net operating losses carried forward	5,033	4,457
Total tax assets	$ 5,309	$ 4,836

Note 17. Unitholders' Capital

The Company is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the Company. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the Company; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders.

There were no changes to the Units or Unitholders' Capital for the period from January 1, 2023 to June 30, 2023 or from the period January 1, 2022 to June 30, 2022.

In 2021, the Company granted 549,687 deferred units to the independent trustees. These deferred units are issued but not issued and outstanding Units. See Note 23 for further discussion on deferred units and profit interests units.

Note 18. Fair Value of Financial Instruments and Derivatives

a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the Financial Statements are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of June 30, 2023 and December 31, 2022, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of the Loans are estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. At June 30, 2023, the Notes Payable were discounted using rates between 7.19% and 11.65% and the Mezzanine Loans were discounted using a rate of 10.50%. Discount rates are either provided by lenders or are observable in the open market. As of June 30, 2023, the carrying value of the Company's Loans exceeded their fair value by approximately $(28,505) and are considered Level 2 in the fair value hierarchy as inputs are observable directly or indirectly.

The fair value of the redeemable Class B Units is determined based on their redemption value. The redemption value is based on the fair value of the Company's Units at the redemption date, and therefore, is calculated based on the fair value of the Company's Units at the date of the Financial Statements. Since the valuation of the Units are based on observable inputs such as quoted prices for similar instruments in active markets, redeemable non-controlling interests in the OP are classified as Level 2 of the fair value hierarchy.

For the three months and six months ended June 30, 2023, there were no transfers between the different levels of the fair value hierarchy.

(b) Derivative Financial Instruments and Hedging Activities

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company manages interest rate risks primarily by managing the amount, sources, and duration of its debt funding and the use of derivative financial instruments.

The Company performs market valuations on its derivative financial instruments. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate caps are determined using the market standard methodology of discounting the future expected cash receipts that would occur if variable interest rates rise

above the strike rate of the caps. The variable interest rates used in the calculation of projected receipts on the cap are based on an expectation of future interest rates derived from observable market interest rate curves and volatilities.

Interest rate caps involve the receipt of variable-rate amounts from a counterparty if interest rates rise above the strike rate on the contract in exchange for an up-front premium. The Company entered into an interest rate cap agreement upon acquisition of the Park City and Bradenton properties in February 2022. As of June 30, 2023, the interest rate cap agreements the Company has entered into effectively cap one-month SOFR on $36,829 of the Company's floating rate mortgage and mezzanine indebtedness at a weighted average rate of 2.00%.

To comply with the provisions of IFRS 9, *Financial Instruments,* the Company incorporates credit valuation adjustments to appropriately reflect both the Company's own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with the Company's derivatives utilize Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by the Company and its counterparties. The Company has determined that the significance of the impact of the credit valuation adjustments made to its derivative contracts, which determination was based on the fair value of each individual contract, was not significant to the overall valuation. Additionally, in the case of interest rate caps, the Company has no performance obligation, so no credit valuation adjustment is necessary. As a result, all of the Company's derivatives held as of June 30, 2023 and December 31, 2022 were classified as Level 2 of the fair value hierarchy.

Changes in fair value of the interest rate caps are recorded directly in Finance costs from operations. For the six months ended June 30, 2023, the Company incurred minimal interest expense related to changes in the fair value of interest rate caps. The combined fair value of the interest rate caps is $1,879 as of June 30, 2023 and is recorded as Interest rate caps in the Interim Consolidated Statement of Financial Position.

As of June 30, 2023, the Company had the following outstanding interest rate caps:

Type of Derivative	Hedged Financial Instrument	Notional	Strike Rate	Reference Rate		Termination Date
Interest rate cap	Note payable	$ 39,300	2.00%	One-month SOFR	2.00%	March 5, 2025

c) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

A majority of the Company's Loans bears interest at a variable rate and are either subject to a LIBOR floor or have interest rate caps in place. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument. The Company is exposed to credit risk with respect to its interest rate caps, interest rate swaps and trade and other receivables. The credit risk for interest rate caps and interest rate swaps are discussed in Note 18 (b). Credit risk of trade and other receivables is mitigated by initiating a prompt collection process. The Company is also exposed to credit risk with respect to cash and cash equivalents, restricted cash, and counterparties on derivative contracts. This credit risk of such counterparties is mitigated by only transacting with large financial institutions.

(iii) Liquidity risk

The Company's principal liquidity needs arise from working capital requirements, debt servicing and repayment obligations, payments on unhedged interest rate swaps, planned funding of property improvements, leasing costs, distributions to unitholders, property development and acquisition funding requirements. Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the property, the proceeds to the Company may be significantly less than the property's carrying amount.

Liquidity risk is managed through cash flow forecasting. Management monitors forecasts of the Company's liquidity requirements to ensure it has sufficient cash to meet operational needs through maintaining sufficient cash and/or availability on undrawn loan agreements and ensuring that it meets its financial covenants. Such forecasting involves a significant degree of judgment, takes into consideration current and projected macroeconomic conditions, the Company's cash collection efforts, debt financing plans, covenant compliance required under the terms of debt agreements and internal targets. There is a risk that such liquidity forecasts may not be achieved, and that currently available debt financing may no longer be available to the Company at terms and conditions that are favorable to the Company, or at all.

As of June 30, 2023, the Company had a working capital deficiency of $46,114, which is primarily the result of the $16,530 Mezz Facility which matures on December 8, 2023. Additional contractual obligations and contingencies are outlined in Note 20. As mentioned in Note 2(a), there is substantial doubt as to whether the Company can meet all of its obligations as they become due. This is primarily the result of the $16,530 Mezz Facility that matured on January 8, 2020, (and as of July 8, 2023, was further extended by the lender until December 8, 2023) and the remaining debt due in 2024 of $77,353 but also as a result of the impact to the Company's revenue decline due to the COVID-19 pandemic. In order to continue as a going concern, management is actively working towards addressing the Company's liquidity concerns, including the following: (i) negotiating with lenders to extend or otherwise restructure the terms of our loans and obtain relief from covenants in the near term; and (ii) converting payables to an affiliate into Class B Units. In addition, subject to market conditions, the Company may seek to raise funding through new debt and equity financing, including sale-leaseback and ground lease arrangements, though there is no assurance the Company will be able to obtain such financing. The particular features and quality of the underlying assets and the debt and equity market parameters existing at the time of financing may impact the ability to obtain financing.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 5.55% and term SOFR of 5.27% as of June 30, 2023:

	Carrying Amount	Contractual Cash Flows	Reclassified as Held for Sale	1 Year	More than 1 Year
Notes payable	$ 177,349	$ 178,638	$ 64,456	$ 77,353	$ 36,829
Mezzanine loan	16,530	16,500	—	16,500	—
Interest payable on notes and mezzanine loans	11,749	21,585	—	10,289	11,296
Accounts payable and other accrued liabilities	16,932	16,932	3,405	13,527	—
Lease liability	983	1,689	—	161	1,528
Total	$ 223,543	$ 235,344	$ 67,861	$ 117,830	$ 49,653

Note 19. Capital Management

The Company defines capital as the aggregate of unitholders' equity, Class B Units, notes payable and mezzanine loans. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 20. Commitments and Contingencies

a) Franchise agreement

The Company's properties are operated under franchise agreements (the "Franchise Agreements") with Franchisors. The Franchise Agreements require the payment of a monthly royalty fee and monthly marketing fee on the property's gross room revenue. For the six months ended June 30, 2023, franchise fees were $2,420 and are included in operating expenses. Details regarding the Franchise Agreements are presented in the following table:

Property	Brand	Execution Date	Term (Years)	Expiration Date	(% of Gross Rooms Sales) Franchise Fees	Marketing Fees
Dallas Hilton Garden Inn	Hilton	December 31, 2014	15	December 31, 2029	5.50%	4.30%
Addison HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Plano HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Las Colinas HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Olympia DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Tigard DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
St. Petersburg Marriott	Marriott	September 25, 2018	20	September 25, 2038	6%/3%[1]	1.00%
Nashville Holiday Inn Express	Intercontinental Group	January 8, 2019	20	January 8, 2039	3.00%	3.00%
Hyatt Place Park City	Hyatt	February 15, 2022	20	February 23, 2042	5.00%	3.50%
Bradenton Hampton Inn & Suites	Hilton	February 22, 2022	15	February 28, 2037	6.00%	4.00%

[1] 6% of gross rooms sales / 3% of gross food and beverage sales.

b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims.

As a result of the financial impact that the COVID-19 pandemic has had on the Nashville Property and the inability of the hotel to meet its financial covenants and obligations, RSS Multiple – DE NT, LLC, the current lender ("Lender"), filed suit against the HIX Borrowers and the Loan Guarantor, seeking, among other things, to appoint a receiver and to foreclose on their security interest.

On May 26, 2021, the HIX Borrowers and Loan Guarantor executed a forbearance agreement with the Lender that will, when followed, cure the defaults identified by the Lender and bring the loan into good standing. The agreement contains various compliance dates, but the final action in compliance with the forbearance agreement, must occur by February 1, 2022. The HIX Borrowers met the compliance requirements by February 1, 2022. As of June 30, 2023, the HIX Borrowers and Loan Guarantor are currently in good standing under the forbearance agreement.

Note 21. Related party transactions

The Financial Statements include the following transactions with related parties:

Advisory Fees

In accordance with the agreement entered into with the Advisor (the "Advisory Agreement"), the Company pays the Advisor an advisory fee equal to 1.00% of the REIT Asset Value (as defined below). Under the direct supervision of the Company, the duties performed by the Company's Advisor under the terms of the Advisory Agreement include, but are not limited to: providing daily management for the Company, selecting and working with third party service providers, overseeing the third party manager, formulating an investment strategy for the Company and selecting suitable properties and investments, managing the Company's outstanding debt and its interest rate exposure through derivative instruments, determining when to sell assets, and managing the renovation program or overseeing a third party vendor that implements the renovation program. REIT Asset Value means the value of the Company's total assets, as determined in accordance with IFRS except that such value shall only consolidate the Company's and NHT Holdings, LLC assets plus the Company's pro rata share of leverage at the OP.

Pursuant to the terms of the Advisory Agreement, the Company will reimburse the Advisor for all documented Operating Expenses and Offering Expenses it incurs on behalf of the Company. "Operating Expenses" include legal, accounting, financial and due diligence services performed by the Advisor that outside professionals or outside consultants would otherwise perform, the Company's pro rata share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Advisor required for the Company's operations, and compensation expenses under the Omnibus Plan (as defined in Note 23). Operating Expenses do not include expenses for the advisory services described in the Advisory Agreement. Certain Operating Expenses, such as the Company's ratable share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses incurred by the Advisor or its affiliates that relate to the operations of the Company, may be billed monthly to the Company under a shared services agreement. "Offering Expenses" include all expenses (other than underwriters' discounts) in connection with an offering, including, without limitation, legal, accounting, printing, mailing, and filing fees and other documented offering expenses.

The Advisor has reinstated the previously waived 2020 advisory fees and the rebate of accrued but unpaid fees as of December 31, 2019. The Company will begin paying advisory fees when it is able to resume payments while remaining cash flow positive.

Expense Cap

Pursuant to the terms of the Advisory Agreement, expenses paid or incurred by the Company for advisory fees payable to the Advisor and expenses incurred by the Advisor or its affiliates in connection with the services it provides to the Company and its subsidiaries will not exceed 1.5% of REIT Asset Value for the calendar year (or part thereof that the Advisory Agreement is in effect (the "Expense Cap")). The Expense Cap does not limit the reimbursement of expenses related to Offering Expenses. The Expense Cap also does not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation, or other events outside the Company's ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets. For the six months ended June 30, 2023 and June 30, 2022, the Company incurred expenses subject to the Expense Cap of $1,631 and $2,532, respectively.

Internalization Fee

The Company and/or the OP may elect to acquire all of the outstanding and issued equity interests of the Advisor (the "Internalization") by exercising its rights, in its sole discretion, under the Advisory Agreement (subject to certain terms and conditions) to effect an Internalization. The Company will pay the Advisor a fee equal to three times the prior 12 months' Advisory Fee. The Internalization Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date of the Internalization. There has been no internalization as of June 30, 2023.

Termination Fee

If the Company and/or the OP elect to terminate the Advisory Agreement, the Company will pay the Advisor a fee (the "Termination Fee") equal to three times the prior 12 months' Advisory Fee. The Termination Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date the Advisory Agreement is terminated.

Loans from Affiliates

As of June 30, 2023, the OP has entered into several convertible notes with affiliates totaling $82,723 since January 8, 2019. The proceeds of the notes were used for general corporate and working capital purposes and have been consolidated into one account on the Consolidated Statements of Financial Position.

Other Related Party Transactions

The Company has in the past, and may in the future, utilize the services of affiliated parties. For the six months ended June 30, 2023, the Company paid de minimis fees to an affiliated bank, NexBank N.A. ("NexBank"), as the Company and its subsidiaries have several bank accounts at NexBank with a cumulative balance of $11,445 as of June 30, 2023. NexBank is an affiliate of the Advisor through common beneficial ownership.

Note 22. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities, including movements of liabilities to cash flows arising from financing activities for the six months ended June 30, 2023 were as follows:

	Notes Payable, Net	Mezzanine Loans, Net	Total
Balance, December 31, 2022	$ 177,658	$ 18,000	$ 195,658
Changes from financing cash flows:			
Principal payments made	$ (689)	$ (1,500)	$ (2,189)
Total changes from financing cash flows	(689)	(1,500)	(2,189)
Liability related:			
Deferred financing costs accrued	26	30	56
Amortization of deferred financing costs on outstanding debt	354	—	354
Balance, June 30, 2023	$ 177,349	$ 16,530	$ 193,879
Current portion	$ 77,353	$ 16,530	$ 93,883
Held for Sale	$ 64,456	$ —	$ 64,456
Long-term portion	$ 35,540	$ —	$ 35,540

Note 23. Incentive Compensation Plan

The Company has adopted an omnibus equity incentive plan (the "Omnibus Plan") to allow for the grant of equity incentive awards to key officers and employees of the Company, independent trustees, and key employees of the Advisor. As part of the independent trustees' compensation, it is anticipated they will be granted deferred units ("DUs") in the future and may receive, at their election, 100% of their board compensation in the form of DUs. Under the Omnibus Plan, subject to adjustments according to the terms of the plan, the maximum number of Units available for issuance is 3,026,155, representing 20% of the issued and outstanding Units of the Company at the time the Omnibus Plan was adopted.

On June 28, 2021, the Company granted 339,687 DUs to the independent trustees. On December 13, 2021, the Company granted 210,000 DUs to the independent trustees. These DUs are issued but not outstanding and vested immediately upon grant. On December 13, 2021, the Company granted 2,475,000 PIUs in the OP to officers of the Company (2,029,200) and employees of the Advisor (445,800). The PIUs will vest ratably over four years (i.e., 25% per year), however, 50% of the PIUs can vest sooner if the value of the units in the table below is achieved, as determined by a recognized national valuation firm which performs regular valuations of the units. In no case can PIUs vest within one year of grant:

Vesting %		Upon Unit Price Achieving[1]	PIUs Vested
12.50%	$	2.00	294,375
12.50%		2.50	294,375
12.50%		3.00	294,375
12.50%		4.00	294,375
Total			1,177,500

[1]Price to be adjusted for dilutive events.

Assuming none of the performance metrics are met, the PIUs will vest as shown in the below table:

Vesting %	Date	PIUs Vested
25.00%	December 6, 2022	588,750
25.00%	December 6, 2023	588,750
25.00%	December 6, 2024	588,750
25.00%	December 6, 2025	588,750
Total		2,355,000

On December 6, 2022, 588,750 PIUs vested to officers of the company and employees of affiliates of the Advisor. Additionally, 294,375 PIUs vested on December 31, 2022, as the units reached the first price threshold. 120,000 units were forfeited as two employees of affiliates of the Advisor left their roles before the vesting dates.

Description	Units		Fair Value
PIUs vested in the OP, March 31, 2023	883,125	$	1,552
PIUs FV adjustment	—		(216)
Q2 PIU liability accrued over the quarter	—		184
PIUs vested in the OP, June 30, 2023	883,125	$	1,520

Upon conversion, grantees of the PIUs will receive Class B Units of the OP. As of June 30, 2023, 549,687 DUs and 2,355,000 PIUs have been granted under the Omnibus Plan with 121,468 DUs or PIUs remaining that may be granted.

On May 31, 2022, the Board of Trustees passed a resolution adopting a deferred unit plan (the "Deferred Unit Plan"). The Deferred Unit Plan was subsequently approved by unitholders at the annual general meeting held on June 30, 2022. The maximum number of DUs reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As of June 30, 2023, no DUs have been issued under this plan.

Note 24. Mezz Loan Minimum Multiple Amount Restatement

As discussed in Note 13, on January 8, 2019, the Company, through the OP, entered into the $35,000 Mezz Facility. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville Property acquired on January 8, 2019.

The Mezz Facility included a provision which allows the lender to earn a minimum return on their capital (the "Minimum Return"). Although the final amount of the Minimum Return will not be known until the Mezz Facility is paid in full, the Minimum Return attributable to each period is able to be reasonably estimated and, as such, should have been accrued in each respective period. The Company had not accrued the additional interest payable related to the Minimum Return (the "Misstatement") as required under IFRS for the periods from inception (January 9, 2019) through December 31, 2022. The Minimum Return will be owed in full by the Company at maturity of the Mezz Facility, which is currently scheduled for December 8, 2023, along with the principal balance and applicable exit fees.

Management has determined that the impact of the Misstatement is not material to the consolidated financial statements for the years 2019, 2020, 2021, and 2022.

The cumulative balance of the Minimum Return from origination through December 31, 2022 of $5,165 has been recorded as a reduction to the opening Unitholders' Deficit and as an increase to accounts payable and other accrued liabilities on the Consolidated Statement of Financial Position for the six months ended June 30, 2023 and as a reduction to the ending Unitholders' Deficit Consolidated Statement of Financial Position for the year ended December 31, 2022 presented herein. Each prior period has been updated to reflect the impact of the Misstatement.

Period	Increase to Accounts Payable and Other Accrued Liabilities	Increase to Finance Costs from Operations
January 8, 2019 - December 31, 2019	$ 1,154	$ 1,154
Year Ended December 31, 2020	2,454	1,300
Year Ended December 31, 2021	3,973	1,519
Year Ended December 31, 2022	5,165	1,192

The tables below show the updated balances for each prior period had the Minimum Return been property recorded since origination of the Mezz Facility,

	NOTES	Twelve Months Ended December 31, 2022 Prior	December 31, 2022 Adjusted	December 31, 2021 Prior	December 31, 2021 Adjusted
LIABILITIES AND UNITHOLDERS' DEFICIT					
Current liabilities					
Accounts payable and other accrued liabilities	12	$ 20,374	$ 25,539	$ 24,175	$ 28,148
Total current liabilities		40,091	45,256	129,659	133,632
Total Liabilities		302,274	307,439	318,015	321,988
Unitholders' Deficit		5,931	766	(754)	(4,727)
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 308,205	$ 308,205	$ 317,261	$ 317,261

	NOTES	Twelve Months Ended December 31, 2020 Prior	December 31, 2020 Adjusted	December 31, 2019 Prior	December 31, 2019 Adjusted
LIABILITIES AND UNITHOLDERS' DEFICIT					
Current liabilities					
Accounts payable and other accrued liabilities	12	$ 23,456	$ 25,910	$ 19,759	$ 20,913
Total current liabilities		64,304	66,758	55,936	57,090
Total Liabilities		310,824	313,278	279,961	281,115
Unitholders' Deficit		(26,009)	(28,463)	82,073	80,919
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 284,815	$ 284,815	$ 362,034	$ 362,034

	Notes	Twelve Months Ended			
		December 31, 2022		December 31, 2021	
Revenues		Prior	Adjusted	Prior	Adjusted
Finance costs from operations	15	(17,713)	(18,905)	(18,389)	(19,908)
Total other income and (expenses)		(18,805)	(19,997)	16,242	14,723
Income (losses) before income taxes		571	(621)	24,513	22,994
Net income (loss) and comprehensive income (loss) from continuing operations		$ 1,985	$ 793	$ 25,313	$ 23,794
Net income (loss) and comprehensive income (loss)		$ 6,685	$ 5,493	$ 24,271	$ 22,752
Basic and diluted income per unit					
Continuing operations		0.07	0.03	0.86	0.81
Discontinued operations		0.16	0.16	(0.04)	(0.04)
Gain/Loss per unit		$ 0.23	$ 0.19	$ 0.82	$ 0.77
Basic and diluted weighted average number of Units outstanding		29,901,742	29,901,742	29,352,055	29,352,055

	Notes	Twelve Months Ended			
		December 31, 2020		December 31, 2019	
Revenues		Prior	Adjusted	Prior	Adjusted
Finance costs from operations		(18,800)	(20,100)	(20,292)	(21,446)
Total other income and (expenses)		(117,301)	(118,601)	(33,965)	(35,119)
Income (losses) before income taxes		(113,020)	(114,320)	(7,783)	(8,937)
Net income (loss) and comprehensive income (loss) from continuing operations		$ (112,336)	$ (113,636)	$ (7,289)	$ (8,443)
Net income (loss) and comprehensive income (loss)		$ (112,336)	$ (113,636)	$ (7,289)	$ (8,443)
Basic and diluted income per unit					
Continuing operations		(3.83)	(3.87)	(0.25)	(0.29)
Discontinued operations		—	—	—	—
Gain/Loss per unit		$ (3.83)	$ (3.87)	$ (0.25)	$ (0.29)
Basic and diluted weighted average number of Units outstanding		29,352,055	29,352,055	29,352,055	29,352,055

	Notes	Twelve Months Ended			
		December 31, 2022		December 31, 2021	
		Prior	Adjusted	Prior	Adjusted
Cash flows from operating activities					
Net income (loss)		6,685	5,493	24,271	22,752
Adjustments to reconcile net income to net cash used in operating activities:					
Finance costs from operations	15	17,713	18,905	18,389	19,908
Net cash provided by operating activities		23,387	23,387	4,922	4,922

	Notes	Twelve Months Ended			
		December 31, 2020		December 31, 2019	
		Prior	Adjusted	Prior	Adjusted
Cash flows from operating activities					
Net income (loss)		(112,336)	(113,636)	(7,289)	(8,443)
Adjustments to reconcile net income to net cash used in operating activities:					
Finance costs from operations	15	18,800	20,100	20,292	21,446
Net cash provided by operating activities		(803)	(803)	20,918	20,918

Note 25. Subsequent Events

The Company evaluated subsequent events through August 29, 2023 to determine if any significant events occurred subsequent to the interim consolidated balance sheet dates that would have a material impact on the Financial Statements and note the following:

On August 11, 2023, NHT entered into an agreement to sell its HIX Nashville property for $120,000.

On August 29, 2023, NHT executed an amendment with the lender on the Mezz Facility to extend the maturity to December 8, 2023.

TAB 3

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NexPoint Hospitality Trust Provides Update On Liquidity Solutions

March 30, 2021

DALLAS and TORONTO, March 30, 2021 /CNW/ -- NexPoint Hospitality Trust (TSX-V: NHT.U) ("NHT") today announced that a subsidiary of NHT has, between November 2020 and January 2021, issued convertible notes (the "Notes") in the aggregate principal amount of US$5.3 million (the "Liquidity Transactions") to an affiliate of NHT's external advisor.

The Notes bear interest at a rate of 2.25% per annum, and are repayable in trust units of NHT ("Trust Units") at the option of NHT in its sole discretion. The approval of the TSX Venture Exchange will be required prior to any amounts owing under the Notes being satisfied by the issuance of Trust Units. NHT used the proceeds of the Liquidity Transactions for general working capital purposes. Management believes the Liquidity Transactions will further strengthen NHT's balance sheet and liquidity profile to better position itself as the hospitality industry continues to rebound from the impact of the COVID-19 pandemic.

The Liquidity Transactions constituted a related party transaction as defined in Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("MI 61-101"). The Liquidity Transactions were completed in reliance on (i) an available exemption from the formal valuation requirement of MI 61-101 provided in paragraph (a) of Section 5.5 of MI 61-101 and (ii) an available exemption from the minority shareholder requirement of MI 61-101 provided in paragraph (a) of Section 5.7(1) of MI 61-101. The fair market value of the Notes does not exceed and did not exceed at the time of issuance of any of the Notes 25% of NHT's market capitalization.

About NexPoint Hospitality Trust

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its units listed on the TSX Venture Exchange under the ticker NHT.U. NHT is focused on acquiring, owning and operating well located hospitality properties in the United States that offer a high current yield and in many cases, that are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand

repositioning, revenue enhancements, operational improvements, reducing expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 11 branded properties sponsored by Marriott, Hilton and InterContinental Hotels Group, located across the U.S., specifically in the Seattle, Portland, Dallas, Nashville and St. Petersburg markets. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P. For more information, visit www.nexpointhospitality.com.

Cautionary Statement Regarding Forward-Looking Information

This news release may contain forward-looking information within the meaning of applicable securities legislation, which reflects NHT's current expectations regarding future events and in some cases can be identified by terms such as "will", "may", "expected" and other similar expressions. Forward-looking information is based on a number of assumptions and is subject to a number of risks and uncertainties, many of which are beyond NHT's control, that could cause actual results and events to differ materially from those that are disclosed in or implied by such forward-looking information. Such risks and uncertainties include, but are not limited to, risks related to the effect of the Liquidity Transactions on NHT's balance sheet and liquidity profile and the ability of the hospitality industry to recover from the impact of the COVID-19 pandemic. Information contained in forward-looking statements is based upon certain material assumptions. While management considers these assumptions to be reasonable based on currently available information, they may prove to be incorrect. NHT does not undertake any obligation to update such forward-looking information, whether as a result of new information, future events or otherwise, except as expressly required by applicable law. This forward-looking information speaks only as of the date of this news release.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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SOURCE NexPoint Hospitality Trust

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TAB 4

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FOR IMMEDIATE RELEASE

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NexPoint Hospitality Trust Announces Fiscal Year 2021 Financial Results, Acquisition Activity, Convertible Notes, Equity Awards Under the Omnibus Plan

DALLAS and TORONTO, April 8, 2022 -- NexPoint Hospitality Trust ("NHT"[1]), (TSX-V: NHT.U) announced the release of NHT's financial results for the twelve months ended December 31, 2021. All amounts are expressed in U.S. dollars.

The table below presents Net Income (Loss), FFO and AFFO.

	For the Year Ended	
	December 31, 2021	**December 31, 2020**
Net Income (Loss)	$ 24.3	$ (112.3)
FFO[2]	(9.2)	(17.6)
AFFO[2]	(10.5)	(20.2)

The table below presents Occupancy, ADR and RevPAR.

	For the Year Ended	
	December 31, 2021	**December 31, 2020**
Occupancy	62.6%	41.8%
ADR	$ 122.16	$ 110.14
RevPAR	$ 78.85	$ 47.16

Additional information on 2021 financial and operational results can be found at www.sedar.com in our 2021 audited consolidated financial statements and management discussion and analysis ("MD&A").

Acquisition Activity

NHT acquired the Hyatt Place in Park City, Utah on February 15, 2022. Located minutes away from one of America's premier outdoor sports destinations, the Hyatt Place has 122 rooms, several dining options, an outdoor pool and hot tub, and secure sports equipment storage options.

[1] In this release, "we," "us," "our," and "NHT" each refer to NexPoint Hospitality Trust.
[2] FFO, Core FFO and AFFO are non-IFRS measures. See "Non-IFRS Financial Measures" in our MD&A for definitions of each of these measures and a reconciliation of these measures to Net Income.

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Additionally, NHT acquired the Hampton Inn & Suites Bradenton Downtown Historic District in Bradenton, Florida on February 22, 2022. The property boasts 119 rooms, a fitness center, an outdoor pool, and 2,282 square feet of meeting space. The Hampton Inn & Suites is centrally located, with easy access to several beaches, a business district, and various entertainment venues.

Both new properties have performed well since acquisition as they were both in season in February and through mid-March. As the Park City asset moves out of season, Management expects to begin value-add renovations.

NHT Capitalization Updates

NHT announced that a subsidiary of NHT has, between July 2021 and December 2021, issued convertible notes (the "Notes") in the aggregate principal amount of US$19.09 million (the "Liquidity Transactions") to affiliates of NHT's external advisor.

The Notes bear interest at a rate of 2.25% per annum and are repayable in membership interests ("Membership Interests") of NHT's operating subsidiary, NHT Operating Partnership, LLC (the "OP"), which are redeemable for trust units of NHT ("Trust Units") at the option of NHT in its sole discretion. The approval of the TSX Venture Exchange will be required prior to any conversion of the Membership Interests into Trust Units. NHT used the proceeds of the Liquidity Transactions for general working capital purposes. Management believes the Liquidity Transactions will further strengthen NHT's balance sheet and liquidity profile to better position itself as the hospitality industry continues to rebound from the impact of the COVID-19 pandemic. The fair market value of each Note does not exceed and did not exceed at the time of issuance of such Note 25% of NHT's market capitalization.

Each of the Liquidity Transactions constituted a related party transaction as defined in Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions ("MI 61-101"). The Liquidity Transactions were completed in reliance on (i) an available exemption from the formal valuation requirement of MI 61-101 provided in paragraph (a) of Section 5.5 of MI 61-101 and (ii) an available exemption from the minority shareholder requirement of MI 61-101 provided in paragraph (a) of Section 5.7(1) of MI 61-101.

Additionally, in December 2021 pursuant to NHT's omnibus equity incentive plan, NHT issued 210,000 Deferred Units to the independent trustees and 2,475,000 Profits Interests in the OP to officers of NHT and employees of the Advisor. As of December 31, 2021, there are 1,468 Deferred Units or Profits Interests remaining that may be granted under the omnibus equity incentive plan. The Deferred Units vested immediately. The Profits Interests vest ratably over four years, however, 50% of the Profits Interests can vest sooner if certain unit price thresholds are achieved. See note 23 of the audited consolidated financial statements for a detailed discussion of equity awards under the omnibus equity incentive plan.

About NHT

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. and NHT is focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital

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improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 13 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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NexPoint Hospitality Trust Announces First Quarter 2022 Financial Results, Intent to Sell DoubleTree Portfolio, and Convertible Notes

DALLAS and TORONTO, May 27, 2022 -- NexPoint Hospitality Trust ("NHT"[1]), (TSX-V: NHT.U) announced the release of NHT's financial results for the three months ended March 31, 2022. All amounts are expressed in U.S. dollars.

The table below presents Net Income, FFO and AFFO.

	For the Three Months Ended	
	March 31, 2022	**March 31, 2021**
Net Income	$ 0.7	$ 13.5
FFO[2]	5.9	(8.0)
AFFO[2]	3.5	(8.5)

The table below presents Occupancy, ADR and RevPAR.

	For the Three Months Ended	
	March 31, 2022	**March 31, 2021**
Occupancy	60.8%	51.9%
ADR	$ 152.52	$ 93.79
RevPAR	$ 95.31	$ 48.39

Additional information on 2022 financial and operational results can be found at www.sedar.com in our 2022 interim consolidated financial statements and management discussion and analysis ("MD&A").

DoubleTree Portfolio

On March 8, 2022, the Company began the marketing process to sell its DoubleTree Portfolio. As of May 27, 2022, the Company has received multiple offers and expects the transaction to close in the third quarter of 2022. The Company will use the proceeds from the sale to pay down the outstanding debt on the DT Portfolio with the remaining proceeds used to make principal paydowns on existing third party debt.

[1] In this release, "we," "us," "our," and "NHT" each refer to NexPoint Hospitality Trust.
[2] FFO and AFFO are non-IFRS measures. See "Non-IFRS Financial Measures" in our MD&A for definitions of each of these measures and a reconciliation of these measures to Net Income.

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NHT Capitalization Updates

NHT announced that a subsidiary of NHT has, between January 1, 2022, and March 31, 2022, issued convertible notes (the "Notes") in the aggregate principal amount of US$27.48 million (the "Liquidity Transactions") to affiliates of NHT's external advisor. NHT repaid $4.55 million of principal to affiliates in the first quarter of 2022.

The Notes bear interest at varying rates and are repayable in membership interests ("Membership Interests") of NHT's operating subsidiary, NHT Operating Partnership, LLC (the "OP"), which are redeemable for trust units of NHT ("Trust Units") at the option of NHT in its sole discretion. The approval of the TSX Venture Exchange will be required prior to any conversion of the Membership Interests into Trust Units. NHT used the proceeds of the Liquidity Transactions for general working capital purposes. Management believes the Liquidity Transactions will further strengthen NHT's balance sheet and liquidity profile to better position itself as the hospitality industry continues to rebound from the impact of the COVID-19 pandemic. The fair market value of each Note does not exceed and did not exceed at the time of issuance of such Note 25% of NHT's market capitalization.

Each of the Liquidity Transactions constituted a related party transaction as defined in Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions ("MI 61-101"). The Liquidity Transactions were completed in reliance on (i) an available exemption from the formal valuation requirement of MI 61-101 provided in paragraph (a) of Section 5.5 of MI 61-101 and (ii) an available exemption from the minority shareholder requirement of MI 61-101 provided in paragraph (a) of Section 5.7(1) of MI 61-101.

About NHT

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. and NHT is focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 13 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

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NexPoint Hospitality Trust Announces Third Quarter 2022 Improving Financial Results, Update on Sale of DoubleTree Portfolio, and Convertible Notes

November 14, 2022

DALLAS and TORONTO, Nov. 14, 2022 /CNW/ -- NexPoint Hospitality Trust ("NHT"[1]), (TSX-V: NHT.U) announced the release of NHT's financial results for the three and nine months ended September 30, 2022. All amounts are expressed in U.S. dollars. Additional information on 2022 financial and operational results can be found at www.sedar.com in our 2022 interim unaudited consolidated financial statements and management discussion and analysis ("MD&A").

The table below presents net income from continuing operations, Funds from Operations ("FFO") and Adjusted Funds from Operations ("AFFO").

	For the Three Months Ended		For the Nine Months Ended	
	September 30, 2022	September 30, 2021	September 30, 2022	September 30, 2021
Net income	$ (0.9)	$ 0.1	$ (1.7)	$ 7.8
FFO[2]	0.4	(0.4)	5.4	(11.5)
AFFO[2]	(0.1)	(2.9)	5.3	(11.9)

The table below presents Occupancy, ADR and RevPAR.

	For the Three Months Ended		For the Nine Months Ended	
	September 30, 2022	September 30, 2021	September 30, 2022	September 30, 2021
Occupancy	69.3 %	68.8 %	67.6 %	62.5 %
ADR	$ 155.41	$ 144.66	$ 158.78	$ 119.34
RevPAR	$ 108.64	$ 100.62	$ 108.70	$ 76.26

DoubleTree Portfolio

On March 8, 2022, the Company began the marketing process to sell its DoubleTree Portfolio. As of September 30, 2022, the Company has sold the Beaverton property and Vancouver property for a combined purchase price of US$29 million. The Company has executed purchase and sale agreements on the Tigard property and Bend property for a combined purchase price of US$53 million and expects these transactions to close in the fourth quarter of 2022. The Company will use the proceeds from the sale to pay down the outstanding debt on the DoubleTree Portfolio.

The Company has opted to no longer sell the Olympia property at this time.

NHT Capitalization Updates

NHT previously announced that a subsidiary of NHT had, between July 1, 2022, and September 30, 2022, issued convertible notes (the "Notes") in the aggregate principal amount of US$8.5 million (the "Liquidity Transactions") to affiliates of NHT's external advisor.

The Notes bear interest at varying rates and are repayable in membership interests ("Membership Interests") of NHT's operating subsidiary, NHT Operating Partnership, LLC (the "OP"), which are redeemable for trust units of NHT ("Trust Units") at the option of NHT in its sole discretion. The approval of the TSX Venture Exchange will be required prior to any conversion of the Membership Interests into Trust Units. NHT used the proceeds of the Liquidity Transactions for general working capital purposes. Management believes the Liquidity Transactions will further strengthen NHT's balance sheet and liquidity profile to better position itself as the hospitality industry continues to rebound from the impact of the COVID-19 pandemic. The fair market value of each Note does not exceed and did not exceed at the time of issuance of such Note 25% of NHT's market capitalization.

Each of the Liquidity Transactions constituted a related party transaction as defined in Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions ("MI 61-101"). The Liquidity Transactions were completed in reliance on (i) an available exemption from the formal valuation requirement of MI 61-101 provided in paragraph (a) of Section 5.5 of MI 61-101 and (ii) an available exemption from the minority shareholder requirement of MI 61-101 provided in paragraph (a) of Section 5.7(1) of MI 61-101.

Non-IFRS Financial Measures

FFO and AFFO are key measures of performance commonly used by real estate operating companies and real estate investment trusts. They are not measures recognized under International Financial Reporting Standards ("IFRS") and do not have standardized meanings prescribed by IFRS. FFO and AFFO may not be comparable to similar measures presented by other issuers in the real estate or lodging industries. For complete definitions of these measures, as well as an explanation of their composition and how the measures provide useful information to investors, please refer to the section titled "Non-IFRS Financial

Measures" in NHT's MD&A for the three months and nine months ended September 30, 2022, which section is hereby incorporated herein by reference.

The following is a reconciliation of our net income to FFO and AFFO for the three months and nine months ended September 30, 2022 and September 30, 2021:

	For the Three Months Ended		For the Nine Months Ended	
	September 30, 2022 $	September 30, 2021 $	September 30, 2022 $	September 30, 2021 $
Net income (loss) from continuing operations	(900)	(93)	(1,699)	7,773
Depreciation of property and equipment	3,106	2,606	8,980	7,699
Depreciation of right-of-use asset	84	79	251	237
Amortization of advanced bookings from acquisitions	268	—	486	—
Fair value adjustment to interest rate swaps	—	(190)	—	(4,803)
Acquisition costs	134	—	498	—
Change in value of interest rate caps	(826)	—	(1,397)	—
Deferred income tax recovery	(581)	(115)	(960)	(187)
Fair value adjustment of Class B Units	(311)	236	(818)	(18)
Impairment (recovery)/loss	(570)	(3,090)	20	(22,183)
Funds from Operations	(404)	(381)	5,361	(11,482
FFO per unit - basic	(0.01)	(0.01	0.18	(0.29)
Income taxes	(434)	(1,759)	117	(283)
FF&E reserve	(684)	(990)	(2,041	(1,304)
Amortization of deferred financing costs	337	208	932	645
Stock Compensation	311	—	900	543
Adjusted Funds from Operations	(66)	(2,922)	5,269	(11,881)
AFFO per unit - basic	–	(0.10)	0.18	(0.40)
Weighted average units outstanding - basic	29,352,055	29,352,055	29,352,055	29,352,055

About NHT

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. and NHT is focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 11 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

Contact:

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[1] In this release, "we," "us," "our," and "NHT" each refer to NexPoint Hospitality Trust.
[2] FFO and AFFO are non-IFRS measures. For a description of the basis of presentation and reconciliations of NHT's non-IFRS measures, see "Non-IFRS Financial Measures" in this release.

SOURCE NexPoint Hospitality Trust

View All News

TAB 7

NEXPOINT HOSPITALITY TRUST

Audited Consolidated Financial Statements

For the years ended December 31, 2022 and December 31, 2021

(Expressed in U.S. dollars)

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Independent Auditor's Report

To the Unitholders and Board of Directors of
NexPoint Hospitality Trust

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated statements of financial position of NexPoint Hospitality Trust (the "Company") as of December 31, 2022 and 2021, and the related consolidated statements of income and comprehensive income, unitholders' equity, and cash flows for the years then ended, and the related notes (collectively, the "consolidated financial statements"), including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and results of its operations and its cash flows for the years then ended, in accordance with International Financial Reporting Standards (IFRS), as issued by International Accounting Standards Board.

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards (CAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Material Uncertainty Related to Going Concern

We draw attention to Notes 2(a) and 13 of the accompanying consolidated financial statements, which indicate the Company has a $11,486,000 working deficit (Note 2(a)), related mostly to the current portion of notes payable and mezzanine loan of $19,386,000 (Note 13). As stated in Note 2(a), these events or conditions, along with other matters as set forth in Note 2(a), indicate that a material uncertainty exists that may cast significant doubt about the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

Key Audit Matters

Key audit matters are those matters that, in the auditor's professional judgement, were of most significance in the audit of the consolidated financial statements of the current period. These matters were addressed in the context of our audit of the financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters.

Investments in hotel properties, net - Indicators of impairment and recovery

Description of the Matter

As of December 31, 2022, the Company had investments in hotel properties, net of accumulated depreciation, impairment, and recoveries, of $284,290,000. As further disclosed in Note 6 in the notes to the consolidated financial statements, the Company records impairment losses on hotel properties used in operations if indicators of impairment are present and the sum of the undiscounted cash flows estimated to be generated by the respective properties over their estimated remaining useful life, based on historical and industry data, is less than the properties' carrying amounts. If the sum of the undiscounted cash flows estimated indicates the impairment loss has decreased from a previous period, the Company records impairment recoveries on hotel properties used in operations. Many indicators of impairment and recovery are subjective. The Company prepares an annual recoverability analysis assuming estimated cash flows for each of its properties to assist with its evaluation of impairment indicators. In association with the recovery test, the Company also evaluates whether a recovery of a previous impairment loss should be recorded.

Auditing management's analysis is complex due to the highly judgmental nature of identifying indicators of impairment as well as any change in the property's intended hold period and projected undiscounted future cash flows. In addition, assessing for recovery requires a similar highly judgmental process as assessing the indicators of impairment.

How We Addressed the Matter in Our Audit

We obtained an understanding and evaluated the design over the Company's review of indicators of impairment, including changes in the intended hold period.

Our testing of the Company's indicators of impairment or recoverability included, among others, testing the recoverability analysis, both internally and through corroboration with third-party industry guides and industry experts. For example, we tested estimated cash flows by comparing them to historical operating results by property and current industry, market, and economic trends through third-party industry guides. In addition, we considered the hold period necessary for the property's carrying value to be recovered via undiscounted cash flows. We held discussions with management about the status of any potential transactions and management's judgments to understand the probability of future events that could affect the holding period and other cash flow assumptions for the properties.

Material uncertainty related to going concern

See the Material Uncertainty Related to Going Concern section of this report for further discussion on this matter.

Other Information

Management is responsible for the other information. Other information comprises Management's Discussion and Analysis filed with the relevant Canadian Securities Commissions. Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audits of the consolidated financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audits, or otherwise appears to be materially misstated.

We obtained Management's Discussion and Analysis filed with the relevant Canadian Securities Commissions as of the date of this auditor's report. If, based on the work we have performed on this other information, we conclude that there is a material misstatement of this other information, we are required to report that fact in the auditor's report. We have nothing to report in this regard.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of the consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.

- Conclude on the appropriateness of management's use of going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to event or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of the auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.

- Evaluate the overall presentation, structure, and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- Communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during the audit.

- Provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and communicate with them all relationships and other matters that may reasonable be thought to bear on our independence, and where applicable, related safeguards.

- From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities with the group to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

The engagement partner on the audit resulting in this independent auditor's report is Ashley M. Babinchak.

Nashville, Tennessee
April 4, 2023

NEXPOINT HOSPITALITY TRUST
AUDITED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	NOTES	December 31, 2022	December 31, 2021
ASSETS			
Current assets			
Cash and cash equivalents		$ 3,174	$ 1,532
Restricted cash	8	7,350	7,055
Trade and other receivables		1,608	3,802
Prepaid and other assets		1,517	2,573
Assets held for sale	6	14,956	-
Total current assets		28,605	14,962
Non-current assets			
Right-of-use assets	7	3,240	2,129
Interest rate caps		1,988	-
Property and equipment, net	7	269,536	297,564
Deferred tax assets	16	4,836	2,606
Total non-current assets		279,600	302,299
TOTAL ASSETS		$ 308,205	$ 317,261
LIABILITIES AND UNITHOLDERS' DEFICIT			
Current liabilities			
Accounts payable and other accrued liabilities	12	$ 20,374	$ 24,175
Current portion of notes payable	13	1,386	85,484
Current portion of mezzanine loan	13	18,000	20,000
Liabilities directly associated with the assets held for sale	6	331	-
Total current liabilities		40,091	129,659
Non-current liabilities			
PPP Loan	13	-	4,000
Lease liability	7	1,063	1,224
Notes payable, net	13	176,272	119,569
Mezzanine loan, net	13	-	13,063
Convertible affiliate notes	13	82,723	50,068
Accrued Profit Sharing		1,816	—
Class B redeemable units of OP	14	309	432
Total non-current liabilities		262,183	188,356
Total Liabilities		302,274	318,015
Unitholders' Equity (Deficit)		5,931	(754)
TOTAL LIABILITIES AND UNITHOLDERS' EQUITY (DEFICIT)		$ 308,205	$ 317,261

See accompanying notes to the audited consolidated financial statements

NEXPOINT HOSPITALITY TRUST
AUDITED CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	Notes	December 31, 2022	December 31, 2021
Revenues			
Rooms		$ 55,207	$ 32,563
Food and beverage		3,561	1,600
Other income		3,195	1,877
Asset management fee income		144	—
Total revenues		62,107	36,040
Other income and (expenses)			
Operating expenses	9	(32,900)	(21,441)
Operating general and administrative expenses	10	(9,831)	(6,328)
Total hotel operating expenses		(42,731)	(27,769)
Operating income		19,376	8,271
Depreciation of property and equipment	7	(12,104)	(10,283)
Depreciation of right-of-use asset	7	(334)	(316)
Amortization of advanced bookings from acquisitions		(682)	—
Corporate general and administrative expenses	11	(3,452)	(2,330)
Advisory fees	12	(2,167)	(1,791)
Acquisition costs	12	(498)	(162)
Gain on disposal - sale		6,382	—
Disposal of property and equipment		-	(2,823)
Casualty gain, net of insurance proceeds	7	508	502
Finance costs from operations	15	(17,713)	(18,389)
Fair value adjustment of Class B Units	14,15	123	194
Fair value adjustment to interest rate swaps		-	7,994
Impairment recovery	3,7	829	38,162
Forgiveness of PPP loans	13	2,846	3,331
Income related to forbearance agreement	13	4,612	—
Refund from franchisors		168	2,153
Write off of payables	12	1,131	—
Gain on fair value adjustments to interest rate caps	15	1,546	—
Total other income and (expenses)		(18,805)	16,242
Income before income taxes		571	24,513
Penalties and interest, gross receipts tax		(124)	-
Income taxes	16	(115)	(45)
Deferred income tax benefit	16	1,653	845
Net income and comprehensive income from continuing operations		$ 1,985	$ 25,313
Discontinued operations			
Net income (loss) and comprehensive income (loss) from discontinued operations	6	4,700	(1,042)
Net income and comprehensive income		$ 6,685	$ 24,271
Basic and diluted income per unit			
Continuing operations		0.07	0.86
Discontinued operations		0.16	(0.04)
Gain/Loss per unit		$ 0.23	$ 0.82
Basic and diluted weighted average number of Units outstanding		29,901,742	29,352,055

See accompanying notes to the audited consolidated financial statements

NEXPOINT HOSPITALITY TRUST
AUDITED CONSOLIDATED STATEMENTS OF UNITHOLDERS' EQUITY (DEFICIT)
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

Year ended December 31, 2022	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2021		$ 99,007	$ (99,761)	$ (754)
Net income		—	6,685	6,685
Balances, December 31, 2022		$ 99,007	$ (93,076)	$ 5,931

Year ended December 31, 2021	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2020		$ 98,023	$ (124,032)	$ (26,009)
Net income		—	24,271	24,271
Deferred units issued	23	984	—	984
Balances, December 31, 2021		$ 99,007	$ (99,761)	$ (754)

See accompanying notes to the audited consolidated financial statements

	Notes	December 31, 2022	December 31, 2021
Cash flows - operating activities			
Net income		$ 6,685	$ 24,271
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation of property and equipment	7	12,104	10,283
Depreciation of right-of-use asset	7	334	316
Franchise fee amortization		2,167	53
Deferred income tax benefit	16	(1,653)	(845)
Finance costs from operations	15	17,713	18,389
Fair value adjustment of Class B Units	15	(123)	(194)
Forgiveness of PPP Loans	13	(2,846)	(3,331)
Stock compensation expense	23	1,816	1,026
Unrealized gain on interest rate derivatives	15	(1,546)	(7,994)
Impairment recovery	3,7	(829)	(38,162)
Income related to forbearance agreement	13	(4,612)	—
Casualty gain, net of insurance proceeds	7	(508)	(502)
(Gain) loss on disposal - sale		(6,382)	2,823
Changes in non-cash working capital items:			
Operating assets		641	(3,756)
Operating assets held for sale		(204)	—
Operating liabilities		(817)	(2,630)
Operating liabilities directly related to assets held for sale		331	—
Income taxes		(239)	(45)
Changes in operating activities from discontinued operations		1,355	5,220
Net cash provided by operating activities		23,387	4,922
Cash flows - investing activities			
Additions to property and equipment	7	(3,451)	(5,436)
Insurance proceeds related to casualty loss		(273)	990
Acquisitions of property and equipment	7	(53,514)	(3,597)
Disposals of property and equipment	7	65,575	—
Additions to ROU asset	7	(1,445)	—
Change in restricted cash	8	(295)	(729)
Net cash provided by (used in) investing activities		6,597	(8,772)
Cash flows - financing activities			
Lease liability paid	7	(161)	(154)
Proceeds from PPP Loan	22	—	4,000
Due to affiliate	13	32,655	35,904
Proceeds from notes payable	13	36,829	—
Principal payments on notes payable	22	(63,135)	(4,177)
Principal payments on Mezz Facility	22	(15,063)	(15,000)
Deferred financing costs paid	22	(2,304)	(144)
Interest paid on outstanding debt		(17,163)	(16,125)
Net cash provided by (used in) financing activities		(28,342)	4,304
Net increase in cash and cash equivalents		1,642	454
Cash and cash equivalents, beginning of year		1,532	1,078
Cash and cash equivalents, end of year		$ 3,174	$ 1,532

See accompanying notes to the audited consolidated financial statements

NEXPOINT HOSPITALITY TRUST
AUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	Notes	December 31, 2022	December 31, 2021
Supplemental disclosure of cash flow information			
Non-cash items			
Forgiveness of PPP loans	13	2,846	3,331
Refund from franchisors		168	2,153

See accompanying notes to the audited consolidated financial statements

Note 1. Overview

NexPoint Hospitality Trust ("NHT" or the "Company") is an unincorporated, open-ended real estate investment trust ("REIT") established pursuant to a declaration of trust dated December 12, 2018 under the laws of the Province of Ontario. The registered office of the Company is at 333 Bay Street, Suite 3400, Toronto, Ontario. NHT was created for the purpose of initially acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. NHT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "Advisor"), which was formed for the purpose of managing NHT and is related to the Company through common indirect ownership as well as common control.

NHT has elected to be treated as a REIT under U.S. tax laws. Substantially all of NHT's business will be conducted through NHT Operating Partnership, LLC (the "OP"), NHT's operating partnership, which is a Delaware limited liability company. NHT owns its properties through the OP and its subsidiaries. The OP and its subsidiaries lease the properties to taxable REIT subsidiaries of NHT (the "TRS Entities") to operate. For NHT to qualify as a REIT under the United States Internal Revenue Code of 1986, as amended (the "Code"), NHT cannot operate directly or indirectly any of the hotels it acquires and owns. Therefore, the OP and its subsidiaries lease the hotels to the TRS Entities who in turn engage eligible independent contractors (as defined in the Code), which for the Initial Portfolio and subsequent additions are affiliates of Aimbridge Hospitality Holdings, LLC, to manage the hotels.

The objectives of NHT are to: (a) provide unitholders with an opportunity to invest in an initial portfolio of extended-stay, select-service and efficient full service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of NHT's assets and maximize the long-term value of the Class A units of the OP (the "Class A Units"), Class B units of the OP (the "Class B Units") and trust units of NHT (the "Units"), collectively, through active asset and property management programs and procedures and a renovation program; and (d) expand the asset base of NHT primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

NHT's Units are listed on the TSX Venture Exchange (the "TSXV") under the symbol NHT.U.

Formation of NHT and the Initial Portfolio

On January 8, 2019, three groups of investors contributed their interests in various entities (the "Contribution Entities") to NHT Holdco LLC ("Holdco") in exchange for 100% of the units of Holdco. Holdco then contributed its interests in the Contribution Entities to a subsidiary of Holdco, NHT Intermediary, LLC ("Intermediary") in exchange for 100% of the common and preferred units of Intermediary. Intermediary then contributed its interests in the Contribution Entities to NHT Holdings, LLC ("Holdings") in exchange for 100% of the units of Holdings. Holdings then contributed its interests in the Contribution Entities to the OP in exchange for 14,213,077 Class A Units (these transactions collectively are referred to as the "Class A Contributions"). Simultaneously with the Class A Contributions, NexPoint Real Estate Opportunities, LLC ("NREO") and minority members contributed their interests in two entities, to the OP in exchange for 13,573,391 Class B Units (the "Class B Contributions" and together with the Class A Contributions the "Initial Transaction"). 2,779 Class B Units were issued as a nominal interest to the General Partner. The Class A Contributions were considered to be common-control transactions and were accounted for using book value accounting. The Class B Contributions were considered to be a business combination and were accounted for using the purchase method of accounting in accordance with IFRS 3, *Business Combinations* ("IFRS 3"). Subsequent to the Initial Transaction, the OP owned a direct interest in the Initial Portfolio.

On March 27, 2019, Holdco contributed its interests in Intermediary to NHT in exchange for 14,213,077 Units. The transaction was considered to be a common-control transaction and was accounted for using book value accounting. Subsequent to the steps described above, NHT indirectly owns the Initial Portfolio.

The hotels in the Initial Portfolio are located across the U.S. All of the hotels in the Initial Portfolio are franchised with the following brands: Hilton Hotels under the following brands: (i) DoubleTree (five hotels) (the "DT Portfolio"); (ii) HomeWood Suites (three hotels) (the "HWS Portfolio"); and (iii) Hilton Garden Inn (one hotel) (the "HGI Property"); Marriott under the Marriott brand (one hotel) (the "St. Pete Property"); and InterContinental Hotels Group under the Holiday Inn Express brand (one hotel) (the "Nashville Property").

For the period from December 12, 2018 to January 8, 2019, the Company's only transaction consisted of the issuance of one Unit for fifteen dollars.

Note 2. Basis of Preparation

a) Going concern

The global response to the COVID-19 pandemic had a large negative impact on the Company's operations in 2020 and the first quarter of 2021. Public companies in the North American lodging sector generally saw a significant decline in their stock prices on average during 2020. The well-publicized impacts on the hospitality industry, including shelter-in-place orders in the markets in which the Company operates, as well as a reduction in transient business travel, which the Company relies upon, reduced the Company's room rates and occupancies and had a significant impact on the Company's operations in 2020 and early 2021. Additionally, data shows that air travel, and consequently, hotel occupancy and average daily rates, were down significantly, with large groups having canceled events. Occupancy declined from an average of 75.1% across the portfolio in 2019 to a low of 12.17% across the portfolio during April 2020, and the Average Daily Rate ("ADR") declined from an average of $145.81 in 2019 to a low of $93.95 during April 2020.

Since the end of January 2021, the hospitality sector in general and the Company specifically have seen significant improvements in operations. Notwithstanding seasonality trends, the fourth quarter of 2022 showed continued improvement over the fourth quarter of 2021 and fourth quarter 2020, with an occupancy of 67.3% across the portfolio compared to 63.1% and 41.4% in the fourth quarter of 2021 and 2020, respectively. We have seen a rebound in occupancy and ADR as COVID-19 vaccines have been globally rolled out, restrictions have been removed altogether, and people have resumed travel. Large group and convention business and business transient bookings have returned to pre-COVID levels as most employees have returned to the office either full-time or in a hybrid model and businesses have removed travel restrictions, enabling the transient segment to recover to pre-COVID levels

At December 31, 2022, the Company had a working capital deficit of $11,486, of which $18,000 relates to the principal balance on the Mezz Facility (as defined in Note 13), which was originally due on January 8, 2020. The impact to the global economy caused by the response to the COVID-19 pandemic had negatively impacted the Company's ability to obtain new financing, and as a result, the Company was unable to refinance the principal balance of the Mezz Facility. As of the date of these audited consolidated financial statements, the Company has obtained another extension for the maturity of the Mezz Facility until July 8, 2023. See Note 24.

At December 31, 2022, the Company had $1,386 of amortizing principal payments and $16,501 of other liabilities due over the next twelve months through December 31, 2023. Of the liabilities, the Company has payment plans in place for $1,823 of these liabilities and continues to work with vendors for the remainder to make repayment by December 31, 2023. The Company added $36,829 of debt to secure the purchases of the Hampton Bradenton and Hyatt Park Cities properties in February of 2022. The DT Loan, Mezz A Loan and Mezz B Loan (each as defined in Note 13), were repaid December 8, 2022 with the proceeds from the sale of the DT Bend property December 31, 2022.

On September 18, 2020, the lender on the HIX Loan (as defined in Note 13) delivered a formal notice of default. NHT Nashville, LLC and NHT Nashville TRS, LLC, the borrowers on the loan (the "HIX Borrowers"), worked with the lender to achieve a mutually agreeable resolution in May 2021, which resolved the default. Those discussions resulted in the HIX Borrowers and the OP, the guarantor on the loan ("Loan Guarantor"), signing a forbearance agreement. The HIX Borrowers cured all events of default and met all compliance requirements of the forbearance agreement on February 1, 2022 and the loan is now in good standing. See Note 20(b).

As of December 31, 2022, the Company is in good standing with the lenders on all of its outstanding Loans (as defined in Note 13). Covenant waivers have been granted at various dates on each loan or the lender has informally, or formally, agreed not to pursue available remedies currently.

Management is actively working towards addressing the matters noted above that create uncertainty for the Company as a going concern, which includes the following:

i) The Company has been granted extensions of the maturity of the Mezz Facility while each party continues in good faith discussions to restructure the facility.

ii) On March 24, 2020, the board of the Company agreed to temporarily suspend distributions for the foreseeable future to conserve cash.

iii) The Company expects to settle most of its amounts due to affiliates through the issuance of additional Class B Units, most of which do not mature for 20 years. See Notes 13, 14, and 21.

iv) On March 24, 2020, the Advisor agreed to defer the advisory fee until such time as the Company is no longer in forbearance with its lenders and is able to resume payments while remaining cash flow positive. The Advisor did not collect any fees for the years ended December 31, 2022, 2021, or 2020.

v) Marriott has revised the required property improvement plan (the “PIP”) for the St. Pete property, which is now expected to cost $7,200 in total and has granted an extension for completion in two phases: June 30, 2021 and December 31, 2022. As of December 31, 2022 the Company has $1,200 in reserves with the lender that can be used toward the PIP. The first phase of the PIP was completed in November 2021 and the Company started the second phase of the renovation in late 2022.

vi) Affiliates of the Advisor provided $36,975 to the Company through the fourth quarter of 2022, in the form of convertible notes. The Company also repaid $4,550 of principal to affiliates in the first quarter of 2022. The Company does not anticipate needing regular cash infusions any longer as Management believes the Company will be cash flow positive in 2023. See Note 13 and Note 21.

vii) States and cities have removed COVID-19 restrictions altogether, all of which is significantly improving the outlook for the lodging sector overall and for the Company specifically. This is displayed in the increase of future group bookings for 2022 and 2023. Occupancy and ADR across the portfolio have increased from 63.1% and $130.53, respectively from the fourth quarter of 2021 to 67.3% and $146.01, respectively for the fourth quarter of 2022.

viii) On August 24, 2022, the Company sold the DT Vancouver Property, on September 30, 2022, the Company sold the DT Beaverton Property, and on December 8, 2022, the Company sold the DT Bend Property. The Company anticipates the sale of the DT Tigard Property to occur before the end of 2023. The Company used the proceeds from these sales to de-lever the portfolio, retiring all debt associated with the Double Tree properties. See Note 6 for a further discussion.

There can be no assurance that the Company will continue to generate positive cash flows from operations, whether any of these required measures may be completed, or whether they will provide the Company with sufficient liquidity. In order to continue as a going concern, the Company needs to (i) generate positive cash flows, which assumes the continuance of current operations, (ii) be successful in continuing to obtain the concessions from its creditors as noted above, and such concessions must provide the Company with sufficient liquidity to fund its cash flow deficits in the intervening period, and (iii) be successful in refinancing its notes and mezzanine loans payable as they come due. As a result of these facts, the Company has determined there is a potential risk about the Company’s ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business.

These audited consolidated financial statements of the Company (the “Financial Statements”) have been prepared on a going concern basis, which assumes the Company will continue its operations in the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. The Financial Statements do not include any adjustments to classification of assets and liabilities and reported expenses that may be necessary if the going concern basis was not appropriate for these Financial Statements. If the Company is unable to continue as a going concern, material write-downs to the carrying values of the Company’s assets, could be required.

Although management believes it can continue as a going concern if the plan outlined above comes to fruition, it is important to note that many of the assumptions included in management’s internal cash flow projections are out of its control. For example, the Company does not control the timing of the distribution of the COVID-19 vaccine and boosters, the spread of any new variants of the COVID-19 virus or whether governmental authorities may impose new shelter-in-place orders as variants of the virus continue to mutate, as has been the case in some other jurisdictions. For these reasons, it is difficult for the Company to estimate the likelihood of these events occurring, the timing of when they may occur or the impact they will have once they occur. The Company is optimistic but proceeds with caution in determining recovery assumptions in management’s internal cash flow projections as there are many factors to consider.

Additionally, the Company has a significant portion of its debt maturing in the next twelve months, with $77,400 in notes maturing in March 2024. Management believes the aforementioned cash flow uncertainty paired with the significant note maturities can potentially have an adverse affect on the Company.

Finally, inflation in the United States is at a 40-year high, with the country experiencing prolonged periods of negative GDP growth as a result. The Company has not seen a negative impact on performance like it did with COVID-19, but management continues to monitor the economic indicators and their potential negative impact on the portfolio.

b) Statement of compliance

These Financial Statements have been prepared by management in accordance with International Financial Report Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). These Financial Statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

The Financial Statements were authorized for issue by the Board of Trustees of NHT on April 4, 2023.

c) Basis of presentation

The Initial Portfolio was acquired by the Company on March 27, 2019, as a result of the contribution of the common and preferred interests in Intermediary to the Company by Holdco in exchange for Units. On January 8, 2019, these assets were contributed to entities under the control of Holdco. The Company and Intermediary are considered to be under common control since at the time of contribution Holdco owned 100% of the interests in Intermediary and subsequent to the completion of the contribution of Intermediary owned 100% of the Company. The Financial Statements reflect the financial position and results of operations as if the Company had owned the Initial Portfolio since January 8, 2019.

d) Basis of measurement

The Financial Statements have been prepared on a historical cost basis, except for Class B Units, interest rate swaps and interest rate caps which are recorded at fair value through profit and loss.

e) Use of estimates and judgments

The preparation of the Financial Statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the Financial Statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected. Assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the future financial year relate to interest rate swaps, interest rate caps, the assessment of impairment of property and equipment, indefinite life intangible assets as described in Note 3(e).

In the process of applying the accounting policies, the Company makes various judgments, apart from those involving estimations, that can significantly affect the amounts it recognized in the Financial Statements. Information about critical judgments in applying accounting policies that have the most significant effect on the amounts recognized in the Financial Statements relate to the following:

i) The componentization of property and equipment as described in Note 3(d).
ii) Impairment of property and equipment or the recovery of prior impairment as described in Note 3(e).
iii) Management's assessment of whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The Company's acquisitions are generally determined to be business combinations as the Company acquires an integrated set of processes as part of the acquisition transaction.
iv) Management's assessment of whether or not the Company controls entities in which it has an interest. This involves evaluating the Company's ability to make decisions over the relevant activities of such entities and to determine to what extent the Company is exposed to the variable returns of the entities. This assessment impacts the identification of the Company's subsidiaries and as a result which entities it consolidates.
v) The Company's ability to continue as a going concern as detailed in Note 2(a). This determination involves making assumptions about future events and about how third parties, which act independently of the Company and its assumptions, may react to current and future events that have an impact on the Company's ability to continue as a going concern.

Note 3. Significant Accounting Policies

The significant accounting policies used in the preparation of the Financial Statements are described below and have been applied consistently to all periods presented:

a) Basis of consolidation

The Financial Statements include the accounts of the Company and its wholly owned subsidiaries including Holdings, the OP and subsidiaries of the OP, which are controlled by the Company in accordance with IFRS 10, *Consolidated Financial Statements*. Control exists when the Company is exposed to or has the rights to variable returns from its involvement with the entity and has the ability to affect those returns through its power. All significant intercompany accounts and transactions have been eliminated on consolidation.

b) Business combinations

At the time of acquisition of a property, whether through a controlling share investment or directly, the Company considers whether the acquisition represents the acquisition of a business. The Company accounts for an acquisition as a business combination where an integrated set of activities is acquired in addition to the property. More specifically, the extent to which significant processes are acquired is considered. If no significant processes, or only insignificant processes, are acquired, the acquisition is treated as an asset acquisition rather than a business combination. The Company generally considers the acquisition of a hospitality asset to be a business combination as an integrated set of activities with significant processes are acquired in the transaction.

The purchase price of a business combination is measured as the fair value of the assets given, equity instruments issued and liabilities incurred or assumed at the acquisition date. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at fair value at the date of acquisition. The Company recognizes assets or liabilities, if any, resulting from a contingent consideration arrangement at their acquisition date fair value and such amounts form part of the purchase price of the business combination. Subsequent changes in the fair value of contingent consideration arrangements are recognized in profit or loss. The difference between the purchase price and the fair value of the acquired identifiable net assets and liabilities is goodwill. On the date of acquisition, positive goodwill is recorded as an asset in the Company's Consolidated Statement of Financial Position. Negative goodwill is immediately recognized in profit or loss. The Company expenses transaction costs associated with business combinations in the period incurred.

When an acquisition does not meet the criteria for business combination, it is accounted for as an acquisition of a group of assets and liabilities. The purchase price of the acquisition, including transaction costs, are allocated to the assets and liabilities acquired based upon their relative fair values. No goodwill is recognized for asset acquisitions.

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were accounted for as business combinations.

c) Functional currency

The functional and presentation currency of the Company and its subsidiaries is the U.S. dollar. All amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

d) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes initial acquisition costs and other direct costs. Significant parts of the buildings are accounted for as separate components of the property, based on management's judgment of what components constitute a significant cost in relation to the total cost of an asset and whether these components have similar or dissimilar patterns of consumption and useful lives for purposes of calculating depreciation.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and its components and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains or losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honor its obligation.

Asset	Useful Life (Years)
Building structure	40
Buildings - mechanical, electrical and elevators	30
Buildings - roof, windows, and doors	20
Building improvements	5 - 15
Interior upgrades	3
Furniture, fixtures and equipment	5 - 7
Leases	Length of lease

e) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment or recovery. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. However, when an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

f) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized through profit or loss. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through profit or loss.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the

credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in profit or loss.

The Company has made the following classifications for its financial instruments:

Financial Instrument	Classification Under IFRS 9
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Lease liability	Amortized cost
Interest rate swaps and caps	FVTPL
Accounts payable and other accrued liabilities	Amortized cost
Note payable	Amortized cost
Mezzanine loan	Amortized cost
Class B redeemable units of OP	FVTPL
PIU redeemable units of OP	FVTPL

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized in profit or loss.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

Units that are redeemable at the option of the holder are considered puttable instruments in accordance with International Accounting Standards 32, *Financial Instruments – Presentation* ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32; in which case, the puttable instruments may be presented as equity. Units meet the exemption conditions of IAS 32 and are, therefore, presented as equity.

The Class B Units are redeemable for cash or Units on a one-for-one basis subject to customary anti-dilution adjustments at the option of the Company and, therefore, the Class B Units meet the definition of a financial liability under IAS 32. Further, the Class B Units are designated as financial liabilities at FVTPL and are measured at fair value at each reporting period with any changes in fair value recorded in profit or loss. The Class B Units are, in all material aspects, economically equivalent to Units on a per unit basis. The distributions paid on Class B Units are accounted for as finance costs.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. NHT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in profit or loss with the carrying amount of the financial asset or group of financial assets reduced.

g) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

h) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with, or under the control of, lenders in respect of future capital expenditures, insurance and taxes.

i) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

j) Revenue recognition

IFRS 15, *Revenue from Contracts with Customers,* establishes a comprehensive framework for determining whether, how much and when revenue is recognized. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded as a component of accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

k) Finance costs from operations

Finance costs from operations consist primarily of interest expense on outstanding debt, the amortization of deferred financing costs, net of interest income and distributions made to Class B unitholders. Interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the effective interest method, and are included in finance costs from operations. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's Consolidated Statement of Financial Position.

l) Income taxes

(i) Canadian mutual fund status

NHT is a mutual fund trust pursuant to the Income Tax Act (Canada). Under current tax legislation, a mutual fund trust that is not a Specified Investment Flow-Through Trust ("SIFT") pursuant to the Income Tax Act (Canada) is entitled to deduct distributions of taxable income such that it is not liable to pay income taxes provided that its taxable income is fully distributed to unitholders. NHT intends to qualify as a mutual fund trust that is not a SIFT trust and to make distributions not less than the amount necessary to ensure that NHT will not be liable to pay income taxes.

(ii) U.S REIT Status

The Company expects to be classified as a corporation for U.S. federal income tax purposes pursuant to section 7874 of the Code. Further, the Company expects to be treated as a U.S. corporation for all purposes under the Code and, as a result, it would be permitted to elect to be treated as a REIT under the Code, notwithstanding it will be organized as a Canadian entity. In general, a company that elects REIT status, distributes at least 90% of its REIT taxable income to its shareholders in any taxable year, and complies with certain other requirements is not subject to U.S. federal income taxation to the extent of the income it distributes. If it fails to qualify as a REIT in any taxable year, it will be subject to U.S. federal income tax at regular corporate income tax rates on its taxable income. Even if it qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed income. The Company

has reviewed the REIT requirements and expects that it will qualify as a REIT under the Code. Accordingly, no provision for U.S. federal income or excise taxes has been made with respect to the income of the Company.

The Company, through wholly owned subsidiaries, leases the Initial Portfolio and intends to lease any future acquisitions to the TRS Entities, which are taxable in the U.S. A TRS is a corporation that has not elected REIT status and has made a joint election with a REIT to be treated as a TRS. As such, it is subject to U.S. federal and state corporate income tax. The income tax effects on the results of the TRS Entities accrue directly to the unitholders of the Company.

For these entities, income tax expense comprises current and deferred taxes. Current tax and deferred tax are recognized in profit or loss except to the extent that they relate to a business combination, or to items recognized directly in equity or in other comprehensive income.

(iii) Current taxes

Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years. The amount of current tax payable or receivable is the best estimate of the tax amount expected to be paid or received that reflects uncertainty related to income taxes, if any.

(iv) Deferred taxes

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: (a) the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, (b) differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future and (c) for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date.

(v) Tax uncertainties

Judgement is required to assess the interpretation of tax legislation when recognizing and measuring current and deferred tax assets and liabilities. The impact of different interpretations and applications could potentially be material. The Company recognizes a tax benefit from an uncertain tax position when it is probable that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of technical merits.

(vi) 2017 Tax Act

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire at the end of 2025.

m) Operating segments

The Company currently operates in one business segment, owning and operating hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

n) Leases

Under IFRS 16, *Leases*, the Company records the initial present value of unavoidable future lease payments as right-of-use assets and lease liabilities on the Company's Consolidated Statement of Financial Position. The right-of-use assets are initially measured at cost and subsequently measured at cost less accumulated depreciation and impairment losses, adjusted for any remeasurement of the lease liabilities. The lease liabilities are initially measured at the present value of the unavoidable future lease payments discounted using the discount rate implicit in the lease (or if that rate cannot be readily determined, the lessee's incremental borrowing rate). Subsequently, the lease liabilities are adjusted for interest and lease payments, and impact of lease modifications, if any.

o) Levies

In accordance with International Financial Reporting Interpretations Committee ("IFRIC") 21, *Levies* ("IFRIC 21"), the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

p) Recent accounting pronouncements

On October 22, 2018, the IASB issued amendments to IFRS 3, that seek to clarify whether a transaction results in an asset or a business acquisition. The amendments apply to businesses acquired in annual reporting periods beginning on or after January 1, 2020. Earlier application is permitted.

The amendments include an election to use a concentration test. This is a simplified assessment that results in an asset acquisition if substantially all of the fair value of the gross assets is concentrated in a single identifiable asset or a group of similar identifiable assets. If a preparer chooses not to apply the concentration test, or the test is failed, then the assessment focuses on the existence of a substantive process.

The Company adopted the amendments on January 1, 2020, when the standard became effective and it did not have a material impact on its Financial Statements.

q) Government assistance

The Company may receive financial grants from the government in return for past or future compliance with certain conditions relating to its operating activities. These financial grants are recorded in income by the Company when there is reasonable assurance that the Company will comply with the relevant conditions and the financial grant is received. If these conditions are not met, grants received are recognized as a liability.

The Company requested and was granted forgiveness of the first PPP loans in September and October 2021. The Company recognized the balance of the forgiven loans and forgiven accrued interest in profit or loss in accordance with IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance.* As of December 31, 2022, the Company recognized $2,846 of forgiven loans in profit or loss in accordance with IAS 20.

r) Reclassification of items in the financial statements

The Company may, from time to time, record reclassifications of certain items in the Financial Statements to ensure proper representation based on facts and circumstances of the Company.

Note 4. Investment in Subsidiaries and Special Purpose Entities

In connection with its indirect equity investments in real estate assets acquired, the Company, through Holdings and the OP, indirectly holds an ownership interest in the properties, through the OP's 100% ownership of the membership interests in special purpose LLCs ("SPEs") that directly own the properties. All of the properties the Company has acquired are consolidated in the Company's Financial Statements. Under the terms of each respective mortgage payable, the lender has a perfected security interest in each real estate asset and related personal property.

The loans to NHT 2325 Stemmons, LLC ("NHT 2325 Stemmons"), NHT DFW Portfolio, LLC ("NHT DFW") and NHT SP, LLC ("NHT SP") are cross-collateralized and thus the assets of each entity are subject to recourse in the event of default. Additionally the Note A Loan and Note B Loan (as defined in Note 13) are cross-defaulted with the Mezz Facility. The lender on the Mezz Facility has a perfected security interest in the membership interest of NHT 2325 Stemmons, NHT DFW Portfolio and NHT SP.

As of December 31, 2022, the Company, through the OP, owned 10 properties through SPE subsidiaries of the OP. The following table presents each SPE that directly owns the title to each property as of December 31, 2022:

Subsidiary	Ownership	Parent	Properties Owned	SPE Subsidiaries Owned	TRS Subsidiaries Owned	Gross Assets	Gross Allocable Notes Payable and Mezzanine Debt
NHT Holdings, LLC	100.0%	NexPoint Hospitality Trust (the Company)	n/a	n/a	n/a	$ 308,205	$ 197,327
NHT Operating Partnership, LLC (the OP)	100.0%	NHT Holdings, LLC	n/a	n/a	n/a	308,205	197,327
NHT 2325 Stemmons, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Dallas Hilton Garden Inn	1	1	33,691	19,021
NREO NW Hospitality, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	DoubleTree Portfolio	2	2	31,807	-
NHT DFW Portfolio, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	HomeWood Suites Portfolio	3	3	33,286	29,216
NHT SP, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Marriott St. Petersburg	1	1	38,446	29,116
NexPoint Multifamily Capital Trust, Inc.	100.0%	NHT Operating Partnership, LLC (the OP)	Holiday Inn Express Nashville	1	1	108,253	65,145
NHT Bradenton, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Bradenton Hampton Inn & Suites	1	1	26,885	17,305
NHT Park City, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Hyatt Place Park City	1	1	30,232	19,525

Note 5. Business Combinations and Contributions of Net Assets

On January 8, 2019 five of the hospitality properties forming part of the Initial Portfolio were indirectly contributed to the Company and the transaction was considered to be a common-control transaction and was accounted for using book value accounting. Simultaneously, the six other hospitality properties forming part of the Initial Portfolio were indirectly contributed to the Company in what was considered to be a business combination and was accounted for using the purchase method of accounting in accordance with IFRS 3, Business Combinations. See prior year financial statements of the Company available on SEDAR for a further discussion on the formation and contribution of the Initial Portfolio.

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were considered to be business combinations and were accounted for using the purchase method of accounting in accordance with IFRS 3, Business Combinations.

On February 14, 2022, the Company made a $200 deposit on a tract of land at the HUB Research Triangle Park in North Carolina. The Company plans to develop a hotel on this site in partnership with a developer that the Advisor has collaborated with previously .

Purchase accounting

The following table summarizes the fair values of the assets acquired and liabilities assumed for the acquisitions accounted for using the purchase method of accounting in 2022:

	NHT Bradenton, LLC	NHT Park City, LLC	Total
Fair value of consideration transferred:	$ 25,973	$ 29,616	$ 55,589
	25,973	29,616	55,589
Property and equipment	24,251	29,660	53,911
Right of use asset	1,445	—	1,445
Intangible assets	304	340	644
Other liabilities	(27)	(384)	(411)
Fair value of net assets acquired and liabilities assumed	$ 25,973	$ 29,616	$ 55,589

The Company acquired the Park City and Bradenton properties for $56,000 and received a credit from the seller of the Park City property in the amount of $200.

Descriptions of the net assets acquired

NHT Park City, LLC

On February 15, 2022, the OP acquired 100% of the LLC interests in NHT Park City, LLC, which owns the Hyatt Place hotel in Park City, Utah ("Park City"). The Park City property is a 122-room hotel located near Park City ski mountain. Originally built in 2016, the property is almost exclusively focused on leisure travel. Additionally, we requested, and Hyatt granted, the addition of a destination fee for all guests, which should materially increase NOI achieved pre-pandemic. In the first month of ownership, the Park City property exceeded in occupancy, ADR and RevPAR as compared to the same period in 2019.

NHT Bradenton, LLC

On February 23, 2022, the OP acquired 100% of the LLC interests in NHT Bradenton, LLC, which owns the Hampton Inn & Suites hotel in Bradenton, Florida ("Bradenton"). The Bradenton property is a 119-room hotel that hosts multiple major league baseball teams during spring training and is a leisure destination area year-round given the temperate climate in the winter and access to the beach. This property represents a traditional value-add opportunity for NHT. Over the last several years this property has lost RevPAR index to the competitor set, however we believe that with the right renovations, Bradenton should be able to close the gap on the competitor set while sitting in the heart of a growing economy in southern Florida.

Note 6. Discontinued Operations, Dispositions and Assets Held for Sale

	December 31, 2022	December 31, 2021
Revenues		
Rooms	$ 13,262	$ 12,630
Food and beverage	590	403
Other income	331	379
Total revenues	14,183	13,412
Hotel operating expenses		
Operating expenses	(7,146)	(6,328)
Operating general and administrative expenses	(3,027)	(2,905)
Total hotel operating expenses	(10,173)	(9,233)
Operating income	4,010	4,179
Other income and (expenses)		
Depreciation of property and equipment	(595)	(3,043)
Gain on sale of assets	2,680	—
Finance costs from operations	(2,515)	(2,253)
Impairment loss	(627)	—
Forgiveness of PPP loans	1,154	—
Total other income and (expenses)	97	(5,296)
Income (loss) from discontinued operations before income taxes	4,107	(1,117)
Income taxes	17	-
Deferred income tax benefit	576	76
Net income (loss) and comprehensive income (loss) from discontinued operations	$ 4,700	$ (1,042)

On August 24, 2022, the Company sold the DT Vancouver Property for $14,500, on September 30, 2022, the Company sold the DT Beaverton Property for $14,500, and on December 8, 2022, the Company sold the DT Bend Property for $38,500. The Company used the proceeds from the sale of the DT Bend Property to retire the outstanding debt on the DT Portfolio (DT Loan, Mezz A Loan and Mezz B Loan). As of December 31, 2022 the DT Tigard Property remains held-for-sale. The Company is in the early stages of analyzing the potential sale of the DT Olympia Property as of December 31, 2022.

	December 31, 2022
Trade and other receivables	$ 28
Prepaid and other assets	173
Property and equipment, net	14,755
Assets held for sale	$ 14,956
Accounts payable and other accrued liabilities	$ 331
Liabilities directly associated with assets held for sale	$ 331

For the year ended December 31, 2022, the Company recorded $627 of impairment recovery to the assets held for sale.

Note 7. Fixed Assets and Leases

a) Property and Equipment, Net

	Land and Land Improvements	Buildings and Improvements	Construction in Progress	Furniture, Fixtures and Equipment	Total
Cost:					
Balance, December 31, 2020	$ 35,742	$ 223,372	$ 1,013	$ 40,611	$ 300,738
Additions - during the period	—	979	4,052	405	5,436
Disposals - during the period	—	(1,598)	—	(2,473)	(4,071)
St. Pete PIP placed into service	—	1,702	(4,320)	2,618	—
Casualty loss	—	(584)	—	—	(584)
Impairment recovery (loss) - during the period	5,094	30,578	(157)	2,647	38,162
Balance, December 31, 2021	$ 40,836	$ 254,449	$ 588	$ 43,808	$ 339,681
Additions - during the period	4	103	2,239	1,105	3,451
Additions - acquired	4,730	42,298	—	6,486	53,514
Assets sold	(7,769)	(51,270)	(84)	(6,452)	(65,575)
Assets held for sale	(1,478)	(13,451)	(36)	(2,234)	(17,199)
Casualty loss	—	(850)	—	(25)	(875)
Impairment recovery (loss) - during the period	273	734	(144)	7	870
Balance, December 31, 2022	$ 36,596	$ 232,013	$ 2,563	$ 42,695	$ 313,867
Accumulated depreciation:					
Balance, December 31, 2020	$ 1	$ 15,413	$ —	$ 14,721	$ 30,135
Depreciation - During the period	3	6,789	—	6,534	13,326
Adjustment for disposal during the period	—	(130)	—	(1,118)	(1,248)
Adjustment for casualty loss during the period	—	(61)	—	(35)	(96)
Balance, December 31, 2021	$ 4	$ 22,011	$ —	$ 20,102	$ 42,117
Depreciation expense - during the period	2	6,316	—	5,786	12,104
Depreciation expense - assets held for sale	—	66	—	70	136
Depreciation expense - assets sold during the period	—	697	—	549	1,246
Adjustment for casualty loss during the period	—	(67)	—	(16)	(83)
Accumulated depreciation - assets sold	—	(4,621)	—	(4,124)	(8,745)
Accumulated depreciation - assets held for sale	—	(1,132)	—	(1,312)	(2,444)
Balance, December 31, 2022	$ 6	$ 23,270	$ —	$ 21,055	$ 44,331
Carrying amount, December 31, 2021	$ 40,832	$ 232,438	$ 588	$ 23,706	$ 297,564
Carrying amount, December 31, 2022	$ 36,590	$ 208,743	$ 2,563	$ 21,640	$ 269,536

The Company's fixed asset additions are primarily related to (i) various upgrades and improvements required by the Company's franchise agreements; (ii) the Company's renovation program; and (iii) typical ongoing capital maintenance items. Depreciation during the period includes depreciation of land improvements.

As mentioned in Note 3(f), non-financial assets are reviewed at each reporting date to determine if there is any indication of impairment or recovery. For the years ended December 31, 2022 and December 31, 2021, the Company recorded a recovery of impairment of $870 and $38,162 to real estate assets, respectively. In assessing the value in use of the real estate assets, the cash flow estimates were derived from detailed financial forecasts prepared by the Company for 2022. The forecasted cash flow is extended through December 31, 2027 and asset values were determined using a discounted cash flow analysis with terminal cap rates and discount

rates used in the most recent appraisals provided by a recognized national valuation firm and adjusted to take into account how various research analysts are now pricing other publicly traded hospitality REITs.

As of December 31, 2022 the Company has classified one asset as held for sale in the consolidated Statement of Financial Position. See Note 6.

b) Leases

The Company's leases consist of land and vehicles at December 31, 2022 and December 31, 2021.

Right of Use Asset	**Land**	**Vehicles**	**Total**
Balance, December 31, 2020	$ 3,013	$ 81	$ 3,094
Balance, December 31, 2021	$ 3,013	$ 81	$ 3,094
Acquisitions	$ 1,445	$ -	$ 1,445
Balance, December 31, 2022	$ 4,458	$ 81	$ 4,539
Accumulated depreciation:			
Balance, December 31, 2020	$ 600	$ 49	$ 649
Depreciation - During the period	300	16	316
Balance, December 31, 2021	$ 900	$ 65	$ 965
Depreciation - During the period	318	16	334
Balance, December 31, 2022	$ 1,218	$ 81	$ 1,299
Carrying amount, December 31, 2021	$ 2,113	$ 16	$ 2,129
Carrying amount, December 31, 2022	$ 3,240	$ -	$ 3,240

Lease Liability	**Land**	**Vehicles**	**Total**
Balance, December 31, 2020	$ 1,345	$ 33	$ 1,378
Interest expense	4	—	$ 4
Changes from financing cash flows:			
Lease liability paid	(142)	(16)	$ (158)
Balance, December 31, 2021	$ 1,207	$ 17	$ 1,224
Interest expense	4	—	4
Changes from financing cash flows:			
Lease liability paid	(148)	(17)	(165)
Balance, December 31, 2022	$ 1,063	$ -	$ 1,063
Carrying amount, December 31, 2021	$ 1,207	$ 17	$ 1,224
Carrying amount, December 31, 2022	$ 1,063	$ -	$ 1,063

Note 8. Restricted Cash

The Company funded restricted cash reserves for brand-mandated PIPs and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement and future insurance and property tax expenses. Restricted cash reserves for PIP programs are typically expected to be spent over an 18-24 month period once work begins. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. Additionally, the Company presents reserves and escrows for taxes and insurance as restricted cash. Cash proceeds in reserve accounts are primarily held by a lender, though in some cases they are held by the Company. Cash reserves to be held by lenders are only available to meet the expenses for which they are reserved against and cannot be used to extinguish general liabilities. The funds for the renovation of the St. Pete Property are included in furniture, fixtures and equipment ("FF&E") reserves in the table below.

The following table summarizes the amounts of cash reserves in each of these categories as of December 31, 2022 and December 31, 2021:

	December 31, 2022	December 31, 2021
PIPs reserve	$ 175	$ 175
FF&E Reserves	4,556	2,213
Property tax reserve	2,397	2,842
Insurance, cash collateral and other reserves	222	692
Nashville restricted cash[1]	—	1,133
Total restricted cash	$ 7,350	$ 7,055

[1]In accordance with the forbearance agreement executed with the Lender on May 26, 2021, the Nashville Property is under cash management until it achieves a debt service coverage ratio as specified by the lender for two consecutive quarters. The Nashville property achieved the required debt service coverage ratio in the first and second quarters of 2022. As of the date of this report, the Nashville property no longer holds any cash in the cash management account.

Note 9. Operating Expenses

The following table summarizes components of operating expenses for the years ended December 31, 2022 and December 31, 2021 which are included in the Consolidated Statements of Income and Comprehensive Income:

	December 31, 2022	December 31, 2021
Payroll	$ 14,546	$ 8,708
Franchise fees	4,086	2,330
Cost of goods sold	4,091	2,323
Utilities	1,810	1,467
Supplies and equipment	1,765	1,008
Property taxes and insurance	5,025	4,118
Other operating expenses	615	907
Repairs and maintenance	962	580
Operating expenses	$ 32,900	$ 21,441

The Company recognizes the property tax levy on January 1st of the calendar year in accordance with IFRIC 21.

Note 10. Operating General and Administrative Expenses

The following table summarizes components of general and administrative expenses for the years ended December 31, 2022 and December 31, 2021 which are included in the Consolidated Statements of Income and Comprehensive Income:

	December 31, 2022	December 31, 2021
Marketing	$ 4,105	$ 2,685
Operations G&A	2,939	1,660
Property management fees	1,802	1,188
Other administrative expenses	985	795
Operating general and administrative expenses	$ 9,831	$ 6,328

Note 11. Corporate General and Administrative Expenses

The following table summarizes components of corporate general and administrative expenses for the years ended December 31, 2022 and December 31, 2021 which are included in the Consolidated Statements of Income and Comprehensive Income:

	December 31, 2022	December 31, 2021
Audit fees and financial reporting	$ 444	$ 462
Tax preparation	192	163
Consulting fees	84	97
D&O Insurance	97	157
Legal fees	401	308
Trustee fees and stock compensation	1,963	950
TSXV listing fees	23	50
Filing fees	22	18
Other administrative expenses	226	125
Corporate general and administrative expenses	$ 3,452	$ 2,330

Note 12. Accounts Payable and Other Accrued Liabilities

The following table summarizes components of accounts payable and other accrued liabilities as of December 31, 2022 and December 31, 2021 which are included in the Consolidated Statements of Financial Position:

	December 31, 2022	December 31, 2021
Trade payables	$ 2,440	$ 1,709
Payroll and payroll taxes payable	695	725
Property taxes payable	1,315	1,423
Sales and occupancy tax payable	781	673
Property management fees payable	851	1,309
Interest payable on outstanding debt and interest rate swaps	4,319	7,751
Franchise fees payable	442	622
Deposit liability	19	85
Offering costs payable	-	212
Other payables	1,477	1,439
Forbearance fee payable	-	342
Professional service fees payable	55	985
Acquisition costs payable	475	1,231
Advisory fee payable	6,802	4,635
Distributions payable to Class B unitholders	1,034	1,034
Accounts payable and other accrued liabilities	$ 20,705	$ 24,175

On November 15, 2019, the Company filed a prospectus registering $500 million additional units, debt securities, subscription receipts and warrants with the intent to raise capital in a secondary offering of the Company's Units (the "Offering"). After launching the Offering, the Company abandoned the Offering on December 18, 2019. As of December 31, 2022, NHT had a zero balance for unpaid offering costs. As a result of the Company's efforts to close its previously disclosed merger with, *inter alia,* Condor Hospitality Trust, Inc. (the "Merger"), the Company has unpaid expenses related to the transaction of $475 as of December 31, 2022, which are related primarily to legal and audit expenses and are included in acquisition costs payable.

Accounts payable and other accrued liabilities of $331 are associated with assets held for sale at December 31, 2022. The balance of accounts payable and other accrued liabilities on the Consolidated Statement of Financial Position does not include this amount as it is presented separately and included in liabilities directly associated with the assets held for sale. See Note 6.

Note 13. Notes Payable, Net, Mezzanine Loans, Net and PPP Loans

The following tables further describe mortgages and other debt instruments as of December 31, 2022 and December 31, 2021 which are included in the Consolidated Statements of Financial Position:

Notes Payable

	December 31, 2022	December 31, 2021
Notes payable	$ 179,327	$ 205,632
Less: current maturities	(1,386)	(85,484)
Less: unamortized portion of deferred financing costs	(1,669)	(579)
Notes payable, net	$ 176,272	$ 119,569

Mezzanine Loans

	December 31, 2022	December 31, 2021
Mezzanine loans	$ 18,000	$ 33,063
Less: current maturities	(18,000)	(20,000)
Mezzanine loans, net	$ -	$ 13,063

On January 8, 2019, in connection with the acquisition of NREO NW Hospitality, LLC, the Company assumed a $55,000 term loan (the "DT Loan"), a $7,365 mezzanine A loan (the "Mezz A Loan") and a $5,700 mezzanine B loan (the "Mezz B Loan"), with a large non-bank company. The Mezz B Loan served as a PIP holdback and was available to the Company for future PIP expenditures and bore interest at a variable rate equal to 30-day LIBOR plus 3.45%. The DT Loan was secured by the DT Portfolio and bore interest at a variable rate equal to the 30-day LIBOR plus 2.35%. The Mezz A Loan bore interest at a variable rate equal to the 30-day LIBOR plus 11.66%. The DT Loan, Mezz A Loan and Mezz B Loan all matured on May 9, 2021 and each of these loans could be extended by the Company for two 12-month periods. The Company executed the first extension on March 10, 2021 extending the maturity date of the DT Loan, Mezz A Loan and Mezz B Loan to May 9, 2022. The DT Loan, Mezz A Loan and Mezz B Loan matured on May 9, 2022, and the Company negotiated a six-month extension bringing the maturity date to November 9, 2022. The DT Loan, Mezz A Loan and Mezz B Loan matured on November 9, 2022, and the Company negotiated a one-month extension bringing the maturity date to December 9, 2022. For the period from January 1, 2022 to December 31, 2022 the Company paid $2,371, $1,040, and $313 in interest on the DT Loan, Mezz A Loan and the Mezz B Loan, respectively. The Company paid down $28,200 of the DT Loan in Q3 of 2022 upon the sales of the DT Beaverton Property and DT Vancouver Property. The Company paid the down the remainder of the DT Loan, Mezz A Loan, and Mezz B Loan balances on December 8, 2022 from the proceeds of the sale of the DT Bend Property.

The Company executed an amendment to the Mezz A Loan and Mezz B Loan dated June 26, 2020 granting the following forbearance and waivers: forbearance of interest for four months through August 31, 2020, waiver of covenants through March 31, 2021, release of FF&E reserves and waiver on contributions to FF&E reserves for four months through August 31, 2020. The Company executed another amendment to the Mezz A Loan and Mezz B Loan granting forbearance of interest from December 2020 through March 2021. The Company paid all deferred interest on the Mezz A Loan and Mezz B Loan in the second quarter of 2022 totaling $484 and $175, respectively.

On January 8, 2019, in connection with the acquisition of the Nashville Property, the Company assumed the existing loan on the property of $72,500 with an outstanding balance of $69,929 (the "HIX Loan"). The HIX Loan is secured by the Nashville Property and bears interest at a fixed rate equal to 5.12% and matures on June 30, 2026.

The HIX Loan contains customary representations, warranties, and events of default, which require the HIX Borrowers to comply with affirmative and negative covenants. On September 18, 2020, the lender delivered a formal notice of default to the HIX Borrowers. On May 26, 2021, the HIX Borrowers executed a forbearance agreement with the lender. See Note 20(b) for further discussion surrounding the Nashville Property.

On January 8, 2019, the Company, through the OP, entered into a $35,000 mezzanine facility (the "Mezz Facility") with a large non-bank company. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville Property acquired on January 8, 2019. The Mezz Facility is secured by a pledge of the membership units in NHT 2325 Stemmons, NHT DFW Portfolio, and NHT SP, bears interest at a variable rate equal to the 30-day LIBOR plus 6.25% and had an original maturity date of January 8, 2020. As of December 31, 2022, the Mezz Facility had an effective interest rate of 8.73%. For the period from January 1, 2022 to December 31, 2022, the Company paid $1,266 in interest on the Mezz Facility.

On February 28, 2019, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $59,400 Note A loan (the "Note A Loan") and a $28,600 Note B loan (the "Note B Loan"). The Note A Loan and Note B Loan are secured by the HGI Property, the HWS Portfolio and the St. Pete Property. The Note A Loan bears interest at a variable rate equal to the 30-day LIBOR plus 2.00% and matures on March 1, 2024. The Note B Loan bears interest at a variable rate equal to the 30-day LIBOR plus 6.46% and matures on March 1, 2024. As of December 31, 2022, the Note A Loan and the Note B Loan had effective interest rates of 5.14% and 9.60%, respectively. For the period from January 1, 2022 to December 31, 2022, the Company paid $2,652 and $2,342 in interest on the Note A Loan and the Note B loan, respectively. During the third quarter of 2022, the Company repaid $4,320 and $2,080 of principal on the Note A Loan and Note B Loan, respectively. See Note 24.

On February 15, 2022, in connection with the acquisition of the Park City and Bradenton properties, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $39,300 loan (the "PC & B Loan") with a large non-bank company. The outstanding balance on the PC & B Loan at December 31, 2022 is $36,829 with $2,471 available to draw on for renovation purposes. The Company has begun planning renovations at both properties to start in early 2023.

The DT Loan, the PC & B Loan, the HIX Loan, the Note A Loan and Note B Loan (collectively referred to as the "Notes Payable"), and the Mezz A Loan, the Mezz B Loan, and the Mezz Facility (collectively referred to as the "Mezzanine Loans" and together with the "Notes Payable" are referred to as the "Loans") contain customary representations, warranties, and events of default, which require the Company to comply with affirmative and negative covenants.

As discussed in Note 2, as of December 31, 2022, the Company is in good standing with the lenders on all of its outstanding Loans.

On May 1, 2020, our properties received a two-year loan from the PPP with total proceeds of the first loans amounting to $3,331 and maturing in 2022. In September and October 2021, the SBA granted the Company full forgiveness of all of the PPP loans in the amount of $3,331.

In February and March 2021, our properties received a second loan from the PPP with total proceeds from the loans amounting to $4,000 and maturing in five years. In February 2022, the SBA granted forgiveness of the second loans. The Company recognized the loans and all accrued interest in profit or loss for the year ended December 31, 2022.

The SBA, in consultation with the U.S. Department of the Treasury, has published guidance for borrowers concerning forgiveness of PPP loans. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the date of disbursement of the loan and the SBA remittance of the forgiveness amount. The borrower is also responsible for paying accrued interest on any amount of the loan that is not forgiven.

The table below shows future payments on the Loans, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to December 31, 2022.

	Notes Payable	Mezzanine Loans	Total
2023	1,386	18,000	19,386
2024	78,803	—	78,803
2025	38,365	—	38,365
2026	60,773	—	60,773
2027	—	—	—
Total	$ 179,327	$ 18,000	$ 197,327

As of December 31, 2022 and December 31, 2021, the Company has $82,723 and $50,068 of convertible notes due to its affiliates. Most bear interest at an annual rate of 2.25% while outstanding and mature in 20 years in most cases.

	December 31, 2022	December 31, 2021
Due to affiliate	$ 82,723	$ 50,068

Note 14. Class B Units

On January 8, 2019, the OP issued Class B Units with a fair value of $67,881. The Class B Units are economically equivalent to Units and are entitled to receive distributions equal to those provided to holders of Units. These Class B Units have been classified as a liability in accordance with IAS 32, as they are redeemable instruments at the option of the holders.

Class B Units are measured at fair value with any changes in fair value recorded in profit or loss. The fair value adjustments of Class B Units are calculated using the Company's Unit closing price as of the end of the reporting period. An increase in the Unit closing price over the period results in a fair value loss whereas a decrease in the Unit closing price over the period results in a fair value gain.

As allowed under IFRS 13, *Fair Value Measurement,* if an asset or a liability measured at fair value has a bid price and an ask price, the price within the bid-ask spread that is the most representative of fair value in the circumstances shall be used to measure fair value. The Company has recorded Class B Units at their fair value, which has been assessed to equal the closing market price of the Units at each valuation date (Level 2).

The 10 day volume weighted average price ("VWAP") of the Units for the 10 trading days immediately preceding the end of the period is the basis of measurement the Company uses to record fair value adjustments of the Class B Units. The VWAP of the Units was $1.50. There was a change in the fair value of the PIUs (defined below), which are treated as economically equivalent to Class B Units. The fair value of the Class B Units and PIUs for the year ended December 31, 2022 was $2,125.

The Company's notes due to affiliates are, subject to TSXV approval, convertible at any time at the election of the Company into Class B Units.

On December 13, 2021, the Company granted 2,475,000 profit interest units ("PIUs") in the OP to officers of the Company and employees of affiliates of the Advisor. Upon conversion, grantees will receive Class B Units of the OP. As of December 31, 2022, 883,125 of the PIU units have vested. See Note 23 for more information on PIUs granted and vesting schedules.

The following table presents the outstanding units and the change in fair value of the Class B Units for the year ended December 31, 2022:

	Units	Fair value
Redeemable Class B Units, January 1, 2022	205,597	$ 432
Net gain attributable to Class B redeemable Units of the OP	—	14
Change in fair value of Class B Units	—	(123)
Adjustment to reflect redemption value of redeemable Class B Units of the OP	—	(14)
Redeemable noncontrolling interests in the OP, December 31, 2022	205,597	$ 309

Note 15. Finance Costs

The following table summarizes finance costs for the years ended December 31, 2022 and December 31, 2021:

	December 31, 2022	December 31, 2021
Interest on debt	$ 16,478	$ 16,550
Amortization of deferred financing costs	1,202	852
Fees related to Nashville forbearance agreement	33	987
Finance costs from operations	$ 17,713	$ 18,389
Fair value adjustment to interest rate caps and swaps	(1,546)	(7,994)
Fair value adjustment of Class B Units	(123)	(194)
Total finance costs	$ 16,044	$ 10,201

Note 16. Income Taxes

(a) Income tax (expense)/recovery:

The Company has recorded current tax expense/recovery for taxes associated with its direct and indirect subsidiaries. The income tax expense/recovery in the Consolidated Statements of Income and Comprehensive Income is as follows:

	December 31, 2022	December 31, 2021
Net income before income tax	$ 4,677	$ 23,395
Less: income relating to entities not subject to income tax	8,947	24,546
Net income before tax relating to taxable subsidiaries	(4,270)	(1,151)
Deferred income tax benefit	2,230	921
Income taxes	(115)	(45)
Income tax recovery	$ 2,115	$ 876

(b) Deferred income tax benefit:

As of December 31, 2022 and December 31, 2021, the Company has an estimated tax asset of $4,836 and $2,606 , respectively, recorded in the Consolidated Statement of Financial Position for certain temporary book-to-tax differences as well as net operating losses associated with its direct and indirect subsidiaries. A summary of the composition of such tax benefits is provided in the table below.

	December 31, 2022	December 31, 2021
Reserves not currently deductible	$ 379	$ 508
Net operating losses carried forward	4,457	2,098
Total tax assets	$ 4,836	$ 2,606

Note 17. Unitholders' Capital

The Company is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the Company. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the Company; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders.

There were no changes to the Units or Unitholders' Capital for the period from January 1, 2022 to December 31, 2022.

The following table presents the Units, and the changes in unitholders' Capital for the period from January 1, 2021 to December 31, 2021:

	Units	Capital Balance
Unitholders' capital, January 1, 2021	29,352,055	$ 98,023
Deferred units issued	549,687	984
Unitholders' capital, December 31, 2021	29,901,742	$ 99,007

In 2021, the Company granted 549,687 deferred units to the independent trustees. These deferred units are issued but not issued and outstanding Units. See Note 23 for a further discussion on deferred units and profit interests units.

Note 18. Fair Value of Financial Instruments and Derivatives

a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value

measurements recognized in the Financial Statements are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of December 31, 2022 and December 31, 2021, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of the Loans are estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. At December 31, 2022, the Notes Payable were discounted using rates between 7.63% and 8.52% and the Mezzanine Loans were discounted using a rate of 14.25%. Discount rates are either provided by lenders or are observable in the open market. As of December 31, 2022, the carrying value of the Company's Loans exceeded their fair value by approximately $5,540 and are considered Level 2 in the fair value hierarchy as inputs are observable directly or indirectly.

The fair value of the redeemable Class B Units is determined based on their redemption value. The redemption value is based on the fair value of the Company's Units at the redemption date, and therefore, is calculated based on the fair value of the Company's Units at the date of the Financial Statements. Since the valuation of the Units are based on observable inputs such as quoted prices for similar instruments in active markets, redeemable non-controlling interests in the OP are classified as Level 2 of the fair value hierarchy.

For the year ended December 31, 2022, there were no transfers between the different levels of the fair value hierarchy.

(b) Derivative financial instruments and hedging activities

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company manages interest rate risks primarily by managing the amount, sources, and duration of its debt funding and the use of derivative financial instruments.

The Company performs market valuations on its derivative financial instruments. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate caps are determined using the market standard methodology of discounting the future expected cash receipts that would occur if variable interest rates rise above the strike rate of the caps. The variable interest rates used in the calculation of projected receipts on the cap are based on an expectation of future interest rates derived from observable market interest rate curves and volatilities.

Interest rate caps involve the receipt of variable-rate amounts from a counterparty if interest rates rise above the strike rate on the contract in exchange for an up-front premium. The Company entered into an interest rate cap agreement upon acquisition of the Park City and Bradenton properties in February 2022. As of December 31, 2022, the interest rate cap agreements the Company has entered into effectively cap one-month SOFR on $36,829 of the Company's floating rate mortgage and mezzanine indebtedness at a weighted average rate of 2.00%.

To comply with the provisions of IFRS 9, *Financial Instruments,* the Company incorporates credit valuation adjustments to appropriately reflect both the Company's own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with the Company's derivatives utilize Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by the Company and its counterparties. The Company has determined that the significance of the impact of the credit valuation adjustments made to its derivative contracts, which determination was based on the fair value of each individual contract, was not significant to the overall valuation. Additionally, in the case of interest rate caps, the Company has no performance obligation, so no credit valuation adjustment is necessary. As a result, all of the Company's derivatives held as of December 31, 2022 and December 31, 2021 were classified as Level 2 of the fair value hierarchy.

Changes in fair value of the interest rate caps are recorded directly in Gain on fair value adjustments to interest rate caps. For the year ended December 31, 2022, the Company accrued interest income related to changes in the fair value of interest rate caps. The fair value of the interest rate caps was $1,988 as of December 31, 2022 and is recorded as Interest rate caps in the Consolidated Statement of Financial Position.

As of December 31, 2022, the Company had the following outstanding interest rate caps:

Type of Derivative	Hedged Financial Instrument	Notional	Strike Rate	Reference Rate		Termination Date
Interest rate cap	Note payable	$ 39,300	2.00%	One-month SOFR[1]	2.00%	March 5, 2025

Interest Rate Swap Agreements

In 2019, the OP entered into three transactions with KeyBank National Association ("KeyBank") whereby the OP exchanged the LIBOR portion of its interest obligations in exchange for a fixed rate. On November 24, 2021, the Company terminated all three interest rate swaps and made a net termination payment of $796 to KeyBank.

c) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

A majority of the Company's Loans bears interest at a variable rate and are either subject to a LIBOR floor or have interest rate caps in place. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument. The Company is exposed to credit risk with respect to its interest rate caps, interest rate swaps and trade and other receivables. The credit risk for interest rate caps and interest rate swaps are discussed in Note 18 (b). Credit risk of trade and other receivables is mitigated by initiating a prompt collection process. The Company is also exposed to credit risk with respect to cash and cash equivalents, restricted cash and counterparties on derivative contracts. This credit risk of such counterparties is mitigated by only transacting with large financial institutions.

(iii) Liquidity risk

The Company's principal liquidity needs arise from working capital requirements, debt servicing and repayment obligations, payments on unhedged interest rate swaps, planned funding of property improvements, leasing costs, distributions to unitholders, property development and acquisition funding requirements. Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the property, the proceeds to the Company may be significantly less than the property's carrying amount.

Liquidity risk is managed through cash flow forecasting. Management monitors forecasts of the Company's liquidity requirements to ensure it has sufficient cash to meet operational needs through maintaining sufficient cash and/or availability on undrawn loan agreements and ensuring that it meets its financial covenants. Such forecasting involves a significant degree of judgment, takes into consideration current and projected macroeconomic conditions, the Company's cash collection efforts, debt financing plans, covenant compliance required under the terms of debt agreements and internal targets. There is a risk that such liquidity forecasts may not be achieved and that currently available debt financing may no longer be available to the Company at terms and conditions that are favorable to the Company, or at all.

As of December 31, 2022, the Company had a working capital deficiency of $11,486, which is primarily the result of $18,000 of Notes Payable and the Mezz Facility, each with maturity dates of less than one year. Additional contractual obligations and contingencies are outlined in Note 20. As mentioned in Note 2(a), there is substantial doubt as to whether the Company can meet all of its obligations as they become due. This is primarily the result of the $18,000 Mezz Facility that matured on January 8, 2020, (and as of January 8, 2023, was further extended by the lender until July 8, 2023). See Note 24. In order to continue as a going concern, management is actively working towards addressing the Company's liquidity concerns, including the following: (i) negotiating with lenders to extend or otherwise restructure the terms of our loans and obtain relief from covenants in the near term; and (ii) converting payables to an affiliate into Class B Units. In addition, subject to market conditions, the Company may seek to raise funding through new debt and equity financing, including sale-leaseback and ground lease arrangements, though there is no assurance the Company will be able to obtain such financing. The particular features and quality of the underlying assets and the debt and equity market parameters existing at the time of financing may impact the ability to obtain financing.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 3.14% as of December 31, 2022:

	Carrying Amount	Contractual Cash Flows	Reclassified as Held for Sale	1 Year	More than 1 Year
Notes payable	$ 177,658	$ 179,327	$ -	$ 1,386	$ 177,941
Mezzanine loan	18,000	18,000	-	18,000	-
Interest payable on notes and mezzanine loans	4,032	18,511	287	5,525	12,986
Accounts payable and other accrued liabilities	16,342	16,342	44	16,342	—
Lease liability	1,063	1,235	—	159	1,076
Total	$ 217,095	$ 233,415	$ 331	$ 41,412	$ 192,003

Note 19. Capital Management

The Company defines capital as the aggregate of unitholders' equity, Class B Units, notes payable and mezzanine loans. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 20. Commitments and Contingencies

a) Franchise agreement

The Company's properties are operated under franchise agreements (the "Franchise Agreements") with Franchisors. The Franchise Agreements require the payment of a monthly royalty fee and monthly marketing fee on the property's gross room revenue. For the year ended December 31, 2022, franchise fees were $4,949 and are included in operating expenses. Details regarding the Franchise Agreements are presented in the following table:

					(% of Gross Rooms Sales)	
Property	**Brand**	**Execution Date**	**Term (Years)**	**Expiration Date**	**Franchise Fees**	**Marketing Fees**
Dallas Hilton Garden Inn	Hilton	December 31, 2014	15	December 31, 2029	5.50%	4.30%
Addison HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Plano HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Las Colinas HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Olympia DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Tigard DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
St. Petersburg Marriott	Marriott	September 25, 2018	20	September 25, 2038	6%/3%[1]	1.00%
Nashville Holiday Inn Express	Intercontinental Group	January 8, 2019	20	January 8, 2039	3.00%	3.00%
Hyatt Place Park City	Hyatt	February 15, 2022	20	February 23, 2042	5.00%	3.50%
Bradenton Hampton Inn & Suites	Hilton	February 22, 2022	15	February 28, 2037	6.00%	4.00%

[1] 6% of gross rooms sales / 3% of gross food and beverage sales.

b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims.

As a result of the financial impact that the COVID-19 pandemic has had on the Nashville Property and the inability of the hotel to meet its financial covenants and obligations, RSS Multiple – DE NT, LLC, the current lender ("Lender"), filed suit against the HIX Borrowers and the Loan Guarantor, seeking, among other things, to appoint a receiver and to foreclose on their security interest.

On May 26, 2021, the HIX Borrowers and Loan Guarantor executed a forbearance agreement with the Lender that would, when followed, cure the defaults identified by the Lender and bring the loan into good standing. The agreement contains various compliance dates, but the final action in compliance with the forbearance agreement, must occur by February 1, 2022. The HIX Borrowers met the compliance requirements by February 1, 2022. As of December 31, 2022, the HIX Borrowers and Loan Guarantor are currently in good standing under the forbearance agreement.

Note 21. Related party transactions

The Financial Statements include the following transactions with related parties:

Issuance of Units

For the Initial Transaction, Units of the Company were issued to affiliates of the chief executive officer of the Company and other officers in connection with the contribution of the HWS Portfolio, the St. Pete Property and the Nashville Property.

Advisory Fees

In accordance with the agreement entered into with the Advisor (the "Advisory Agreement"), the Company pays the Advisor an advisory fee equal to 1.00% of the REIT Asset Value (as defined below). Under the direct supervision of the Company, the duties performed by the Company's Advisor under the terms of the Advisory Agreement include, but are not limited to: providing daily management for the Company, selecting and working with third party service providers, overseeing the third party manager, formulating an investment strategy for the Company and selecting suitable properties and investments, managing the Company's outstanding debt and its interest rate exposure through derivative instruments, determining when to sell assets, and managing the renovation program or overseeing a third party vendor that implements the renovation program. REIT Asset Value means the value of the Company's total assets, as determined in accordance with IFRS except that such value shall only consolidate the Company's and Holdings assets plus the Company's pro rata share of leverage at the OP.

Pursuant to the terms of the Advisory Agreement, the Company will reimburse the Advisor for all documented Operating Expenses and Offering Expenses it incurs on behalf of the Company. "Operating Expenses" include legal, accounting, financial and due diligence services performed by the Advisor that outside professionals or outside consultants would otherwise perform, the Company's pro rata

share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Advisor required for the Company's operations, and compensation expenses under the Omnibus Plan (as defined in Note 23). Operating Expenses do not include expenses for the advisory services described in the Advisory Agreement. Certain Operating Expenses, such as the Company's ratable share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses incurred by the Advisor or its affiliates that relate to the operations of the Company, may be billed monthly to the Company under a shared services agreement. "Offering Expenses" include all expenses (other than underwriters' discounts) in connection with an offering, including, without limitation, legal, accounting, printing, mailing and filing fees and other documented offering expenses.

The Advisor has reinstated the previously waived 2020 advisory fees and the rebate of accrued but unpaid fees as of December 31, 2019. The Company will begin paying advisory fees when it is able to resume payments while remaining cash flow positive.

Expense Cap

Pursuant to the terms of the Advisory Agreement, expenses paid or incurred by the Company for advisory fees payable to the Advisor and expenses incurred by the Advisor or its affiliates in connection with the services it provides to the Company and its subsidiaries will not exceed 1.5% of REIT Asset Value Assets for calendar year (or part thereof that the Advisory Agreement is in effect (the "Expense Cap")). The Expense Cap does not limit the reimbursement of expenses related to Offering Expenses. The Expense Cap also does not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation or other events outside the Company's ordinary course of business or any out-of-pocket acquisitions or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets. For the year ended December 31, 2022 and December 31, 2021, the Company incurred expenses subject to the Expense Cap of $5,619 and $4,121, respectively.

Internalization Fee

The Company and/or the OP may elect to acquire all of the outstanding and issued equity interests of the Advisor (the "Internalization") by exercising its rights, in its sole discretion, under the Advisory Agreement (subject to certain terms and conditions) to effect an Internalization. The Company will pay the Advisor a fee equal to three times the prior 12 months' Advisory Fee. The Internalization Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date of the Internalization. There has been no internalization as of December 31, 2022.

Termination Fee

If the Company and/or the OP elect to terminate the Advisory Agreement, the Company will pay the Advisor a fee (the "Termination Fee") equal to three times the prior 12 months' Advisory Fee. The Termination Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date the Advisory Agreement is terminated.

Private Placement of Units

On February 10, 2020, the Company completed the non-brokered private placement offering pursuant to which certain existing unitholders of the Company purchased an aggregate of 850,705 Units at a price of $5.00 per unit for aggregate gross proceeds of $4,254.

Loans from Affiliates

As of December 31, 2022, the OP has entered into several convertible notes with affiliates totaling $82,723 since January 8, 2019. The proceeds of the notes were used for general corporate and working capital purposes and have been consolidated and re-classed into one account on the Consolidated Statements of Financial Position. In the first quarter of 2022, the Company repaid $4,550 of principal to affiliates.

Other Related Party Transactions

The Company has in the past, and may in the future, utilize the services of affiliated parties. For the year ended December 31, 2022, the Company paid de minimis fees to an affiliated bank, NexBank N.A. ("NexBank"), as the Company and its subsidiaries have several bank accounts at NexBank with a cumulative balance of $88 as of December 31, 2022. NexBank is an affiliate of the Advisor through common beneficial ownership.

Note 22. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities, including movements of liabilities to cash flows arising from financing activities for the year ended December 31, 2022 were as follows:

	Notes Payable, Net	Mezzanine Loans, Net	PPP Loans, Net	Total
Balance, December 31, 2021	$ 205,053	$ 33,063	$ 4,000	$ 242,116
Changes from financing cash flows:				
PPP loan forgiveness	—	—	(4,000)	(4,000)
Loan proceeds related to acquisitions	36,829	—	—	36,829
Deferred financing costs paid	(1,960)	(344)	—	(2,304)
Total changes from financing cash flows	34,869	(344)	(4,000)	30,525
Liability related:				
Principal payments made	(8,135)	(2,000)	—	(10,135)
Principal payments made upon sale of assets	(55,000)	(13,063)	—	(68,063)
Amortization of deferred financing costs on outstanding debt	871	344	—	1,215
Balance, December 31, 2022	$ 177,658	$ 18,000	$ —	$ 195,658
Current portion	$ 1,386	$ 18,000	$ —	$ 19,386
Long-term portion	$ 176,272	$ —	$ —	$ 176,272

Note 23. Incentive Compensation Plan

The Company has adopted an omnibus equity incentive plan (the “Omnibus Plan”) to be granted to key officers and employees of the Company, independent trustees and key employees of the Advisor. As part of the independent trustees’ compensation, it is anticipated they will be granted deferred units (“DUs”) in the future and may receive, at their election, 100% of their board compensation in the form of DUs. Under the Omnibus Plan, subject to adjustments according to the terms of the plan, the maximum number of Units available for issuance is 3,026,155, representing 20% of the issued and outstanding Units of the Company at the time the Omnibus Plan was adopted.

On June 28, 2021, the Company granted 339,687 DUs to the independent trustees. On December 13, 2021, the Company granted 210,000 DUs to the independent trustees. These DUs are issued but not issued and outstanding and vested immediately. On December 6, 2021, the Company granted 2,475,000 PIUs in the OP to officers of the Company (2,029,200) and employees of the Advisor (445,800). The PIUs will vest ratably over four years (i.e. 25% per year), however, 50% of the PIUs can vest sooner if the following stock price thresholds are achieved. Therefore, to the extent the below stock prices are achieved prior to December 13, 2022, the PIUs will not be issued until December 31, 2022, assuming no additional restrictions exist:

Vesting %	Upon Unit Price Achieving[1]	PIUs Vested
12.50%	$ 2.00	294,375
12.50%	2.50	294,375
12.50%	3.00	294,375
12.50%	4.00	294,375
Total		1,177,500

1. Price to be adjusted for dilutive events.

Assuming none of the performance metrics are met, the PIUs will vest as shown in the below table:

Vesting %	Date	PIUs Vested
25.00%	December 6, 2022	588,750
25.00%	December 6, 2023	588,750
25.00%	December 6, 2024	588,750
25.00%	December 6, 2025	588,750
Total		2,355,000

On December 6, 2022, 588,750 PIUs vested to officers of the company and employees of affiliates of the Advisor. Additionally, 294,375 PIUs vested on December 31, 2022 as the units reached the first price threshold. 120,000 units were forfeited as two employees of affiliates of the Advisor left their roles before the vesting dates.

Description	Units	Fair Value
PIUs vested in the OP, January 1, 2022	-	$ -
Time vesting PIUs	588,750	1,215
Performance vesting PIUs	294,375	601
PIUs vested in the OP, December 31, 2022	883,125	$ 1,816

Upon conversion, grantees of the PIUs will receive Class B Units of the OP. As of December 31, 2022, 549,687 DUs and 2,475,000 PIUs have been granted under the Omnibus Plan with 1,468 DUs or PIUs remaining that may be granted.

On May 31, 2022, the Board of Trustees passed a resolution adopting a deferred unit plan (the "Deferred Unit Plan"). The Deferred Unit Plan was subsequently approved by unitholders at the annual general meeting held on June 30, 2022. The maximum number of DUs reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As December 31, 2022, no DUs have been issued under this plan.

Note 24. Subsequent Events

The Company evaluated subsequent events through April 4, 2023 to determine if any significant events occurred subsequent to the consolidated balance sheet dates that would have a material impact on the Financial Statements.

The HIX Nashville Mezzanine Facility

The Mezz Facility expired on January 8, 2023. The Company negotiated an extension on January 6, 2023, bringing the maturity date of the Mezz Facility to July 8, 2023.

On February 15, 2023, the Company made a principal payment of $600 on the Mezz Facility, reducing the balance to $17,400.

TAB 8

NEXPOINT HOSPITALITY TRUST

Interim Consolidated Financial Statements

For the three months and six months ended June 30, 2022 and June 30, 2021

(Expressed in U.S. dollars)

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	NOTES	June 30, 2022	December 31, 2021
ASSETS			
Current assets			
Cash and cash equivalents		$ 3,382	$ 1,532
Restricted cash	8	11,536	7,055
Trade and other receivables		2,507	3,802
Prepaid and other assets		2,756	2,573
Assets held for sale	6	88,169	—
Total current assets		108,350	14,962
Non-current assets			
Right-of-use asset	7	3,407	2,129
Property and equipment, net	7	256,351	297,564
Deferred tax assets	16	2,897	2,606
Total non-current assets		262,655	302,299
TOTAL ASSETS		$ 371,005	$ 317,261
LIABILITIES AND UNITHOLDERS' DEFICIT			
Current liabilities			
Accounts payable and other accrued liabilities	12	$ 22,271	$ 24,175
Current portion of notes payable	13	7,750	85,484
Current portion of mezzanine loan	13	19,696	20,000
Liabilities directly associated with the assets held for sale	6	71,208	—
Total current liabilities		120,925	129,659
Non-current liabilities			
PPP Loan	13	—	4,000
Lease liability	7	1,145	1,224
Notes payable, net	13	176,586	119,569
Mezzanine loan, net	13	—	13,063
Convertible affiliate notes	13	73,993	50,068
Class B redeemable units of OP	14	514	432
Total non-current liabilities		252,238	188,356
Total Liabilities		373,163	318,015
Unitholders' Deficit		(2,158)	(754)
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 371,005	$ 317,261

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

		For the Three Months Ended		For the Six Months Ended	
	Notes	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Revenues					
Rooms		$ 19,272	$ 11,512	$ 34,625	$ 18,796
Food and beverage		1,122	462	2,069	779
Other income		842	432	1,576	759
Total revenues		21,236	12,406	38,270	20,334
Other income and (expenses)					
Operating expenses	9	(10,043)	(5,575)	(21,214)	(13,609)
Operating general and administrative expenses	10	(3,646)	(2,248)	(6,238)	(3,691)
Depreciation of property and equipment	7	(3,978)	(3,331)	(7,666)	(6,514)
Depreciation of right-of-use asset	7	(84)	(79)	(167)	(158)
Amortization of advanced bookings from acquisitions		(122)	—	(218)	—
Corporate general and administrative expenses	11	(741)	(705)	(1,486)	(1,148)
Advisory fees	12	(560)	(451)	(1,046)	(882)
Acquisition costs	12	(86)	—	(364)	—
Casualty gain/(loss), net of insurance proceeds	7	147	—	147	—
Finance costs from operations	15	(4,780)	(5,973)	(9,169)	(10,925)
Fair value adjustment of Class B Units	14,15	218	74	507	254
Fair value adjustment to interest rate swaps	15	—	(2,386)	—	4,613
Impairment recovery/(loss)	3,7	570	3,921	(1,217)	21,508
Forgiveness of PPP loans	13	—	—	4,000	—
Income related to forbearance agreement	13	—	—	4,612	—
Refund of brand fees		168	—	168	—
Total other income and (expenses)		(22,937)	(16,753)	(39,351)	(10,552)
Income (loss) before income taxes		(1,701)	(4,347)	(1,081)	9,782
Income taxes	16	(531)	(999)	(614)	(1,660)
Deferred income tax benefit (expense)	16	168	(27)	291	38
Net income (loss) and comprehensive income (loss)		$ (2,064)	$ (5,373)	$ (1,404)	$ 8,160

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF UNITHOLDERS' DEFICIT
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

Six Months Ended June 30, 2022	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2021		$ 99,007	$ (99,761)	$ (754)
Net loss		—	(1,404)	(1,404)
Balances, June 30, 2022		$ 99,007	$ (101,165)	$ (2,158)

Six Months Ended June 30, 2021	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2020		$ 98,023	$ (124,032)	$ (26,009)
Net income		—	8,160	8,160
Deferred units issued	23	543	—	543
Balances, June 30, 2021		$ 98,566	$ (115,872)	$ (17,306)

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

		For the Three Months Ended		For the Six Months Ended	
	Notes	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Cash flows - operating activities					
Net income (loss)		$ (2,064)	$ (5,373)	$ (1,404)	$ 8,160
Adjustments to reconcile net income to net cash provided by operating activities:					
Depreciation of property and equipment	7	3,978	3,331	7,666	6,514
Depreciation of right-of-use asset	7	84	79	167	158
Amortization of advanced bookings from acquisitions		122	—	218	—
Deferred income tax benefit	16	(168)	27	(291)	(38)
Finance costs from operations	15	4,780	5,973	9,169	10,925
Fair value adjustment of Class B Units	15	(218)	(74)	(507)	(254)
Forgiveness of PPP Loans	13	—	—	(4,000)	—
Stock compensation expense	23	245	—	589	—
Unrealized (gain)/loss on interest rate derivatives	15	—	2,386	—	(4,613)
Impairment loss/(recovery)	3,7	(570)	(3,921)	1,217	(21,508)
Income related to forbearance agreement	13	—	—	(4,612)	—
Casualty (gain)/loss, net of insurance proceeds	7	(147)	—	(147)	—
Changes in non-cash working capital items:					
Operating assets		(1,174)	412	(630)	607
Operating liabilities		2,289	(118)	6,640	3,455
Income taxes		(531)	(999)	(614)	(1,660)
Net cash provided by operating activities		6,626	1,723	13,461	1,746
Cash flows - investing activities					
Additions to property and equipment	7	(1,419)	(349)	(1,768)	(1,698)
Acquisitions of property and equipment	7	—	—	(53,911)	—
Additions to right of use assets	7	—	—	(1,445)	—
Insurance proceeds related to casualty loss		940	—	940	—
Net cash paid on interest rate swaps		—	(767)	—	(1,501)
Change in restricted cash	8	(3,192)	(2,888)	(4,481)	(1,417)
Net cash used in investing activities		(3,671)	(4,004)	(60,665)	(4,616)
Cash flows - financing activities					
Lease liability paid	7	(39)	(38)	(79)	(76)
Proceeds from PPP loans	22	—	—	—	4,000
Convertible affiliate notes, net of repayments	13	1,000	14,674	23,925	16,814
Proceeds from notes payable	13		—	36,829	—
Principal payments on notes payable	22	(320)	(2,289)	(1,070)	(2,289)
Principal payments on Mezz Facility		—	(5,000)	—	(5,000)
Deferred financing costs paid	22	(520)	(10)	(2,445)	(13)
Interest paid on outstanding debt		(4,650)	(5,309)	(8,106)	(7,873)
Deferred units issued	23	—	543	—	543
Net cash provided by (used in) financing activities		(4,529)	2,571	49,054	6,106
Net increase in cash and cash equivalents		(1,574)	290	1,850	3,236
Cash and cash equivalents, beginning of period		4,956	4,024	1,532	1,078
Cash and cash equivalents, end of period		$ 3,382	$ 4,314	$ 3,382	$ 4,314

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

		For the Three Months Ended		For the Six Months Ended	
	Notes	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Supplemental disclosure of cash flow information					
Non-cash items					
Forgiveness of PPP loans	13	—	—	4,000	—

See accompanying notes to the interim consolidated financial statements

Note 1. Overview

NexPoint Hospitality Trust ("NHT" or the "Company") is an unincorporated, open-ended real estate investment trust ("REIT") established pursuant to a declaration of trust dated December 12, 2018 under the laws of the Province of Ontario. The registered office of the Company is at 333 Bay Street, Suite 3400, Toronto, Ontario. NHT was created for the purpose of initially acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. NHT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "Advisor"), which was formed for the purpose of managing NHT and is related to the Company through common indirect ownership as well as common control.

NHT has elected to be treated as a REIT under U.S. tax laws. Substantially all of NHT's business will be conducted through NHT Operating Partnership, LLC (the "OP"), NHT's operating partnership, which is a Delaware limited liability company. NHT owns its properties through the OP and its subsidiaries. The OP and its subsidiaries lease the properties to taxable REIT subsidiaries of NHT (the "TRS Entities") to operate. For NHT to qualify as a REIT under the United States Internal Revenue Code of 1986, as amended (the "Code"), NHT cannot operate directly or indirectly any of the hotels it acquires and owns. Therefore, the OP and its subsidiaries lease the hotels to the TRS Entities who in turn engage eligible independent contractors (as defined in the Code), which for the current portfolio of 13 hospitality assets located in the United States (the "Current Portfolio") are affiliates of Aimbridge Hospitality Holdings, LLC, to manage the hotels.

The objectives of NHT are to: (a) provide unitholders with an opportunity to invest in a portfolio of extended-stay, select-service and efficient full service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of NHT's assets and maximize the long-term value of the Class A units of the OP (the "Class A Units"), Class B units of the OP (the "Class B Units") and trust units of NHT (the "Units"), collectively, through active asset and property management programs and procedures and a renovation program; and (d) expand the asset base of NHT primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

NHT's Units are listed on the TSX Venture Exchange (the "TSXV") under the symbol NHT.U.

Note 2. Basis of Preparation

a) Going Concern Uncertainty

The global response to the COVID-19 pandemic had a large negative impact on the Company's operations in 2020 and the first quarter of 2021. Public companies in the North American lodging sector generally saw a significant decline in their stock prices on average during 2020. The well-publicized impacts on the hospitality industry, including shelter-in-place orders in the markets in which the Company operates, as well as a reduction in transient business travel, which the Company relies upon, reduced the Company's room rates and occupancies and had a significant impact on the Company's operations in 2020 and early 2021. Additionally, data shows that air travel, and consequently, hotel occupancy and average daily rates, were down significantly, with large groups having canceled events. Occupancy declined from an average of 75.1% across the portfolio in 2019 to a low of 12.17% across the portfolio during April 2020, and the Average Daily Rate ("ADR") declined from an average of $145.81 in 2019 to a low of $93.95 during April 2020.

Since the end of January 2021, the hospitality sector in general and the Company specifically have seen significant improvements in operations. Notwithstanding seasonality trends, the second quarter of 2022 was much improved over the second quarter of 2021, with an occupancy of 71.5% across the Initial Portfolio compared to 66.4% in the second quarter of 2021. We have seen a rebound in occupancy and ADR as COVID-19 restrictions have loosened or have been removed altogether and people have resumed business and leisure travel. Large group and convention business and business transient bookings returned and a full recovery in this segment is likely to take place over the next 12 months. We expect that as employees return to offices, even if in a diminished capacity, businesses will also begin removing travel restrictions and the transient segment will continue recovering in 2022.

At June 30, 2022, the Company had a working capital deficit of $12,575. The items on our balance sheet contributing to the deficit include the $20,000 principal balance on the Mezz Facility (as defined in Note 13), which was originally due on January 8, 2020, $6,400 of principal balance on the Note A Loan and Note B Loan (as defined in Note 13), $1,162 of payables to Franchisors (as defined below) and $2,222 of payables to other vendors. The impact to the global economy caused by the response to the COVID-19 pandemic negatively impacted the Company's ability to obtain new financing, and as a result, the Company was unable to refinance the principal balance of the Mezz Facility. As of the date of this report, the Company has obtained another extension for the maturity of the Mezz Facility until January 8, 2023.

At June 30, 2022, the Company had $1,350 of amortizing principal payments and $18,455 of other liabilities due over the next twelve months through June 30, 2023. Of the liabilities, the Company has payment plans in place for $5,054 of these liabilities and continues to work with vendors for the remainder to make repayment by June 30, 2023. The DT Loan, Mezz A Loan and Mezz B Loan (each as defined in Note 13), totaling $68,063, was initially set to mature on May 9, 2022. The Company executed an amendment with the lender in May 2022 for a sixth month extension, bringing the maturity date to November 9, 2022. See Note 13.

On September 18, 2020, the lender on the HIX Loan (as defined in Note 13) delivered a formal notice of default. NHT Nashville, LLC and NHT Nashville TRS, LLC, the borrowers on the loan (the "HIX Borrowers"), worked with the lender to achieve a mutually agreeable resolution in May 2021, which resolved the default. Those discussions resulted in the HIX Borrowers and the OP, the guarantor on the loan ("Loan Guarantor"), signing a forbearance agreement. The HIX Borrowers cured all events of default and met all compliance requirement of the forbearance agreement on February 1, 2022 and the loan is now in good standing. See Note 20(b).

As of June 30, 2022, the Company is in good standing with the lenders on all of its outstanding Loans (as defined in Note 13). Covenant waivers have been granted at various dates on each loan or the lender has informally, or formally, agreed not to pursue available remedies currently.

Management is actively working towards addressing the matters noted above that create uncertainty for the Company as a going concern, which includes the following:

i) The Company has been granted extensions of the maturity of the Mezz Facility while each party continues in good faith discussions to restructure the facility.

ii) The Company received government assistance through the Paycheck Protection Program (the "PPP") implemented by the Small Business Administration (the "SBA") under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in the form of $3,331 in loan proceeds on May 1, 2020. Additionally, as a result of legislation passed in December 2020 to provide further assistance to businesses impacted by COVID-19, the PPP was extended, and the Company received the maximum allowable amount of assistance in the form of $4,000 in loan proceeds in February 2021 and March 2021. The SBA has granted full forgiveness of the Company's PPP loans totaling $7,331. For the year ended December 31, 2021, the Company recognized $3,331 of PPP loans and all accrued interest related to the first loans in profit or loss. The Company recognized forgiveness of its second PPP loans in the amount of $4,000 and all accrued interest in profit or loss for the six months ended June 30, 2022. See Note 13.

iii) On March 24, 2020, the board of the Company agreed to temporarily suspend distributions for the foreseeable future to conserve cash.

iv) The Company expects to settle most of its amounts due to affiliates through the issuance of additional Class B Units, most of which do not mature for 20 years. See Notes 13, 14, and 21.

v) On March 24, 2020, the Advisor agreed to defer the advisory fee until such time as the Company is able to resume payments while remaining cash flow positive. The Advisor did not collect any fees in 2020, 2021, or for the six months ended June 30, 2022.

vi) Each of the Company's three franchisors of the properties in the Initial Portfolio (Hilton Worldwide, Marriott International and the Intercontinental Hotel Group, together, the "Franchisors") granted the Company the ability to pay past due franchise fees over time throughout 2020 and 2021. The Company is current on franchise fees with all Franchisors.

vii) Marriott has revised the required property improvement plan (the "PIP") for the St. Pete property, which is now expected to cost $7,200 in total and has granted an extension for completion in two phases throughout 2021 and 2022. As of June 30, 2022 the Company has $769 in reserves with the lender that can be used toward the PIP. The first phase of the PIP was completed in November 2021 and the Company expects to start the second phase of the renovation in late 2022.

viii) Affiliates of the Advisor provided $1,000 to the Company in the second quarter of 2022, in the form of convertible notes. The Company also repaid $4,550 of principal to affiliates in the first quarter of 2022. See Note 13 and Note 21.

ix) Occupancy and ADR across the Initial Portfolio have increased from 66.4% and $121.02, respectively from the second quarter of 2021 to 71.5% and $162.24, respectively for the second quarter of 2022. The United States is aggressively rolling out vaccines and states and cities are removing COVID-19 restrictions altogether, all of which

is significantly improving the outlook for the lodging sector overall and for the Company specifically. This is displayed in the increase of future group bookings for 2022. Occupancy and ADR across the Current Portfolio for the three months ended June 30, 2022 was 69.6% and $161.79. Occupancy and ADR across the Current Portfolio for the six months ended June 30, 2022 was 66.1% and $154.96.

x) On March 8, 2022, we launched a process to market the DT Portfolio for sale. We expect to close the sale of the Beaverton property, Tigard property, and Vancouver property towards the end of the third quarter, with the possibility of an extension to close in October 2022. See Note 6 and Note 24 for a further discussion.

There can be no assurance that the Company will continue to generate positive cash flows from operations, whether any of these required measures may be completed, or whether they will provide the Company with sufficient liquidity. In order to continue as a going concern, the Company needs to (i) generate positive cash flows, which assumes the continuance of current operations, (ii) be successful in obtaining the concessions from its creditors as noted above, and such concessions must provide the Company with sufficient liquidity to fund its cash flow deficits in the intervening period, and (iii) be successful in refinancing its notes and mezzanine loans payable as they come due. As a result of these facts, the Company has determined there is a potential risk about the Company's ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business.

These interim consolidated financial statements of the Company (the "Financial Statements") have been prepared on a going concern basis, which assumes the Company will continue its operations in the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. The Financial Statements do not include any adjustments to classification of assets and liabilities and reported expenses that may be necessary if the going concern basis was not appropriate for these Financial Statements. If the Company is unable to continue as a going concern, material write-downs to the carrying values of the Company's assets could be required.

Although management believes it can continue as a going concern if the plan outlined above comes to fruition, it is important to note that many of the assumptions included in management's internal cash flow projections are out of its control. For example, the Company does not control the timing of the distribution of the COVID-19 vaccine and boosters, the spread of any new variants of the COVID-19 virus or whether governmental authorities may impose new shelter-in-place orders as variants of the virus continue to mutate. Nor does the Company control consumer behavior regarding when the general public will feel safe in traveling and staying in hotels or when businesses will lift the suspension on business travel. For these reasons, it is difficult for the Company to estimate the likelihood of these events occurring, the timing of when they may occur or the impact they will have once they occur. The Company is optimistic but proceeds with caution in determining recovery assumptions in management's internal cash flow projections as there are many factors to consider.

Additionally, inflation in the United States is at a 40-year high, and the country saw the second consecutive quarter of negative GDP growth for the quarter ended June 30, 2022. The Company has not seen a negative impact on performance like it did with COVID-19, but management continues to monitor the economic indicators and their potential negative impact on the portfolio.

b) Statement of Compliance

These Financial Statements have been prepared by management in accordance with IAS 34 Interim Financial Reporting. The Financial Statements should be read in conjunction with the notes to the Company's consolidated interim financial statements for the six months ended June 30, 2022 and June 30, 2021, which have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), since the Financial Statements do not contain all disclosures as required by IFRS for annual financial statements. These Financial Statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

The Financial Statements were authorized for issue by the Board of Trustees of NHT on August 19, 2022.

c) Basis of Measurement

The Financial Statements have been prepared on a historical cost basis, except for Class B Units, interest rate swaps and interest rate caps which are recorded at fair value through profit and loss.

d) Use of estimates and judgments

The preparation of the Financial Statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the Financial Statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected. Assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the future financial year relate to interest rate swaps, interest rate caps, the assessment of impairment of property and equipment, indefinite life intangible assets and goodwill as described in Note 3(e).

In the process of applying the accounting policies, the Company makes various judgments, apart from those involving estimations, that can significantly affect the amounts it recognized in the Financial Statements. Information about critical judgments in applying accounting policies that have the most significant effect on the amounts recognized in the Financial Statements relate to the following:

i) The componentization of property and equipment as described in Note 3(d).
ii) Impairment of property and equipment or the recovery of prior impairment as described in Note 3(e).
iii) Management's assessment of whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The Company's acquisitions are generally determined to be business combinations as the Company acquires an integrated set of processes as part of the acquisition transaction.
iv) Management's assessment of whether or not the Company controls entities in which it has an interest. This involves evaluating the Company's ability to make decisions over the relevant activities of such entities and to determine to what extent the Company is exposed to the variable returns of the entities. This assessment impacts the identification of the Company's subsidiaries and as a result which entities it consolidates.
v) The Company's ability to continue as a going concern as detailed in Note 2(a). This determination involves making assumptions about future events and about how third parties, which act independently of the Company and its assumptions, may react to current and future events that have an impact on the Company's ability to continue as a going concern.

Note 3. Significant Accounting Policies

The significant accounting policies used in the preparation of the Financial Statements are described below and have been applied consistently to all periods presented:

a) Basis of Consolidation

The Financial Statements include the accounts of the Company and its wholly owned subsidiaries including NHT Holdings LLC, the OP and subsidiaries of the OP, which are controlled by the Company in accordance with IFRS 10, *Consolidated Financial Statements*. Control exists when the Company is exposed to or has the rights to variable returns from its involvement with the entity and has the ability to affect those returns through its power. All significant intercompany accounts and transactions have been eliminated on consolidation.

b) Business combinations

At the time of acquisition of a property, whether through a controlling share investment or directly, the Company considers whether the acquisition represents the acquisition of a business. The Company accounts for an acquisition as a business combination where an integrated set of activities is acquired in addition to the property. More specifically, the extent to which significant processes are acquired is considered. If no significant processes, or only insignificant processes, are acquired, the acquisition is treated as an asset acquisition rather than a business combination. The Company generally considers the acquisition of a hospitality asset to be a business combination as an integrated set of activities with significant processes are acquired in the transaction.

The purchase price of a business combination is measured as the fair value of the assets given, equity instruments issued and liabilities incurred or assumed at the acquisition date. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at fair value at the date of acquisition. The Company recognizes assets or liabilities, if any, resulting from a contingent consideration arrangement at their acquisition date fair value and such amounts form part of the purchase price of the business combination. Subsequent changes in the fair value of contingent consideration arrangements are recognized in profit or loss. The difference between the purchase price and the fair value of the acquired identifiable net assets and liabilities is goodwill. On the date of acquisition, positive goodwill is recorded as an asset in the Company's Consolidated Statement of Financial Position. Negative goodwill is immediately recognized in profit or loss. The Company expenses transaction costs associated with business combinations in the period incurred.

When an acquisition does not meet the criteria for business combination, it is accounted for as an acquisition of a group of assets and liabilities. As determined by a concentration test, an acquisition is determined to be an asset acquisition if substantially all of the fair value of the gross assets is concentrated in a single identifiable asset or group of similar identifiable assets. If a preparer

chooses not to apply the concentration test, or the test is failed, then the assessment focuses on the existence of a substantive process. The purchase price of the acquisition, including transaction costs, are allocated to the assets and liabilities acquired based upon their relative fair values. No goodwill is recognized for asset acquisitions.

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were accounted for as asset acquisitions.

c) Functional currency

The functional and presentation currency of the Company and its subsidiaries is the U.S. dollar. All amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

d) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes initial acquisition costs and other direct costs. Significant parts of the buildings are accounted for as separate components of the property, based on management's judgment of what components constitute a significant cost in relation to the total cost of an asset and whether these components have similar or dissimilar patterns of consumption and useful lives for purposes of calculating depreciation.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience, and take into consideration the anticipated physical life of the asset and its components and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate, and are also reviewed in conjunction with impairment testing. Gains or losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honour its obligation.

Asset	Useful Life (Years)
Building structure	40
Buildings - mechanical, electrical and elevators	30
Buildings - roof, windows, and doors	20
Building improvements	5 - 15
Interior upgrades	3
Furniture, fixtures and equipment	5 - 7
Leases	Length of lease

e) Impairment of non-financial assets

The carrying amounts of the Company's non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment or recovery. If any such indication exists, then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment

testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the "cash-generating unit" or "CGU").

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. However, when an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU's recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

Intangible assets with finite useful lives are tested for impairment if events or changes in circumstances, assessed at each reporting date, indicate the carrying amount may not be recoverable.

f) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss ("FVTPL"), and (iii) fair value through other comprehensive income ("FVTOCI"). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized through profit or loss. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through profit or loss.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in profit or loss.

The Company has made the following classifications for its financial instruments:

Financial Instrument	Classification Under IFRS 9
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Lease liability	Amortized cost
Interest rate caps	FVTPL
Interest rate swaps	FVTPL
Accounts payable and other accrued liabilities	Amortized cost
Note payable	Amortized cost
Mezzanine loan	Amortized cost
Class B redeemable units of OP	FVTPL

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized in profit or loss.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

Units that are redeemable at the option of the holder are considered puttable instruments in accordance with International Accounting Standards 32, *Financial Instruments – Presentation* ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32; in which case, the puttable instruments may be presented as equity. Units meet the exemption conditions of IAS 32 and are, therefore, presented as equity.

The Class B Units are redeemable for cash or Units on a one-for-one basis subject to customary anti-dilution adjustments at the option of the Company and, therefore, the Class B Units meet the definition of a financial liability under IAS 32. Further, the Class B Units are designated as financial liabilities at FVTPL and are measured at fair value at each reporting period with any changes in fair value recorded in profit or loss. The Class B Units are, in all material aspects, economically equivalent to Units on a per unit basis. The distributions paid on Class B Units are accounted for as finance costs.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. NHT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in profit or loss with the carrying amount of the financial asset or group of financial assets reduced.

g) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

h) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with, or under the control of, lenders in respect of future capital expenditures, insurance and taxes.

i) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability and the increase to the provision due to the passage of time will be recognized as a finance cost.

j) Revenue recognition

IFRS 15, *Revenue from Contracts with Customers,* establishes a comprehensive framework for determining whether, how much and when revenue is recognized. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded as a component of accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

k) Finance costs from operations

Finance costs from operations consist primarily of interest expense on outstanding debt, the amortization of deferred financing costs, net of interest income and distributions made to Class B unitholders. Interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the effective interest method, and are included in finance costs from operations. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's Consolidated Statement of Financial Position.

l) Income taxes

(i) Canadian mutual fund status

NHT is a mutual fund trust pursuant to the Income Tax Act (Canada). Under current tax legislation, a mutual fund trust that is not a Specified Investment Flow-Through Trust ("SIFT") pursuant to the Income Tax Act (Canada) is entitled to deduct distributions of taxable income such that it is not liable to pay income taxes provided that its taxable income is fully distributed to unitholders. NHT intends to qualify as a mutual fund trust that is not a SIFT trust and to make distributions not less than the amount necessary to ensure that NHT will not be liable to pay income taxes.

(ii) U.S REIT Status

The Company expects to be classified as a corporation for U.S. federal income tax purposes pursuant to section 7874 of the Code. Further, the Company expects to be treated as a U.S. corporation for all purposes under the Code and, as a result, it would be permitted to elect to be treated as a REIT under the Code, notwithstanding it will be organized as a Canadian entity. In general, a company that elects REIT status, distributes at least 90% of its REIT taxable income to its shareholders in any taxable year, and complies with certain other requirements is not subject to U.S. federal income taxation to the extent of the income it distributes. If it fails to qualify as a REIT in any taxable year, it will be subject to U.S. federal income tax at regular corporate income tax rates on its taxable income. Even if it qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed income. The Company has reviewed the REIT requirements and expects that it will qualify as a REIT under the Code. Accordingly, no provision for U.S. federal income or excise taxes has been made with respect to the income of the Company.

The Company, through wholly owned subsidiaries, leases the Initial Portfolio and will lease any future acquisitions to the TRS Entities, which are taxable in the U.S. A TRS is a corporation that has not elected REIT status and has made a joint election with a REIT to be treated as a TRS. As such, it is subject to U.S. federal and state corporate income tax. The income tax effects on the results of the TRS Entities accrue directly to the unitholders of the Company.

For these entities, income tax expense comprises current and deferred taxes. Current tax and deferred tax are recognized in profit or loss except to the extent that they relate to a business combination, or to items recognized directly in equity or in other comprehensive income.

(iii) Current taxes

Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years. The amount of current tax payable or receivable is the best estimate of the tax amount expected to be paid or received that reflects uncertainty related to income taxes, if any.

(iv) Deferred taxes

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: (a) the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, (b) differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future and (c) for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date.

(v) Tax uncertainties

Judgement is required to assess the interpretation of tax legislation when recognizing and measuring current and deferred tax assets and liabilities. The impact of different interpretations and applications could potentially be material. The Company recognizes a tax benefit from an uncertain tax position when it is probable that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of technical merits.

(vi) 2017 Tax Act

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire at the end of 2025.

m) Operating segments

The Company currently operates in one business segment, owning and operating hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

n) Leases

Under IFRS 16, *Leases*, the Company records the initial present value of unavoidable future lease payments as right-of-use assets and lease liabilities on the Company's Consolidated Statement of Financial Position. The right-of-use assets are initially measured at cost and subsequently measured at cost less accumulated depreciation and impairment losses, adjusted for any remeasurement of the lease liabilities. The lease liabilities are initially measured at the present value of the unavoidable future lease payments discounted using the discount rate implicit in the lease (or if that rate cannot be readily determined, the lessee's incremental borrowing rate). Subsequently, the lease liabilities are adjusted for interest and lease payments, and impact of lease modifications, if any.

o) Levies

In accordance with International Financial Reporting Interpretations Committee ("IFRIC") 21, *Levies* ("IFRIC 21"), the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

p) Government assistance

The Company may receive financial grants from the government in return for past or future compliance with certain conditions relating to its operating activities. These financial grants are recorded in income by the Company when there is reasonable assurance that the Company will comply with the relevant conditions and the financial grant is received. If these conditions are not met, grants received are recognized as a liability.

The Company requested and was granted forgiveness of the first PPP loans in 2021. The Company recognized the balance of the forgiven loans and forgiven accrued interest in profit or loss in 2021 in accordance with IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance.* The Company recognized in profit or loss its second PPP loans in the amount of $4,000 and $6 of accrued interest in accordance with IAS 20 in the first quarter of 2022. See Note 13.

q) Reclassification of items in the financial statements

The Company may, from time to time, record reclassifications of certain items in the Financial Statements to ensure proper representation based on facts and circumstances of the Company.

Note 4. Investment in Subsidiaries and Special Purpose Entities

In connection with its indirect equity investments in real estate assets acquired, the Company, through NHT Holdings, LLC and the OP, indirectly holds an ownership interest in the properties, through the OP's 100% ownership of the membership interests in special purpose LLCs ("SPEs") that directly own the properties. All of the properties the Company has acquired are consolidated in the Company's Financial Statements. Under the terms of each respective mortgage payable, the lender has a perfected security interest in each real estate asset and related personal property.

The loans to NHT 2325 Stemmons, LLC ("NHT 2325 Stemmons"), NHT DFW Portfolio, LLC ("NHT DFW") and NHT SP, LLC ("NHT SP") are cross-collateralized and thus the assets of each entity are subject to recourse in the event of default. Additionally the Note A Loan and Note B Loan (as defined in Note 13) are cross-defaulted with the Mezz Facility. The lender on the Mezz Facility has a perfected security interest in the membership interest of NHT 2325 Stemmons, NHT DFW Portfolio and NHT SP. The Mezz A Loan and Mezz B Loan lender (each as defined in Note 13) has a perfected security interest in the membership interest of NREO NW Hospitality, LLC.

As of June 30, 2022, the Company, through the OP, owned 13 properties through SPE subsidiaries of the OP. The following table presents each SPE that directly owns the title to each property as of June 30, 2022:

Subsidiary	Ownership	Parent	Properties Owned	SPE Subsidiaries Owned	TRS Subsidiaries Owned	Gross Assets	Gross Allocable Notes Payable and Mezzanine Debt
NHT Holdings, LLC	100.0%	NexPoint Hospitality Trust (the Company)	n/a	n/a	n/a	$ 371,005	$ 274,453
NHT Operating Partnership, LLC (the OP)	100.0%	NHT Holdings, LLC	n/a	n/a	n/a	371,005	274,453
NHT 2325 Stemmons, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Dallas Hilton Garden Inn	1	1	34,354	20,595
NREO NW Hospitality, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	DoubleTree Portfolio	5	5	90,658	68,063
NHT DFW Portfolio, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	HomeWood Suites Portfolio	3	3	32,726	31,633
NHT SP, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Marriott St. Petersburg	1	1	38,565	31,524
NexPoint Multifamily Capital Trust, Inc.	100.0%	NHT Operating Partnership, LLC (the OP)	Holiday Inn Express Nashville	1	1	113,373	65,809
NHT Bradenton, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Bradenton Hampton Inn & Suites	1	1	26,630	17,305
NHT Park City, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Hyatt Place Park City	1	1	31,348	19,525

Note 5. Business Combinations, Contributions of Net Assets and Asset Acquisitions

On January 8, 2019 five of the hospitality properties forming part of the Initial Portfolio were indirectly contributed to the Company (Addison HomeWood Suites, Plano HomeWood Suites, St. Pete Marriott, and the Nashville Holiday Inn Express) and the transaction was considered to be a common-control transaction and was accounted for using book value accounting. Simultaneously, the six other hospitality properties forming part of the Initial Portfolio were indirectly contributed to the Company (Dallas Hilton Garden Inn, Beaverton DoubleTree, Bend DoubleTree, Olympia DoubleTree, Tigard DoubleTree, and the Vancouver DoubleTree) in what was considered to be a business combination and was accounted for using the purchase method of accounting in accordance with IFRS 3. See prior year financial statements of the Company available on SEDAR for a further discussion on the formation and contribution of the Initial Portfolio.

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were considered to be asset acquisitions and were accounted for using the purchase method of accounting in accordance with IFRS 3. The Initial Portfolio together with the Park City and Bradenton properties constitutes the Current Portfolio.

On February 14, 2022, the Company made a $200 deposit on a tract of land at the HUB Research Triangle Park in North Carolina. The Company plans to develop a hotel on this site in partnership with a developer that the Advisor has collaborated with previously.

There were no contributions of net assets for the six months ended June 30, 2022.

Purchase Accounting

The following table summarizes the fair values of the assets acquired and liabilities assumed for the acquisitions accounted for using the purchase method of accounting in 2022:

	NHT Bradenton, LLC	NHT Park City, LLC	Total
Fair value of consideration transferred:	$ 25,973	$ 29,502	$ 55,475
	25,973	29,502	55,475
Property and equipment	24,251	29,660	53,911
Right of use asset	1,445	—	1,445
Intangible assets	304	340	644
Other liabilities	(27)	(498)	(525)
Fair value of net assets acquired and liabilities assumed	$ 25,973	$ 29,502	$ 55,475

The Company acquired the Park City and Bradenton properties for $56,000 and received a credit from the seller of the Park City property in the amount of $200.

Descriptions of the net assets acquired

NHT Park City, LLC

On February 15, 2022, the OP acquired 100% of the LLC interests in NHT Park City, LLC, which owns the Hyatt Place Park City property.

NHT Bradenton, LLC

On February 23, 2022, the OP acquired 100% of the LLC interests in NHT Bradenton, LLC, which owns the Hampton Inn & Suites Bradenton property.

Note 6. Dispositions and Assets Held for Sale

	June 30, 2022
Trade and other receivables	$ 301
Prepaid and other assets	652
Property and equipment, net	87,216
Assets held for sale	$ 88,169
Accounts payable and other accrued liabilities	$ 3,145
DT Loan, Mezz A Loan, Mezz B Loan	68,063
Liabilities directly associated with assets held for sale	$ 71,208

On March 8, 2022, the Company began the marketing process to sell the DoubleTree Portfolio. The Company expects the sale of the Beaverton property, Tigard property, and Vancouver property to occur towards the end of the third quarter, with the possibility of an extension to close in October 2022. See Note 24.

The proceeds from the sale will be used to pay down the outstanding debt on the DT Portfolio (the DT Loan, Mezz A Loan and Mezz B Loan).

For the six months ended June 30, 2022, the Company recorded $743 of impairment to the assets held for sale.

Note 7. Fixed Assets and Leases

a) Property and Equipment, Net

	Land and Land Improvements	Buildings and Improvements	Construction in Progress	Furniture, Fixtures and Equipment	Total
Cost:					
Balance, December 31, 2020	$ 35,742	$ 223,372	$ 1,013	$ 40,611	$ 300,738
Additions - during the period	—	979	4,052	405	5,436
Disposals - during the period	—	(1,598)	—	(2,473)	(4,071)
St. Pete PIP placed into service	—	1,702	(4,320)	2,618	—
Casualty loss	—	(584)	—	—	(584)
Impairment recovery (loss) - during the period	5,094	30,578	(157)	2,647	38,162
Balance, December 31, 2021	$ 40,836	$ 254,449	$ 588	$ 43,808	$ 339,681
Additions - during the period	—	1,291	32	445	1,768
Additions - acquired	4,889	42,536	—	6,486	53,911
Reclassification to assets held for sale	(11,118)	(79,563)	(159)	(10,315)	(101,155)
Casualty loss	—	(850)	—	(25)	(875)
Impairment recovery (loss) - during the period	(280)	(1,074)	178	(41)	(1,217)
Balance, June 30, 2022	$ 34,327	$ 216,789	$ 639	$ 40,358	$ 292,113
Accumulated depreciation:					
Balance, December 31, 2020	$ 1	$ 15,413	$ —	$ 14,721	$ 30,135
Depreciation - during the period	3	6,598	—	5,381	11,982
Balance, December 31, 2021	$ 4	$ 22,011	$ —	$ 20,102	$ 42,117
Depreciation - during the period	1	4,025	—	3,640	7,666
Adjustment for casualty loss during the period	—	(65)	—	(17)	(82)
Reclassification to assets held for sale	(3)	(7,283)	—	(6,653)	(13,939)
Balance, June 30, 2022	$ 2	$ 18,688	$ —	$ 17,072	$ 35,762
Carrying amount, December 31, 2021	$ 40,832	$ 232,438	$ 588	$ 23,706	$ 297,564
Carrying amount, June 30, 2022	$ 34,325	$ 198,101	$ 639	$ 23,286	$ 256,351

The Company's fixed asset additions are primarily related to (i) various upgrades and improvements required by the Company's franchise agreements; (ii) the Company's renovation program; and (iii) typical ongoing capital maintenance items. Depreciation during the period includes depreciation of land improvements.

As mentioned in Note 3(e), non-financial assets are reviewed at each reporting date to determine if there is any indication of impairment or recovery. For the six months ended June 30, 2022 and June 30, 2021, the Company recorded an impairment loss of $1,217 and recovery of impairment of $21,508, respectively. In assessing the value in use of the real estate assets, the cash flow estimates were derived from detailed financial forecasts prepared by the Company for 2022. The forecasted cash flow is extended through June 30, 2027 and asset values were determined using a discounted cash flow analysis with terminal cap rates and discount rates used in the most recent appraisals provided by a recognized national valuation firm and adjusted to take into account how various research analysts are now pricing other publicly traded hospitality REITs.

As of June 30, 2022, the Company has classified five assets as held for sale in the consolidated Statement of Financial Position. See Note 6.

b) Leases

The Company's leases consist of land and vehicles at June 30, 2022 and December 31, 2021.

Right of Use Asset	Land	Vehicles	Total
Balance, December 31, 2020	$ 3,013	$ 81	$ 3,094
Balance, December 31, 2021	$ 3,013	$ 81	$ 3,094
Acquisitions	1,445	—	1,445
Balance, June 30, 2022	$ 4,458	$ 81	$ 4,539
Accumulated depreciation:			
Balance, December 31, 2020	$ 600	$ 49	$ 649
Depreciation - During the period	300	16	316
Balance, December 31, 2021	$ 900	$ 65	$ 965
Depreciation - During the period	159	8	167
Balance, June 30, 2022	$ 1,059	$ 73	$ 1,132
Carrying amount, December 31, 2021	$ 2,113	$ 16	$ 2,129
Carrying amount, June 30, 2022	$ 3,399	$ 8	$ 3,407

Lease Liability	Land	Vehicles	Total
Balance, December 31, 2020	$ 1,345	$ 33	$ 1,378
Interest expense	4	—	4
Changes from financing cash flows:			
Lease liability paid	(142)	(16)	(158)
Balance, December 31, 2021	$ 1,207	$ 17	$ 1,224
Interest expense	2	—	2
Changes from financing cash flows:			
Lease liability paid	(73)	(8)	(81)
Balance, June 30, 2022	$ 1,136	$ 9	$ 1,145
Carrying amount, December 31, 2021	$ 1,207	$ 17	$ 1,224
Carrying amount, June 30, 2022	$ 1,136	$ 9	$ 1,145

Note 8. Restricted Cash

The Company funded restricted cash reserves for brand-mandated PIPs and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement and future insurance and property tax expenses. Restricted cash reserves for PIP programs are typically expected to be spent over an 18-24 month period once work begins. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. Additionally, the Company presents reserves and escrows for taxes and insurance as restricted cash. Cash proceeds in reserve accounts are primarily held by a lender, though in some cases they are held by the Company. Cash reserves to be held by lenders are only available to meet the expenses for which they are reserved against and cannot be used to extinguish general liabilities. The funds for the renovation of the St. Pete Property are included in furniture, fixtures and equipment ("FF&E") reserves in the table below.

The following table summarizes the amounts of cash reserves in each of these categories as of June 30, 2022 and December 31, 2021:

	June 30, 2022	December 31, 2021
PIPs reserve	$ 175	$ 175
FF&E Reserves	4,937	2,213
Property tax reserve	3,290	2,842
Insurance, cash collateral and other reserves	918	692
Nashville Restricted Cash[1]	2,216	1,133
Total restricted cash	$ 11,536	$ 7,055

[1]In accordance with the forbearance agreement executed with the Lender on May 26, 2021, the Nashville Property is under cash management until it achieves a debt service coverage ratio as specified by the lender for two consecutive quarters. Cash management allows the lender to receive all cash as it comes in from operations and then make payments based on a waterfall. After expenses within the waterfall are met, the remaining cash is distributed to the subsidiary that owns the Nashville Property.

Note 9. Operating Expenses

The following table summarizes components of operating expenses for the three months and six months ended June 30, 2022 and June 30, 2021 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Payroll	$ 4,989	$ 2,773	$ 8,885	$ 5,134
Franchise fees	1,382	788	2,502	1,343
Cost of goods sold	1,300	709	2,228	1,163
Utilities	513	387	951	748
Supplies and equipment	592	304	1,094	544
Property taxes and insurance	748	369	4,605	4,253
Other operating expenses	210	96	409	158
Repairs and maintenance	309	149	540	266
Operating expenses	$ 10,043	$ 5,575	$ 21,214	$ 13,609

The Company recognizes the property tax levy on January 1st of the calendar year in accordance with IFRIC 21.

Note 10. Operating General and Administrative Expenses

The following table summarizes components of general and administrative expenses for the three months and six months ended June 30, 2022 and June 30, 2021 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Marketing	$ 1,652	$ 1,012	$ 2,716	$ 1,534
Operations G&A	1,057	556	1,831	996
Property management fees	578	349	1,039	568
Other administrative expenses	359	331	652	593
Operating general and administrative expenses	$ 3,646	$ 2,248	$ 6,238	$ 3,691

Note 11. Corporate General and Administrative Expenses

The following table summarizes components of corporate general and administrative expenses for the three months and six months ended June 30, 2022 and June 30, 2021 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Audit fees and financial reporting	$ 75	$ 175	$ 304	$ 329
Tax preparation	9	—	34	47
Consulting fees	37	13	66	22
D&O Insurance	24	36	24	54
Legal fees	184	71	228	206
Trustee fees, stock and other compensation	367	343	738	391
TSXV listing fees	4	—	20	16
Filing fees	18	10	18	12
Other administrative expenses	23	57	54	71
Corporate general and administrative expenses	$ 741	$ 705	$ 1,486	$ 1,148

Note 12. Accounts Payable and Other Accrued Liabilities

The following table summarizes components of accounts payable and other accrued liabilities as of June 30, 2022 and December 31, 2021 which are included in the Consolidated Statements of Financial Position:

	June 30, 2022	December 31, 2021
Trade payables	$ 3,196	$ 1,709
Payroll and payroll taxes payable	742	725
Property taxes payable	3,308	1,423
Sales and occupancy tax payable	968	673
Property management fees payable	1,670	1,309
Renovation fees payable	392	—
Interest payable on outstanding debt	3,410	7,751
Franchise fees payable	1,162	622
Deposit liability and advanced bookings	85	85
Offering costs payable	212	212
Other payables	1,546	1,439
Forbearance fee payable	—	342
Professional service fees payable	912	985
Acquisition costs payable	1,098	1,231
Advisory fee payable	5,681	4,635
Distributions payable to Class B unitholders	1,034	1,034
Accounts payable and other accrued liabilities	$ 25,416	$ 24,175

On November 15, 2019, the Company filed a prospectus registering $500 million of additional units, debt securities, subscription receipts and warrants with the intent to raise capital in a secondary offering of the Company's Units (the "Offering"). After launching the Offering, the Company abandoned the Offering on December 18, 2019. The unpaid costs of the Offering totaled $212 as of June 30, 2022, and are included in offering costs payable. As a result of the Company's efforts to close its previously disclosed merger with, *inter alia,* Condor Hospitality Trust, Inc., the Company has unpaid expenses related to the transaction of $1,098 as of June 30, 2022, which are related primarily to legal and audit expenses and are included in acquisition costs payable.

Accounts payable and other accrued liabilities of $3,145 are associated with assets held for sale at June 30, 2022. The balance of accounts payable and other accrued liabilities on the Consolidated Statement of Financial Position does not include this amount as it is presented separately and included in liabilities directly associated with the assets held for sale. See Note 6.

Note 13. Notes Payable, Net, Mezzanine Loans, Net and PPP Loans

The following tables further describe mortgages and other debt instruments as of June 30, 2022 and December 31, 2021 which are included in the Consolidated Statements of Financial Position:

Notes Payable

	June 30, 2022	December 31, 2021
Notes payable	$ 241,390	$ 205,632
Less: current maturities	(7,750)	(85,484)
Less: notes related to assets held for sale	(55,000)	—
Less: unamortized portion of deferred financing costs	(2,054)	(579)
Notes payable, net	$ 176,586	$ 119,569

Mezzanine Loans

	June 30, 2022	December 31, 2021
Mezzanine loans	$ 33,063	$ 33,063
Less: current maturities	(19,696)	(20,000)
Less: mezzanine loans related to assets held for sale	(13,063)	—
Less: unamortized portion of deferred financing costs	(304)	—
Mezzanine loans, net	$ —	$ 13,063

On January 8, 2019, the Company assumed a $55,000 term loan (the “DT Loan”), a $7,365 mezzanine A loan (the “Mezz A Loan”) and a $5,700 mezzanine B loan (the “Mezz B Loan”), with a large non-bank company. The Mezz B Loan serves as a PIP holdback and is available to the Company for future PIP expenditures and bears interest at a variable rate equal to 30-day LIBOR plus 3.45%. The DT Loan is secured by the DT Portfolio and bears interest at a variable rate equal to the 30-day LIBOR plus 2.35%. The Mezz A Loan accrues interest at a variable rate equal to the 30-day LIBOR plus 11.66%. The DT Loan, Mezz A Loan and Mezz B Loan all matured on May 9, 2021 and the Company executed the first extension on March 10, 2021 extending the maturity date of the DT Loan, Mezz A Loan and Mezz B Loan to May 9, 2022. The Company executed a second extension on May 9, 2022 extending the maturity to November 9, 2022. As of June 30, 2022, the DT Loan, Mezz A Loan and Mezz B Loan had interest rates of 4.26%, 13.57% and 5.36%, respectively. As of June 30, 2022 and December 31, 2021, the balance drawn on the Mezz B Loan was $5,698. For the period from January 1, 2021 to June 30, 2022, the Company paid $1,184, $990, and $330 in interest on the DT Loan, Mezz A Loan and the Mezz B Loan, respectively. The Mezz A Loan and Mezz B Loan are secured by a pledge of the membership units of NREO NW Hospitality, LLC.

The Company executed an amendment to the Mezz A Loan and Mezz B Loan dated June 26, 2020 granting the following forbearance and waivers: forbearance of interest for four months through August 31, 2020, waiver of covenants through March 31, 2021, release of FF&E reserves and waiver on contributions to FF&E reserves for four months through August 31, 2020. The Company executed another amendment to the Mezz A Loan and Mezz B Loan granting forbearance of interest from December 2020 through March 2021. The Company paid all deferred interest on the Mezz A Loan and Mezz B Loan in the second quarter of 2022 totaling $484 and $175 respectively.

The DT Loan, Mezz A Loan and Mezz B Loan contain customary representations, warranties, and events of default, which require the Company to comply with affirmative and negative covenants. As of June 30, 2022, there has been no declaration of an event of default by the lender as defined in the respective agreements.

On January 8, 2019, in connection with the acquisition of the Nashville Property, the Company assumed the existing loan on the property of $72,500 with an outstanding balance of $69,929 (the “HIX Loan”). The HIX Loan is secured by the Nashville Property and bears interest at a fixed rate equal to 5.12% and matures on June 30, 2026.

The HIX Loan contains customary representations, warranties, and events of default, which require the HIX Borrowers to comply with affirmative and negative covenants. On September 18, 2020, the lender delivered a formal notice of default to the HIX Borrowers. On May 26, 2021, the HIX Borrowers executed a forbearance agreement with the lender. See Note 20(b) for further discussion surrounding the Nashville Property.

On January 8, 2019, the Company, through the OP, entered into a $35,000 mezzanine facility (the “Mezz Facility”) with a large non-bank company. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville

Property acquired on January 8, 2019. The Mezz Facility is secured by a pledge of the membership units in NHT 2325 Stemmons, NHT DFW Portfolio, and NHT SP, bears interest at a variable rate equal to the 30-day LIBOR plus 6.25% and had an original maturity date of January 8, 2020. As of June 30, 2022, the Mezz Facility had an effective interest rate of 8.50% and matures on July 8, 2022. For the period from January 1, 2021 to June 30, 2022, the Company paid $859 in interest on the Mezz Facility. See Note 24.

On February 28, 2019, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $59,400 Note A loan (the "Note A Loan") and a $28,600 Note B loan (the "Note B Loan"). The Note A Loan and Note B Loan are secured by the HGI Property, the HWS Portfolio and the St. Pete Property. The Note A Loan bears interest at a variable rate equal to the 30-day LIBOR plus 2.00% and matures on March 1, 2024. The Note B Loan bears interest at a variable rate equal to the 30-day LIBOR plus 6.46% and matures on March 1, 2024. As of June 30, 2022, the Note A Loan and the Note B Loan had an effective interest rate of 4.25% and 8.71%, respectively. For the period from January 1, 2021 to June 30, 2022, the Company paid $1,206 and $1,211 in interest on the Note A Loan and the Note B loan, respectively. On April 14, 2021, the Company repaid $1,012 and $488 of principal on the Note A Loan and Note B Loan, respectively. Starting in September 2021 and through February 2022, the Company made monthly principal payments on the Note A Loan and Note B Loan. The total principal payments made during this period were $842 and $405, respectively.

On February 15, 2022, in connection with the acquisition of the Park City and Bradenton properties, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $39,300 loan (the "PC & B Loan") with a large non-bank company. The outstanding balance on the PC & B Loan at June 30, 2022 is $36,829 with $2,471 available to draw on for renovation purposes. The Company has begun planning renovations at both properties to start in late 2022.

The DT Loan, the PC & B Loan, the HIX Loan, the Note A Loan and Note B Loan (collectively referred to as the "Notes Payable"), and the Mezz A Loan, the Mezz B Loan, and the Mezz Facility (collectively referred to as the "Mezzanine Loans" and together with the "Notes Payable" are referred to as the "Loans") contain customary representations, warranties, and events of default, which require the Company to comply with affirmative and negative covenants.

As discussed in Note 2, as of June 30, 2022, the Company is in good standing with the lenders on all of its outstanding Loans.

In February and March 2021, all 11 of our properties in the Initial Portfolio received a second loan from the PPP with total proceeds from the loans amounting to $4,000. In February 2022, the SBA granted forgiveness of the second loans. The Company recognized the loans and all accrued interest in profit or loss for the six months ended June 30, 2022.

The SBA, in consultation with the U.S. Department of the Treasury, has published guidance for borrowers concerning forgiveness of PPP loans. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the date of disbursement of the loan and the SBA remittance of the forgiveness amount. The borrower is also responsible for paying accrued interest on any amount of the loan that is not forgiven.

The table below shows future payments on the Loans, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to June 30, 2022, with the DT Loan, the Mezz A Loan and Mezz B Loan maturing in 2022 as those assets are held for sale:

	Notes Payable	Mezzanine Loans	Total
2022	$ 62,716	$ 33,063	$ 95,779
2023	1,386	—	1,386
2024	78,802	—	78,802
2025	38,365	—	38,365
2026	60,121	—	60,121
2027	—	—	—
Total	$ 241,390	$ 33,063	$ 274,453

As of June 30, 2022 and December 31, 2021, the Company has $73,993 and $50,068 of convertible notes due to its affiliates. The notes are, subject to TSXV approval, convertible to Class B Units at the election of the Company. Most bear interest at an annual rate of 2.25% while outstanding and mature in 20 years in most cases.

In the first quarter of 2022, the Company repaid $4,550 of principal to affiliates.

	June 30, 2022		December 31, 2021	
Convertible affiliate notes	$	73,993	$	50,068

Note 14. Class B Units

The Class B Units of the OP are economically equivalent to Units and are entitled to receive distributions equal to those provided to holders of Units. These Class B Units have been classified as a liability in accordance with IAS 32, as they are redeemable instruments at the option of the holders.

Class B Units are measured at fair value with any changes in fair value recorded in profit or loss. The fair value adjustments of Class B Units are calculated using the Company's Unit closing price as of the end of the reporting period. An increase in the Unit closing price over the period results in a fair value loss whereas a decrease in the Unit closing price over the period results in a fair value gain.

As allowed under IFRS 13, *Fair Value Measurement,* if an asset or a liability measured at fair value has a bid price and an ask price, the price within the bid-ask spread that is the most representative of fair value in the circumstances shall be used to measure fair value. The Company has recorded Class B Units at their fair value, which has been assessed to equal the closing market price of the Units at each valuation date (Level 2).

The 10 day volume weighted average price ("VWAP") of the Units for the 10 trading days immediately preceding the end of the period is the basis of measurement the Company uses to record fair value adjustments of the Class B Units. The 10 day VWAP at June 30, 2022 was $2.50 and the fair value adjustment of the Class B Units for the six months ended June 30, 2022 was $507.

The Company's notes due to affiliates are, subject to TSXV approval, convertible at any time at the election of the Company into Class B Units.

On December 13, 2021, the Company granted 2,475,000 profit interest units ("PIUs") in the OP to officers of the Company and employees of the Advisor. Upon vesting, grantees will receive Class B Units of the OP. As of June 30, 2022, no profits interests units have vested. See Note 23 for more information on PIUs granted and vesting schedules.

The following table presents the outstanding units and the change in fair value of the Class B Units for the six months ended June 30, 2022:

	Units	Fair value	
Redeemable noncontrolling interests in the OP, January 1, 2022	205,597	$	432
Change in fair value of Class B Units	—		(507)
Profit interest units granted	—		589
Redeemable noncontrolling interests in the OP, June 30, 2022	205,597	$	514

Note 15. Finance Costs

The following table summarizes finance costs for the three months and six months ended June 30, 2022 and June 30, 2021:

	For the Three Months Ended				For the Six Months Ended			
	June 30, 2022		June 30, 2021		June 30, 2022		June 30, 2021	
Interest on debt	$	4,636	$	4,585	$	9,048	$	9,306
Amortization of deferred financing costs		389		226		680		457
Change in value of interest rate cap		(245)		—		(571)		—
Fees related to Nashville forbearance agreement		—		1,162		12		1,162
Finance costs from operations	$	4,780	$	5,973	$	9,169	$	10,925
Fair value adjustment to interest rate swaps		—		2,386		—		(4,613)
Fair value adjustment of Class B Units		(218)		(74)		(507)		(254)
Total finance costs	$	4,562	$	8,285	$	8,662	$	6,058

Note 16. Income Taxes

(a) Income tax (expense)/recovery:

The Company has recorded current tax expense/recovery for taxes associated with its direct and indirect subsidiaries. The income tax expense/recovery in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss) is as follows:

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2022	June 30, 2021	June 30, 2022	June 30, 2021
Net income (loss) before income tax	$ (1,701)	$ (4,347)	$ (1,081)	$ 9,782
Less: income/(loss) relating to entities not subject to income tax	(920)	(8,558)	(3,041)	3,521
Net income before tax relating to taxable subsidiaries	(781)	4,211	1,960	6,261
Deferred income tax benefit	168	(27)	291	38
Income taxes	(531)	(999)	(614)	(1,660)
Income tax recovery (expense)	$ (363)	$ (1,026)	$ (323)	$ (1,622)

(b) Deferred income tax benefit:

As of June 30, 2022 and December 31, 2021, the Company has an estimated tax asset of $2,897 and $2,606, respectively, recorded in the Consolidated Statement of Financial Position for certain temporary book-to-tax differences as well as net operating losses associated with its direct and indirect subsidiaries. A summary of the composition of such tax benefits is provided in the table below.

	June 30, 2022	December 31, 2021
Reserves not currently deductible	$ 390	$ 508
Net operating losses carried forward	2,507	2,098
Total tax assets	$ 2,897	$ 2,606

Note 17. Unitholders' Capital

The Company is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the Company. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the Company; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders.

There were no changes to the Units or Unitholders' Capital for the period from January 1, 2022 to June 30, 2022.

In 2021, the Company granted 549,687 deferred units to the independent trustees. These deferred units are issued but not issued and outstanding Units. See Note 23 for a further discussion on deferred units and profit interests units.

The following table presents the issued Units, and the changes in unitholders' Capital for the period from January 1, 2021 to December 31, 2021:

	Units	Capital Balance
Unitholders' capital, January 1, 2021	29,352,055	$ 98,023
Deferred units issued	549,687	984
Unitholders' capital, December 31, 2021	29,901,742	$ 99,007

Note 18. Fair Value of Financial Instruments and Derivatives

a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value

measurements recognized in the Financial Statements are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of June 30, 2022 and December 31, 2021, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of the Loans are estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. At June 30, 2022, the Notes Payable were discounted using rates between 6.09% and 7.63% and the Mezzanine Loans were discounted using rates between 12.29% and 14.25%. Discount rates are either provided by lenders or are observable in the open market. As of June 30, 2022, the carrying value of the Company's Loans exceeded their fair value by approximately $12,511 and are considered Level 2 in the fair value hierarchy as inputs are observable directly or indirectly.

The fair value of the redeemable Class B Units is determined based on their redemption value. The redemption value is based on the fair value of the Company's Units at the redemption date, and therefore, is calculated based on the fair value of the Company's Units at the date of the Financial Statements. Since the valuation of the Units are based on observable inputs such as quoted prices for similar instruments in active markets, redeemable non-controlling interests in the OP are classified as Level 2 of the fair value hierarchy.

For the three months and six months ended June 30, 2022, there were no transfers between the different levels of the fair value hierarchy.

(b) Derivative Financial Instruments and Hedging Activities

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company manages interest rate risks primarily by managing the amount, sources, and duration of its debt funding and the use of derivative financial instruments.

The Company performs market valuations on its derivative financial instruments. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate caps are determined using the market standard methodology of discounting the future expected cash receipts that would occur if variable interest rates rise above the strike rate of the caps. The variable interest rates used in the calculation of projected receipts on the cap are based on an expectation of future interest rates derived from observable market interest rate curves and volatilities.

Interest rate caps involve the receipt of variable-rate amounts from a counterparty if interest rates rise above the strike rate on the contract in exchange for an up-front premium. The Company entered into an interest rate cap agreement upon acquisition of the Park City and Bradenton properties in February 2022. As of June 30, 2022, the interest rate cap agreements the Company has entered into effectively cap one-month SOFR on $36,829 of the Company's floating rate mortgage and mezzanine indebtedness at a weighted average rate of 2.00%.

To comply with the provisions of IFRS 9, *Financial Instruments,* the Company incorporates credit valuation adjustments to appropriately reflect both the Company's own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with the Company's derivatives utilize Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by the Company and its counterparties. The Company has determined that the significance of the impact of the credit valuation adjustments made to its derivative contracts, which determination was based on the fair value of each individual contract, was not significant to the overall valuation. Additionally, in the case of interest rate caps, the Company has no performance obligation, so no credit valuation adjustment is necessary. As a result, all of the Company's derivatives held as of June 30, 2022 and December 31, 2021 were classified as Level 2 of the fair value hierarchy.

Changes in fair value of the interest rate caps are recorded directly in Finance costs from operations. For the six months ended June 30, 2022, the Company incurred minimal interest expense related to changes in the fair value of interest rate caps. The combined fair value of the interest rate caps was nominal as of June 30, 2022 and is recorded as Prepaid and Other Assets in the Consolidated Statement of Financial Position.

As of June 30, 2022, the Company had the following outstanding interest rate caps:

Type of Derivative	Hedged Financial Instrument	Notional		Strike Rate	Reference Rate		Termination Date
Interest rate cap	Note payable	$	55,000	3.00%	One-month LIBOR	1.58%	May 9, 2022[1]
Interest rate cap	Mezz loans	$	13,065	3.00%	One-month LIBOR	1.58%	May 9, 2022[1]
Interest rate cap	Note payable	$	39,300	2.00%	One-month SOFR[2]	2.00%	March 5, 2025

[1]The Company did not renew the interest rate caps upon expiration.
[2] Means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York

Interest Rate Swap Agreements

In 2019, the OP entered into three transactions with KeyBank National Association ("KeyBank") whereby the OP exchanged the LIBOR portion of its interest obligations in exchange for a fixed rate. On November 24, 2021, the Company terminated all three interest rate swaps.

c) Financial risk management

The Company may be exposed to a number of risks in its normal course of operations from use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

A majority of the Company's Loans bears interest at a variable rate and are either subject to a LIBOR floor or have interest rate caps in place. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument. The Company is exposed to credit risk with respect to its interest rate caps, interest rate swaps and trade and other receivables. The credit risk for interest rate caps and interest rate swaps are discussed in Note 18 (b). Credit risk of trade and other receivables is mitigated by initiating a prompt collection process. The Company is also exposed to credit risk with respect to cash and cash equivalents, restricted cash and counterparties on derivative contracts. This credit risk of such counterparties is mitigated by only transacting with large financial institutions.

(iii) Liquidity risk

The Company's principal liquidity needs arise from working capital requirements, debt servicing and repayment obligations, payments on unhedged interest rate swaps, planned funding of property improvements, leasing costs, distributions to unitholders, property development and acquisition funding requirements. Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they fall due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments. If the Company was required to sell the property, the proceeds to the Company may be significantly less than the property's carrying amount.

Liquidity risk is managed through cash flow forecasting. Management monitors forecasts of the Company's liquidity requirements to ensure it has sufficient cash to meet operational needs through maintaining sufficient cash and/or availability on undrawn loan agreements and ensuring that it meets its financial covenants. Such forecasting involves a significant degree of judgment, takes into consideration current and projected macroeconomic conditions, the Company's cash

collection efforts, debt financing plans, covenant compliance required under the terms of debt agreements and internal targets. There is a risk that such liquidity forecasts may not be achieved and that currently available debt financing may no longer be available to the Company at terms and conditions that are favorable to the Company, or at all.

As of June 30, 2022, the Company had a working capital deficiency of $12,575. Additional contractual obligations and contingencies are outlined in Note 20. As mentioned in Note 2(a), there is substantial doubt as to whether the Company can meet all of its obligations as they become due. This is primarily the result of the $20,000 Mezz Facility that matured on January 8, 2020, (and as of July 8, 2022, was further extended by the lender until January 8, 2023) but also as a result of the impact to the Company's revenue decline due to the COVID-19 pandemic. In order to continue as a going concern, management is actively working towards addressing the Company's liquidity concerns, including the following: (i) negotiating with lenders to extend or otherwise restructure the terms of our loans and obtain relief from covenants in the near term; and (ii) converting payables to an affiliate into Class B Units. In addition, subject to market conditions, the Company may seek to raise funding through new debt and equity financing, including sale-leaseback and ground lease arrangements, though there is no assurance the Company will be able to obtain such financing. The particular features and quality of the underlying assets and the debt and equity market parameters existing at the time of financing may impact the ability to obtain financing.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 1.7867% and term SOFR of 1.6860% as of June 30, 2022:

	Carrying Amount	Contractual Cash Flows	Reclassified as Held for Sale	1 Year	More than 1 Year
Notes payable	$ 239,336	$ 241,390	$ 55,000	$ 7,750	$ 178,640
Mezzanine loan	32,759	33,063	13,063	20,000	—
Interest payable on notes and mezzanine loans	2,121	28,389	1,289	8,193	18,908
Accounts payable and other accrued liabilities	20,150	20,150	1,856	18,294	—
Lease liability	1,145	1,689	—	161	1,528
Total	$ 295,511	$ 324,681	$ 71,208	$ 54,397	$ 199,076

Note 19. Capital Management

The Company defines capital as the aggregate of unitholders' equity, Class B Units, notes payable and mezzanine loans. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 20. Commitments and Contingencies

a) Franchise agreement

The Company's properties are operated under franchise agreements (the "Franchise Agreements") with Franchisors. The Franchise Agreements require the payment of a monthly royalty fee and monthly marketing fee on the property's gross room revenue. For the six months ended June 30, 2022, franchise fees were $2,502 and are included in operating expenses.

Details regarding the Franchise Agreements are presented in the following table:

Property	Brand	Execution Date	Term (Years)	Expiration Date	(% of Gross Rooms Sales) Franchise Fees	Marketing Fees
Dallas Hilton Garden Inn	Hilton	December 31, 2014	15	December 31, 2029	5.50%	4.30%
Addison HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Plano HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Las Colinas HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Beaverton DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Bend DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Olympia DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Tigard DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Vancouver DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
St. Petersburg Marriott	Marriott	September 25, 2018	20	September 25, 2038	6%/3%[1]	1.00%
Nashville Holiday Inn Express	Intercontinental Group	January 8, 2019	20	January 8, 2039	3.00%	3.00%
Hyatt Place Park City	Hyatt	February 15, 2022	20	February 23, 2042	5.00%	3.50%
Bradenton Hampton Inn & Suites	Hilton	February 22, 2022	15	February 28, 2037	6.00%	4.00%

[1] 6% of gross rooms sales / 3% of gross food and beverage sales.

b) *Litigation*

In the normal course of operations, the Company may become subject to a variety of legal and other claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims.

As a result of the financial impact that the COVID-19 pandemic has had on the Nashville Property and the inability of the hotel to meet its financial covenants and obligations, RSS Multiple – DE NT, LLC, the current lender ("Lender"), filed suit against the HIX Borrowers and the Loan Guarantor, seeking, among other things, to appoint a receiver and to foreclose on their security interest.

On May 26, 2021, the HIX Borrowers and Loan Guarantor executed a forbearance agreement with the Lender that will, when followed, cure the defaults identified by the Lender and bring the loan into good standing. The agreement contains various compliance dates, but the final action in compliance with the forbearance agreement, must occur by February 1, 2022. The HIX Borrowers met the compliance requirements by February 1, 2022.

Note 21. Related party transactions

The Financial Statements include the following transactions with related parties:

Advisory Fees

In accordance with the agreement entered into with the Advisor (the "Advisory Agreement"), the Company pays the Advisor an advisory fee equal to 1.00% of the REIT Asset Value (as defined below). Under the direct supervision of the Company, the duties performed by the Company's Advisor under the terms of the Advisory Agreement include, but are not limited to: providing daily management for the Company, selecting and working with third party service providers, overseeing the third party manager, formulating an investment strategy for the Company and selecting suitable properties and investments, managing the Company's outstanding debt and its interest rate exposure through derivative instruments, determining when to sell assets, and managing the renovation program or overseeing a third party vendor that implements the renovation program. REIT Asset Value means the value of the Company's total assets, as determined in accordance with IFRS except that such value shall only consolidate the Company's and NHT Holdings, LLC assets plus the Company's pro rata share of leverage at the OP.

Pursuant to the terms of the Advisory Agreement, the Company will reimburse the Advisor for all documented Operating Expenses and Offering Expenses it incurs on behalf of the Company. "Operating Expenses" include legal, accounting, financial and due diligence services performed by the Advisor that outside professionals or outside consultants would otherwise perform, the Company's pro rata share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Advisor required for the Company's operations, and compensation expenses under the Omnibus Plan (as defined in Note 23). Operating Expenses do not include expenses for the advisory services described in the Advisory Agreement. Certain Operating Expenses, such as the Company's ratable share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses incurred by the Advisor or its affiliates that relate to the operations of the Company, may be billed monthly to the Company under a shared services agreement. "Offering Expenses" include all expenses (other than underwriters' discounts) in connection with an offering, including, without limitation, legal, accounting, printing, mailing and filing fees and other documented offering expenses.

The Advisor has reinstated the previously waived 2020 advisory fees and the rebate of accrued but unpaid fees as of December 31, 2019. The Company will begin paying advisory fees when it is able to resume payments while remaining cash flow positive.

Expense Cap

Pursuant to the terms of the Advisory Agreement, expenses paid or incurred by the Company for advisory fees payable to the Advisor and expenses incurred by the Advisor or its affiliates in connection with the services it provides to the Company and its subsidiaries will not exceed 1.5% of REIT Asset Value for the calendar year (or part thereof that the Advisory Agreement is in effect (the "Expense Cap")). The Expense Cap does not limit the reimbursement of expenses related to Offering Expenses. The Expense Cap also does not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation or other events outside the Company's ordinary course of business or any out-of-pocket acquisition or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets. For the six months ended June 30, 2022 and June 30, 2021, the Company incurred expenses subject to the Expense Cap of $2,532 and $2,030, respectively.

Internalization Fee

The Company and/or the OP may elect to acquire all of the outstanding and issued equity interests of the Advisor (the "Internalization") by exercising its rights, in its sole discretion, under the Advisory Agreement (subject to certain terms and conditions) to effect an Internalization. The Company will pay the Advisor a fee equal to three times the prior 12 months' Advisory Fee. The Internalization Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date of the Internalization. There has been no internalization as of June 30, 2022.

Termination Fee

If the Company and/or the OP elect to terminate the Advisory Agreement, the Company will pay the Advisor a fee (the "Termination Fee") equal to three times the prior 12 months' Advisory Fee. The Termination Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date the Advisory Agreement is terminated.

Loans from Affiliates

As of June 30, 2022, the OP has entered into several convertible notes with affiliates totaling $78,543 since January 8, 2019. The proceeds of the notes were used for general corporate and working capital purposes and have been consolidated into one account on the Consolidated Statements of Financial Position. In the first quarter of 2022, the Company repaid $4,550 of principal to affiliates. The notes are, subject to TSXV approval, convertible into Class B Units at the election of the Company.

Other Related Party Transactions

The Company has in the past, and may in the future, utilize the services of affiliated parties. For the six months ended June 30, 2022, the Company paid de minimis fees to an affiliated bank, NexBank N.A. ("NexBank"), as the Company and its subsidiaries have several bank accounts at NexBank with a cumulative balance of $12 as of June 30, 2022. NexBank is an affiliate of the Advisor through common beneficial ownership.

Note 22. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities, including movements of liabilities to cash flows arising from financing activities for the six months ended June 30, 2022 were as follows:

	Notes Payable, Net	Mezzanine Loans, Net	PPP Loans, Net	Total
Balance, December 31, 2021	$ 205,053	$ 33,063	$ 4,000	$ 242,116
Changes from financing cash flows:				
PPP loan forgiveness	—	—	(4,000)	(4,000)
Loan proceeds related to acquisitions	36,829	—	—	36,829
Deferred financing costs paid	(1,972)	(473)	—	(2,445)
Total changes from financing cash flows	34,857	(473)	(4,000)	30,384
Liability related:				
Principal payments made	(1,070)	—	—	(1,070)
Reclassification to liabilities held for sale	(55,000)	(13,063)	—	(68,063)
Amortization of deferred financing costs on outstanding debt	496	169	—	665
Balance, June 30, 2022	$ 184,336	$ 19,696	$ —	$ 204,032
Current portion	$ 7,750	$ 19,696	$ —	$ 27,446
Long-term portion	$ 176,586	$ —	$ —	$ 176,586

Note 23. Incentive Compensation Plan

The Company has adopted an omnibus equity incentive plan (the "Omnibus Plan") to be granted to key officers and employees of the Company, independent trustees and key employees of the Advisor. As part of the independent trustees' compensation, it is anticipated they will be granted deferred units ("DUs") in the future and may receive, at their election, 100% of their board compensation in the form of DUs. Under the Omnibus Plan, subject to adjustments according to the terms of the plan, the maximum number of Units available for issuance is 3,026,155, representing 20% of the issued and outstanding Units of the Company at the time the Omnibus Plan was adopted.

On June 28, 2021, the Company granted 339,687 DUs to the independent trustees. On December 13, 2021, the Company granted 210,000 DUs to the independent trustees. These DUs vested immediately upon grant. On December 13, 2021, the Company granted 2,475,000 PIUs in the OP to officers of the Company (2,029,200) and employees of the Advisor (445,800). The PIUs will vest ratably over four years (i.e. 25% per year), however, 50% of the PIUs can vest sooner if the value of the units in the table below is achieved, as determined by a recognized national valuation firm which performs regular valuations of the units. In no case can PIUs vest within one year of grant. Therefore, to the extent the below stock prices are achieved prior to December 13, 2022, the PIUs will not be issued until December 13, 2022, assuming no additional restrictions exist:

Vesting %	Upon Unit Price Achieving[1]	PIUs Vested
12.50%	$ 2.00	309,375
12.50%	2.50	309,375
12.50%	3.00	309,375
12.50%	4.00	309,375
Total		1,237,500

[1]Price to be adjusted for dilutive events.

Assuming none of the performance metrics are met, the PIUs will vest as shown in the below table:

Vesting %	Date	PIUs Vested
25.00%	December 13, 2022	618,750
25.00%	December 13, 2023	618,750
25.00%	December 13, 2024	618,750
25.00%	December 13, 2025	618,750
Total		2,475,000

Upon vesting, grantees of the PIUs will receive Class B Units of the OP. As of June 30, 2022, 549,687 DUs and 2,475,000 PIUs have been granted under the Omnibus Plan with 1,468 DUs or PIUs remaining that may be granted.

On May 31, 2022, the Board of Trustees passed a resolution adopting a deferred unit plan (the "Deferred Unit Plan"). The Deferred Unit Plan was subsequently approved by unitholders at the annual general meeting held on June 30, 2022. The maximum number of DUs reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As of June 30, 2022, no DUs have been issued under this plan.

Note 24. Subsequent Events

The Company evaluated subsequent events through August 19, 2022 to determine if any significant events occurred subsequent to the consolidated balance sheet dates that would have a material impact on the Financial Statements.

Convertible Notes

Subsequent to June 30, 2022, the Company issued $2,100 in convertible notes to related parties. The notes mature 20 years from the issuance date and, subject to TSXV approval, are convertible to Class B Units at the Company's discretion.

DoubleTree Properties

As of August 19, 2022, the Company has executed purchase and sale agreements with three different parties for the sale of the Beaverton property, the Tigard property, and the Vancouver property for a combined purchase price of $43,600. The Company expects these transactions to close towards the end of the third quarter, with the possibility of an extension to close in October 2022.

Subsequent to June 30, 2022, the Company decided to no longer market the Bend property and Olympia property for sale and will continue to hold those assets for the foreseeable future. As of August 19, 2022, assets related to these properties are no longer classified as held for sale.

Mezz Facility

On July 8, 2022, the Company executed an amendment with the lender on the Mezz Facility extending the maturity date to January 8, 2023.

On July 8, 2022, the Company made a $2,000 principal payment on the Mezz Facility.

TAB 9

NEXPOINT HOSPITALITY TRUST

Interim Consolidated Financial Statements

For the three months ended March 31, 2023 and March 31, 2022

(Expressed in U.S. dollars)

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	NOTES	March 31, 2023	December 31, 2022	January 1, 2022
ASSETS			**(Restated)**	**(Restated)**
Current assets				
Cash and cash equivalents		$ 4,606	$ 3,174	$ 1,532
Restricted cash	8	7,774	7,350	7,055
Trade and other receivables		1,872	1,608	3,802
Prepaid and other assets		869	1,517	2,573
Assets held for sale	6	133,668	14,956	—
Total current assets		148,789	28,605	14,962
Non-current assets				
Right-of-use asset	7	3,193	3,240	2,129
Interest rate caps		1,602	1,988	—
Property and equipment, net	7	150,404	269,536	297,564
Deferred tax assets	16	4,856	4,836	2,606
Total non-current assets		160,055	279,600	302,299
TOTAL ASSETS		$ 308,844	$ 308,205	$ 317,261
LIABILITIES AND UNITHOLDERS' DEFICIT				
Current liabilities				
Accounts payable and other accrued liabilities[1]	12	$ 28,195	$ 25,539	$ 28,148
Current portion of notes payable	13	77,353	1,386	85,484
Current portion of mezzanine loan	13	17,410	18,000	20,000
Liabilities directly associated with the assets held for sale	6	67,997	331	—
Total current liabilities		190,955	45,256	133,632
Non-current liabilities				
PPP Loan		—	—	4,000
Lease liability	7	1,021	1,063	1,224
Notes payable, net	13	35,363	176,272	119,569
Mezzanine loan, net		—	—	13,063
Convertible affiliate notes	13	82,723	82,723	50,068
Accrued Profit Sharing	23	1,552	1,816	—
Class B redeemable units of OP	14	208	309	432
Total non-current liabilities		120,867	262,183	188,356
Total Liabilities		311,822	307,439	321,988
Unitholders' Deficit[1]		(2,978)	766	(4,727)
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 308,844	$ 308,205	$ 317,261

[1] The January 1, 2022 and December 31, 2022, balance has been adjusted for the effect of the Misstatement (as defined herein) described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF INCOME (LOSS) AND COMPREHENSIVE INCOME (LOSS)
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

	Notes	For the Three Months Ended March 31, 2023	For the Three Months Ended March 31, 2022 (Restated)
Revenues			
Rooms		$ 17,433	$ 12,247
Food and beverage		1,123	822
Other income		915	639
Asset management fee income		111	—
Total revenues		19,582	13,708
Hotel Operating Expenses			
Operating expenses	9	(11,631)	(9,458)
Operating general and administrative expenses	10	(2,842)	(1,941)
Total hotel operating expenses		(14,473)	(11,399)
Operating income		5,109	2,309
Other income and (expenses)			
Depreciation of property and equipment	7	(1,847)	(2,794)
Depreciation of right-of-use asset	7	(47)	(83)
Amortization of advanced bookings from acquisitions		—	(96)
Corporate general and administrative expenses	11	(358)	(746)
Advisory fees	12	(544)	(486)
Acquisition costs	12	—	(278)
Finance costs from operations[1]	15	(5,917)	(4,474)
Fair value adjustment of Class B Units	14,15	101	289
Impairment (loss)	3,7	—	(1,787)
Forgiveness of PPP loans	13	—	4,000
Income related to forbearance agreement	13	—	4,612
Insurance proceeds		104	—
Fair value adjustment to interest rate caps		(135)	326
Total other income and (expenses)		(8,643)	(1,517)
Income before income taxes		(3,534)	792
Penalties and interest, gross receipts tax		—	(26)
Income taxes	16	(242)	(57)
Deferred income tax benefit	16	20	121
Net income (loss) and comprehensive income (loss) from continuing operations		$ (3,756)	$ 830
Discontinued operations			
Net income (loss) and comprehensive income (loss) from discontinued operations		12	(484)
Net income (loss) and comprehensive income (loss)		$ (3,744)	$ 346
Basic and diluted income per unit			
Continuing operations		(0.13)	0.03
Discontinued operations		—	(0.02)
Gain/Loss per unit		$ (0.13)	$ 0
Basic and diluted weighted average number of Units outstanding		29,901,742	29,352,055

[1] Finance costs from operations for the three months ended March 31, 2022, has been adjusted for the effect of the Misstatement as described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
INTERIM CONSOLIDATED STATEMENTS OF UNITHOLDERS' DEFICIT
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS)

Three Months Ended March 31, 2023	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2022[1] (Restated)		$ 99,007	$ (98,241)	$ 766
Net loss		—	(3,744)	(3,744)
Balances, March 31, 2023		$ 99,007	$ (101,985)	$ (2,978)

Three Months Ended March 31, 2022	Notes	Units (in Dollars)	Accumulated Deficit	Total
Balances, December 31, 2021[1] (Restated)		$ 99,007	$ (103,734)	$ (4,727)
Net income[1]		—	346	346
Balances, March 31, 2022[1]		$ 99,007	$ (103,387)	$ (4,380)

[1] Adjusted for the effect of the Misstatement as described in Note 24.

See accompanying notes to the interim consolidated financial statements

NEXPOINT HOSPITALITY TRUST
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS EXCEPT UNIT COUNTS AND PER UNIT AMOUNTS)

	Notes	For the Three Months Ended March 31, 2023	For the Three Months Ended March 31, 2022 (Restated)
Cash flows - operating activities			
Net income[1]		$ (3,744)	$ 346
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation of property and equipment	7	1,847	2,794
Depreciation of right-of-use asset	7	47	83
Amortization of advanced bookings from acquisitions		—	96
Franchise fee amortization		—	16
Deferred income tax benefit	16	(20)	(121)
Finance costs from operations[1]	15	5,917	4,474
Fair value adjustment of Class B Units	15	(101)	(289)
Forgiveness of PPP Loans	13	—	(4,000)
Stock compensation expense	23	(264)	—
Unrealized gain on interest rate derivatives	15	135	(326)
Impairment recovery	3,7	—	1,787
Income related to forbearance agreement	13	—	(4,612)
Changes in non-cash working capital items:			
Operating assets		635	1,510
Operating assets held for sale		(933)	(982)
Operating liabilities[1]		556	1,440
Operating liabilities directly related to assets held for sale		2,981	2,912
Income taxes		(222)	(83)
Changes in operating activities from discontinued operations		2	1,790
Net cash provided by operating activities		6,836	6,835
Cash flows - investing activities			
Additions to property and equipment	7	(494)	(349)
Acquisitions of property and equipment	7	—	(53,911)
Additions to ROU asset	7	—	(1,445)
Change in restricted cash	8	(424)	(1,289)
Net cash used in investing activities		(918)	(56,994)
Cash flows - financing activities			
Lease liability paid	7	(43)	(40)
Due to affiliate	13	—	22,925
Proceeds from notes payable	13	—	36,829
Principal payments on notes payable	22	(460)	(750)
Principal payments on Mezz Facility		(600)	—
Deferred financing costs paid	22	—	(1,925)
Interest paid on outstanding debt		(3,383)	(3,456)
Net cash (used in) provided by financing activities		(4,486)	53,583
Net increase in cash and cash equivalents		1,432	3,424
Cash and cash equivalents, beginning of period		3,174	1,532
Cash and cash equivalents, end of period		$ 4,606	$ 4,956

[1] Adjusted for the effect of the Misstatement as described in Note 24.

	Notes	For the Three Months Ended March 31, 2023	For the Three Months Ended March 31, 2022
Supplemental disclosure of cash flow information			
Forgiveness of PPP loans	13	—	4,000

Note 1. Overview

NexPoint Hospitality Trust ("NHT" or the "Company") is an unincorporated, open-ended real estate investment trust ("REIT") established pursuant to a declaration of trust dated December 12, 2018, under the laws of the Province of Ontario. The registered office of the Company is at 333 Bay Street, Suite 3400, Toronto, Ontario. NHT was created for the purpose of initially acquiring a portfolio of 11 hospitality assets located in the United States (the "Initial Portfolio"), to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria and to own, renovate and operate its portfolio of income-producing hotel properties. NHT is externally managed by NexPoint Real Estate Advisors VI, L.P. (the "Advisor"), which was formed for the purpose of managing NHT and is related to the Company through common indirect ownership as well as common control.

NHT has elected to be treated as a REIT under U.S. tax laws. Substantially all of NHT's business will be conducted through NHT Operating Partnership, LLC (the "OP"), NHT's operating partnership, which is a Delaware limited liability company. NHT owns its properties through the OP and its subsidiaries. The OP and its subsidiaries lease the properties to taxable REIT subsidiaries of NHT (the "TRS Entities") to operate. For NHT to qualify as a REIT under the United States Internal Revenue Code of 1986, as amended (the "Code"), NHT cannot operate directly or indirectly any of the hotels it acquires and owns. Therefore, the OP and its subsidiaries lease the hotels to the TRS Entities who in turn engage eligible independent contractors (as defined in the Code), which for the current portfolio of 10 hospitality assets located in the United States (the "Current Portfolio") are affiliates of Aimbridge Hospitality Holdings, LLC, to manage the hotels.

The objectives of NHT are to: (a) provide unitholders with an opportunity to invest in a portfolio of extended-stay, select-service and efficient full service hotels located in attractive U.S. markets and competitively positioned to outperform the industry as a whole; (b) provide unitholders with predictable, sustainable and growing tax efficient cash distributions; (c) enhance the value of NHT's assets and maximize the long-term value of the Class A units of the OP (the "Class A Units"), Class B units of the OP (the "Class B Units") and trust units of NHT (the "Units"), collectively, through active asset and property management programs and procedures and a renovation program; and (d) expand the asset base of NHT, including investing in other real estate where it sees opportunities, primarily through acquisitions and improvements of its properties, including the Initial Portfolio, using targeted and strategic capital expenditures.

NHT's Units are listed on the TSX Venture Exchange (the "TSXV") under the symbol NHT.U.

Note 2. Basis of Preparation

a) Going Concern Uncertainty

The global response to the COVID-19 pandemic had a large negative impact on the Company's operations in 2020 and the first quarter of 2021. Public companies in the North American lodging sector generally saw a significant decline in their stock prices on average during 2020. The well-publicized impacts on the hospitality industry, including shelter-in-place orders in the markets in which the Company operates, as well as a reduction in transient business travel, which the Company relies upon, reduced the Company's room rates and occupancies, and had a significant impact on the Company's operations in 2020 and early 2021. Additionally, data shows that air travel, and consequently, hotel occupancy and average daily rates, were down significantly, with large groups having canceled events. Occupancy declined from an average of 75.1% across the portfolio in 2019 to a low of 12.17% across the portfolio during April 2020, and the Average Daily Rate ("ADR") declined from an average of $145.81 in 2019 to a low of $93.95 during April 2020.

Since the end of January 2021, the hospitality sector in general and the Company specifically have seen significant improvements in operations. Notwithstanding seasonality trends, the first quarter of 2023 was much improved over the first quarter of 2022, with an occupancy of 73.3% across the Current Portfolio compared to 66.9% in the first quarter of 2022. We have seen a rebound in occupancy and ADR as COVID-19 restrictions have loosened or have been removed altogether and people have resumed business and leisure travel. Large group and convention business and business transient bookings have returned to pre-COVID levels as most employees have returned to the office either full-time or in a hybrid model and businesses have removed travel restrictions, enabling the transient segment to recover to pre-COVID levels.

At March 31, 2023, the Company had a working capital deficit of $42,166, of which $17,410 relates to the principal balance on the Mezz Facility (as defined in Note 13) which was originally due on January 8, 2020. The impact to the global economy caused by the response to the COVID-19 pandemic negatively impacted the Company's ability to obtain new financing, and as a result, the Company was unable to refinance the principal balance of the Mezz Facility. As of the date of these interim consolidated financial statement (the "Interim Consolidated Financial Statements"), the Company has obtained an extension for the maturity of the Mezz Facility until July 8, 2023. The Company's held for sale assets are expected to generate sufficient cash proceeds to repay the Mezz Facility. The Company also has $77,353 of notes coming due within the next twelve months.

At March 31, 2023, the Company had the total amount of the Mezz Facility being $17,410, $28,195 of other liabilities as well as the Note A and Note B loans of $52,213 and $25,140, respectively due over the next twelve months through March 31, 2024. Of the liabilities, the Company has payment plans in place for $2,140 of these liabilities and continues to work with vendors for the remainder to make repayment by March 31, 2024.

As of March 31, 2023, the Company is in good standing with the lenders on all its outstanding Loans (as defined in Note 13). Covenant waivers have been granted at various dates on each loan or the lender has informally, or formally, agreed not to pursue available remedies currently.

Management is actively working towards addressing the matters noted above that create uncertainty for the Company as a going concern, which includes the following:

i) The Company has been granted extensions of the maturity of the Mezz Facility while each party continues in good faith discussions to restructure the facility.

ii) On March 24, 2020, the board of trustees of the Company (the "Board") agreed to temporarily suspend distributions for the foreseeable future to conserve cash.

iii) The Company expects to settle most of its amounts due to affiliates through the issuance of additional Class B Units, most of which do not mature for 20 years. See Notes 13, 14, and 21.

iv) On March 24, 2020, the Advisor agreed to defer the advisory fee until such time as the Company is no longer in forbearance with its lenders and can resume payments while remaining cash flow positive. The Advisor did not collect any fees in 2020, 2021, 2022 or for the three months ended March 31, 2023.

v) Marriott has revised the required property improvement plan (the "PIP") for the St. Pete property, which is now expected to cost $7,200 in total and has granted an extension for completion in two phases throughout 2021 and 2022. As of March 31, 2023, the Company had $175 in reserves with the lender that can be used toward the PIP. The first phase of the PIP was completed in November 2021 and the Company started the second phase of the renovation in December 2022 and rolled into the first quarter of 2023. This renovation is expected to be completed in the second quarter of 2023.

vi) Affiliates of the Advisor have not provided any funds to the Company in the first quarter of 2023, so no further convertible notes were issued. The Company does not anticipate needing cash infusions any longer as management believes the Company will be cash flow positive in 2023. See Note 13 and Note 21.

vii) States and cities have removed COVID-19 restrictions altogether, all of which is significantly improving the outlook for the lodging sector overall and for the Company specifically. This is displayed in the increase of future group bookings for 2022 and 2023. Occupancy and ADR across the Current Portfolio have increased from 66.9% and $149.83, respectively from the first quarter of 2022 to 73.3% and $169.94, respectively for the first quarter of 2023.

viii) On March 8, 2023, we launched a process to market the DT Portfolio and HIX Portfolio for sale, which we expect to close in the second and third quarters of 2023. The properties that are classified as Held for Sale are DT Tigard, DT Olympia, and Holiday Inn in Nashville. The proceeds will be used to de-lever the Company. See Note 6.

There can be no assurance that the Company will continue to generate positive cash flows from operations, whether any of these required measures may be completed, or whether they will provide the Company with sufficient liquidity. In order to continue as a going concern, the Company needs to (i) generate positive cash flows, which assumes the continuance of current operations, (ii) be successful in obtaining the concessions from its creditors as noted above, and such concessions providing the Company with sufficient liquidity to fund its cash flow deficits in the intervening period, and (iii) be successful in refinancing its notes and mezzanine loans payable as they come due. As a result of these facts, the Company has determined there is a potential risk about the Company's ability to continue as a going concern and, therefore, realize its assets and discharge its liabilities in the normal course of business.

These Interim Consolidated Financial Statements have been prepared on a going concern basis, which assumes the Company will continue its operations in the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. The Interim Consolidated Financial Statements do not include any adjustments to classification of assets and liabilities and reported expenses that may be necessary if the going concern basis was not appropriate for these Interim Consolidated Financial Statements. If the Company is unable to continue as a going concern, material write-downs to the carrying values of the Company's assets could be required.

Although management believes it could continue as a going concern if the plan outlined above comes to fruition, it is important to note that many of the assumptions included in management's internal cash flow projections are out of its control. For example, the Company does not control the timing of the distribution of the COVID-19 vaccine and boosters, the spread of any new variants of the COVID-19 virus or whether governmental authorities may impose new shelter-in-place orders as variants of the virus continue to mutate. Nor does the Company control consumer behavior regarding when the general public will feel safe in traveling and staying in hotels or when businesses will lift the suspension on business travel. For these reasons, it is difficult for the Company to estimate the likelihood of these events occurring, the timing of when they may occur or the impact they will have once they occur. The Company is optimistic but proceeds with caution in determining recovery assumptions in management's internal cash flow projections as there are many factors to consider.

b) Statement of Compliance

These Interim Consolidated Financial Statements have been prepared by management in accordance with IAS 34 Interim Financial Reporting. The Interim Consolidated Financial Statements should be read in conjunction with the notes to the Company's Interim Consolidated Financial Statements for the three months ended March 31, 2023 and March 31, 2022, which have been prepared in accordance with International Financial Report Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), since the Interim Consolidated Financial Statements do not contain all disclosures as required by IFRS for annual financial statements. These Interim Consolidated Financial Statements are presented in U.S. dollars, which is the functional currency of the Company, and all amounts have been rounded to the nearest thousandth, except when otherwise indicated, such as unit counts and per unit amounts.

The Interim Consolidated Financial Statements were authorized for issue by the Board of NHT on May 30, 2023.

c) Basis of presentation

The Initial Portfolio was acquired by the Company on March 27, 2019, as a result of the contribution of the common and preferred interests in Intermediary to the Company by the Holdings Company (the "Holdco") in exchange for Units. On January 8, 2019, these assets were contributed to entities under the control of Holdco. The Company and Intermediary are considered to be under common control since at the time of contribution Holdco owned 100% of the interests in Intermediary and subsequent to the completion of the contribution of Intermediary owned 100% of the Company. The Interim Consolidated Financial Statements reflect the financial position and results of operations as if the Company had owned the Initial Portfolio since January 8, 2019.

d) Basis of Measurement

The Interim Consolidated Financial Statements have been prepared on a historical cost basis, except for Class B Units and interest rate caps which are recorded at fair value through profit and loss.

e) Use of estimates and judgments

The preparation of the Interim Consolidated Financial Statements in conformity with IFRS requires management to make estimates and assumptions that affect the application of accounting policies and the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the Financial Statements. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected. Assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the future financial year relate to interest rate swaps, interest rate caps, the assessment of impairment of property and equipment, indefinite life intangible assets and goodwill as described in Note 3(e).

In the process of applying the accounting policies, the Company makes various judgments, apart from those involving estimations, that can significantly affect the amounts it recognized in the Interim Consolidated Financial Statements. Information about critical judgments in applying accounting policies that have the most significant effect on the amounts recognized in the Interim Consolidated Financial Statements relate to the following:

i) The componentization of property and equipment as described in Note 3(d).
ii) The impairment of property and equipment or the recovery of prior impairment as described in Note 3(e).
iii) Management's assessment of whether the acquisition of a property should be accounted for as an asset purchase or business combination. This assessment impacts the accounting treatment of transaction costs, the allocation of the costs associated with the acquisition and whether or not goodwill is recognized. The Company's acquisitions are generally determined to be business combinations as the Company acquires an integrated set of processes as part of the acquisition transaction.

iv) Management's assessment of whether or not the Company controls entities in which it has an interest. This involves evaluating the Company's ability to make decisions over the relevant activities of such entities and to determine to what extent the Company is exposed to the variable returns of the entities. This assessment impacts the identification of the Company's subsidiaries and as a result which entities it consolidates.

v) The Company's ability to continue as a going concern as detailed in Note 2(a). This determination involves making assumptions about future events and about how third parties, which act independently of the Company and its assumptions, may react to current and future events that have an impact on the Company's ability to continue as a going concern.

Note 3. Significant Accounting Policies

The significant accounting policies used in the preparation of the Interim Consolidated Financial Statements are described below and have been applied consistently to all periods presented:

a) Basis of Consolidation

The Interim Consolidated Financial Statements include the accounts of the Company and its wholly owned subsidiaries including NHT Holdings LLC, the OP, and subsidiaries of the OP, which are controlled by the Company in accordance with IFRS 10, *Consolidated Financial Statements*. Control exists when the Company is exposed to or has the right to variable returns from its involvement with the entity and has the ability to affect those returns through its power. All significant intercompany accounts and transactions have been eliminated from consolidation.

b) Business combinations

At the time of acquisition of a property, whether through a controlling share investment or directly, the Company considers whether the acquisition represents the acquisition of a business. The Company accounts for an acquisition as a business combination where an integrated set of activities is acquired in addition to the property. More specifically, the extent to which significant processes are acquired is considered. If no significant processes, or only insignificant processes, are acquired, the acquisition is treated as an asset acquisition rather than a business combination. The Company generally considers the acquisition of a hospitality asset to be a business combination as an integrated set of activities with significant processes are acquired in the transaction.

The purchase price of a business combination is measured as the fair value of the assets given, equity instruments issued, and liabilities incurred or assumed at the acquisition date. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at fair value at the date of acquisition. The Company recognizes assets or liabilities, if any, resulting from a contingent consideration arrangement at their acquisition date fair value and such amounts form part of the purchase price of the business combination. Subsequent changes in the fair value of contingent consideration arrangements are recognized in profit or loss. The difference between the purchase price and the fair value of the acquired identifiable net assets and liabilities is goodwill. On the date of acquisition, positive goodwill is recorded as an asset in the Company's Consolidated Statement of Financial Position. Negative goodwill is immediately recognized in profit or loss. The Company expenses transaction costs associated with business combinations in the period incurred.

When an acquisition does not meet the criteria for business combination, it is accounted for as an acquisition of a group of assets and liabilities. The purchase price of the acquisition, including transaction costs, are allocated to the assets and liabilities acquired based upon their relative fair values. No goodwill is recognized for asset acquisitions.

c) Functional currency

The functional and presentation currency of the Company and its subsidiaries is the U.S. dollar. All amounts have been rounded to the nearest thousand, except when otherwise indicated, such as unit counts and per unit amounts.

d) Property and equipment

(i) Recognition and measurement

Property and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. Cost includes initial acquisition costs and other direct costs. Significant parts of the buildings are accounted for as separate components of the property, based on management's judgment of what components constitute a significant cost in relation to the total cost of an asset and whether these components have similar or dissimilar patterns of consumption and useful lives for purposes of calculating depreciation.

(ii) Subsequent costs

The cost of replacing a part of an item of property and equipment is recognized in the carrying amount of the item if it is probable that the future economic benefits embodied within the part will flow to the Company and its cost can be measured reliably. The carrying amount of the replaced part is derecognized. The costs of the day-to-day maintenance of property and equipment are recognized in profit or loss as incurred.

(iii) Depreciation

Depreciation is computed on a straight-line basis based on the useful lives of each component of property and equipment. Depreciation on new construction commences in the month after the asset is available for its intended use based upon the useful life of the asset.

Estimated useful lives were determined based on current facts and past experience and take into consideration the anticipated physical life of the asset and its components and current and forecasted demand. The rates and methods used are reviewed annually at year end to ensure they continue to be appropriate and are also reviewed in conjunction with impairment testing. Gains or losses on disposition of property and equipment are recognized in profit or loss when the Company has transferred to the purchaser the significant risk and rewards of ownership of the property and equipment and the purchaser has made a substantial commitment demonstrating its intent to honor its obligation.

Asset	Useful Life (Years)
Building structure	40
Buildings - mechanical, electrical and elevators	30
Buildings - roof, windows, and doors	20
Building improvements	5 - 15
Interior upgrades	3
Furniture, fixtures and equipment	5 - 7
Leases	Length of lease

e) Impairment of non-financial assets

The carrying amounts of the Company’s non-financial assets, other than inventories, are reviewed at each reporting date to determine whether there is any indication of impairment or recovery. If any such indication exists, then the asset’s recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less costs to sell. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For the purpose of impairment testing, assets that cannot be tested individually are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the “cash-generating unit” or “CGU”).

When the carrying amount of the asset or CGU exceeds its estimated recoverable amount, an impairment loss is recognized in an amount equal to the excess. However, when an indication that an impairment loss recognized in prior periods for an asset or CGU other than goodwill may no longer exist or may have decreased, the recoverable amount of that asset or CGU is estimated. A reversal of an impairment loss is recognized immediately in profit or loss if the recoverable amount of a previously impaired asset or CGU has subsequently increased to the lower of the asset or CGU’s recoverable amount or carrying amount had no impairment loss been recognized for the asset or CGU in prior years.

f) Financial instruments

(i) Classification and measurement of financial assets and liabilities:

Financial instruments are generally measured at fair value on initial recognition. The classification and measurement of financial assets consists of the following categories: (i) measured at amortized cost, (ii) fair value through profit and loss (“FVTPL”), and (iii) fair value through other comprehensive income (“FVTOCI”). Financial assets classified at amortized cost are measured using the effective interest method. Financial assets classified as FVTPL are measured at fair value with gains and losses recognized through profit or loss. Financial assets classified as FVTOCI are measured at fair value with gains or losses recognized through other comprehensive income, except for gains and losses pertaining to impairment or foreign exchange recognized through profit or loss.

The classification and measurement of financial liabilities consists of the following categories: (i) measured at amortized cost and (ii) FVTPL. Financial liabilities classified at amortized cost are measured using the effective interest method. Financial liabilities classified as FVTPL are measured at fair value with changes in fair value attributable to changes in the credit risk of the liability presented in other comprehensive income, and the remaining amount of change in fair value presented in profit or loss.

The Company has made the following classifications for its financial instruments:

Financial Instrument	Classification Under IFRS 9
Cash and cash equivalents	Amortized cost
Restricted cash	Amortized cost
Trade and other receivables	Amortized cost
Lease liability	Amortized cost
Interest rate caps	FVTPL
Accounts payable and other accrued liabilities	Amortized cost
Note payable	Amortized cost
Mezzanine loan	Amortized cost
Class B redeemable units of OP	FVTPL
PIU redeemable units of OP	FVTPL

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. The Company derecognizes a financial liability when, and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and payable is recognized in profit or loss.

Transaction costs other than those related to financial instruments classified as FVTPL, which are expensed as incurred, are capitalized to the carrying amount of the instrument and amortized using the effective interest method. These costs include interest, amortization of discounts or premiums relating to borrowings, fees and commissions paid to agents, brokers and advisers and transfer taxes and duties.

Units that are redeemable at the option of the holder are considered puttable instruments in accordance with International Accounting Standards 32, *Financial Instruments – Presentation* ("IAS 32"). Puttable instruments are required to be accounted for as financial liabilities, except where certain conditions are met in accordance with IAS 32; in which case, the puttable instruments may be presented as equity. Units meet the exemption conditions of IAS 32 and are, therefore, presented as equity.

The Class B Units are redeemable in cash or Units on a one-for-one basis subject to customary anti-dilution adjustments at the option of the Company and, therefore, the Class B Units meet the definition of a financial liability under IAS 32. Further, the Class B Units are designated as financial liabilities at FVTPL and are measured at fair value at each reporting period with any changes in fair value recorded in profit or loss. The Class B Units are, in all material aspects, economically equivalent to Units on a per unit basis. The distributions paid on Class B Units are accounted for as finance costs.

(ii) Impairment of financial assets

For impairment of financial assets other than investments in equity instruments, contract assets, lease receivables, loan commitments and financial guarantee contracts, the Company applies a forward-looking 'expected credit loss' ("ECL") model. NHT adopted the practical expedient to determine ECL on trade and other receivables using a provision matrix based on historical credit loss experiences adjusted for current and forecasted future economic conditions to estimate lifetime ECL.

Impairment losses are recorded in profit or loss with the carrying amount of the financial asset or group of financial assets reduced.

g) Cash and cash equivalents

The Company considers all liquid investments with original terms to maturity of three months or less when acquired to be cash equivalents. Cash and cash equivalents consist of cash on hand and cash held at banks.

h) Restricted cash

Restricted cash primarily consists of cash reserves on deposit with, or under the control of, lenders in respect of future capital expenditures, insurance, and taxes.

i) Provisions

A provision is recognized if, as a result of a past event, the Company has a present legal or constructive obligation that can be estimated reasonably, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the time value of money is material, provisions are determined by discounting the expected future cash flows using a current rate that reflects the risk profile of the liability, and the increase to the provision due to the passage of time will be recognized as a finance cost.

j) Revenue recognition

IFRS 15, *Revenue from Contracts with Customers,* establishes a comprehensive framework for determining whether, how much and when revenue is recognized. The standard requires revenue to be recognized in a manner that depicts the transfer of promised goods or services to a customer and at an amount that reflects the consideration expected to be received in exchange for transferring those goods or services. This is achieved by applying the following five steps:

1. identify the contract with a customer;
2. identify the performance obligations in the contract;
3. determine the transaction price;
4. allocate the transaction price to the performance obligations in the contract; and
5. recognize revenue when (or as) the entity satisfies a performance obligation.

Revenue is generated primarily from the operation of the Company's hotels, which includes room rentals, food and beverage sales and other incidental income. Revenue is recognized when services are rendered, the amount is earned, and collectability is reasonably assured. The Company may collect payments in advance of the utilization of a facility. These payments are recorded as a component of accounts payable and other accrued liabilities until such time as the applicable facility is utilized, at which time the customer deposit is recognized as revenue.

k) Finance costs from operations

Finance costs from operations consist primarily of interest expense on outstanding debt, the amortization of deferred financing costs, net of interest income and distributions made to Class B unitholders. Interest expense is recognized in the period in which it is incurred. Fees and costs related to obtaining debt financing are capitalized against the related debt and amortized over the term of the debt using the effective interest method and are included in finance costs from operations. The unamortized balance of the fees and costs is recorded as a reduction from the related debt on the Company's Consolidated Statement of Financial Position.

l) Income taxes

(i) Canadian mutual fund status

NHT is a mutual fund trust pursuant to the Income Tax Act (Canada). Under current tax legislation, a mutual fund trust that is not a Specified Investment Flow-Through Trust ("SIFT") pursuant to the Income Tax Act (Canada) is entitled to deduct distributions of taxable income such that it is not liable to pay income taxes provided that its taxable income is fully distributed to unitholders. NHT intends to qualify as a mutual fund trust that is not a SIFT trust and to make distributions not less than the amount necessary to ensure that NHT will not be liable to pay income taxes.

(ii) U.S REIT Status

The Company expects to be classified as a corporation for U.S. federal income tax purposes pursuant to section 7874 of the Code. Further, the Company expects to be treated as a U.S. corporation for all purposes under the Code and, as a result, it would be permitted to elect to be treated as a REIT under the Code, notwithstanding it will be organized as a Canadian entity. In general, a company that elects REIT status, distributes at least 90% of its REIT taxable income to its shareholders in any taxable year, and complies with certain other requirements is not subject to U.S. federal income taxation to the extent of the income it distributes. If it fails to qualify as a REIT in any taxable year, it will be subject to U.S. federal income tax at regular

corporate income tax rates on its taxable income. Even if it qualifies for taxation as a REIT, it may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed income. The Company has reviewed the REIT requirements and expects that it will qualify as a REIT under the Code. Accordingly, no provision for U.S. federal income or excise taxes has been made with respect to the income of the Company.

The Company, through wholly owned subsidiaries, leases the Initial Portfolio and will lease any future acquisitions to the TRS Entities, which are taxable in the U.S. A TRS is a corporation that has not elected REIT status and has made a joint election with a REIT to be treated as a TRS. As such, it is subject to U.S. federal and state corporate income tax. The income tax effects on the results of the TRS Entities accrue directly to the unitholders of the Company.

For these entities, income tax expense comprises current and deferred taxes. Current tax and deferred tax are recognized in profit or loss except to the extent that they relate to a business combination, or to items recognized directly in equity or in other comprehensive income.

(iii) Current taxes

Current tax is the expected tax payable or receivable on the taxable income or loss for the year, using tax rates enacted or substantively enacted at the reporting date, and any adjustment to tax payable in respect of previous years. The amount of current tax payable or receivable is the best estimate of the tax amount expected to be paid or received that reflects uncertainty related to income taxes, if any.

(iv) Deferred taxes

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized for the following temporary differences: (a) the initial recognition of assets or liabilities in a transaction that is not a business combination and that affects neither accounting nor taxable profit or loss, (b) differences relating to investments in subsidiaries and jointly controlled entities to the extent that it is probable that they will not reverse in the foreseeable future and (c) for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the reporting date.

(v) Tax uncertainties

Judgement is required to assess the interpretation of tax legislation when recognizing and measuring current and deferred tax assets and liabilities. The impact of different interpretations and applications could potentially be material. The Company recognizes a tax benefit from an uncertain tax position when it is probable that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of technical merits.

(vi) 2017 Tax Act

On December 22, 2017, the Tax Cuts and Jobs Act (the "2017 Tax Act") was signed into law in the United States. The most significant change is the reduction of the statutory corporate tax rate from 35 percent to 21 percent, effective January 1, 2018. Many of the provisions in the 2017 Tax Act expire at the end of 2025.

m) Operating segments

The Company currently operates in one business segment, owning and operating hotel properties in the U.S. The primary format for segment reporting is based on geographic region and is consistent with the internal reporting provided to the Company's chief operating decision-maker.

n) Leases

Under IFRS 16, *Leases*, the Company records the initial present value of unavoidable future lease payments as right-of-use assets and lease liabilities on the Company's Consolidated Statement of Financial Position. The right-of-use assets are initially measured at cost and subsequently measured at cost less accumulated depreciation and impairment losses, adjusted for any remeasurement of the lease liabilities. The lease liabilities are initially measured at the present value of the unavoidable future lease payments discounted using the discount rate implicit in the lease (or if that rate cannot be readily determined, the lessee's

incremental borrowing rate). Subsequently, the lease liabilities are adjusted for interest and lease payments, and impact of lease modifications, if any.

o) Levies

In accordance with International Financial Reporting Interpretations Committee ("IFRIC") 21, *Levies* ("IFRIC 21"), the Company recognizes the full amount of annual property tax liabilities at the point in time when the realty tax obligation is imposed. This is the obligating event that gives rise to a liability to pay the property taxes.

p) Government assistance

The Company may receive financial grants from the government in return for past or future compliance with certain conditions relating to its operating activities. These financial grants are recorded in income by the Company when there is reasonable assurance that the Company will comply with the relevant conditions and the financial grant is received. If these conditions are not met, grants received are recognized as a liability.

The Company requested and was granted forgiveness of the first PPP loans in 2021. The Company recognized the balance of the forgiven loans and forgiven accrued interest in profit or loss in 2021 in accordance with IAS 20, *Accounting for Government Grants and Disclosure of Government Assistance.* In 2022 the Company recognized an additional $4,000 of forgiven loans in profit or loss in accordance with IAS 20.

q) Reclassification of items in the financial statements

The Company may, from time to time, record reclassifications of certain items in the Interim Consolidated Financial Statements to ensure proper representation based on facts and circumstances of the Company.

Note 4. Investment in Subsidiaries and Special Purpose Entities

In connection with its indirect equity investments in real estate assets acquired, the Company, through NHT Holdings, LLC, and the OP, indirectly holds an ownership interest in the properties, through the OP's 100% ownership of the membership interests in special purpose LLCs ("SPEs") that directly own the properties. All the properties the Company has acquired are consolidated in the Company's Interim Consolidated Financial Statements. Under the terms of each respective mortgage payable, the lender has a perfected security interest in each real estate asset and related personal property.

The loans to NHT 2325 Stemmons, LLC ("NHT 2325 Stemmons"), NHT DFW Portfolio, LLC ("NHT DFW") and NHT SP, LLC ("NHT SP") are cross-collateralized and thus the assets of each entity are subject to recourse in the event of default. Additionally, the Note A Loan and Note B Loan (as defined in Note 13) are cross defaulted with the Mezz Facility. The lender on the Mezz Facility has a perfected security interest in the membership interest of NHT 2325 Stemmons, NHT DFW Portfolio and NHT SP.

As of March 31, 2023, the Company, through the OP, owned 10 properties through SPE subsidiaries of the OP. The following table presents each SPE that directly owns the title to each property as of March 31, 2023:

Subsidiary	Ownership	Parent	Properties Owned	SPE Subsidiaries Owned	TRS Subsidiaries Owned	Gross Assets	Gross Allocable Notes Payable and Mezzanine Debt
NHT Holdings, LLC	100.0%	NexPoint Hospitality Trust (the Company)	n/a	n/a	n/a	$ 308,844	$ 196,267
NHT Operating Partnership, LLC (the OP)	100.0%	NHT Holdings, LLC	n/a	n/a	n/a	308,844	196,267
NHT 2325 Stemmons, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Dallas Hilton Garden Inn	1	1	34,358	19,021
NREO NW Hospitality, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	DoubleTree Portfolio	2	2	31,653	—
NHT DFW Portfolio, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	HomeWood Suites Portfolio	3	3	33,120	29,216
NHT SP, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Marriott St. Petersburg	1	1	38,848	29,116
NexPoint Multifamily Capital Trust, Inc.	100.0%	NHT Operating Partnership, LLC (the OP)	Holiday Inn Express Nashville	1	1	108,100	64,685
NHT Bradenton, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Bradenton Hampton Inn & Suites	1	1	26,791	17,305
NHT Park City, LLC	100.0%	NHT Operating Partnership, LLC (the OP)	Hyatt Place Park City	1	1	30,167	19,525

Note 5. Business Combinations, Contributions of Net Assets and Asset Acquisitions

In February 2022, the Company acquired the Hyatt Place in Park City, Utah and the Hampton Inn & Suites in Bradenton, Florida. Both acquisitions were considered to be business combinations and were accounted for using the purchase method of accounting in accordance with IFRS 3, Business Combinations. The Initial Portfolio together with the Park City and Bradenton properties constitutes the Current Portfolio.

On February 14, 2022, the Company made a $200 deposit on a tract of land at the HUB Research Triangle Park in North Carolina. The Company plans to develop a hotel on this site in partnership with a developer that the Advisor has collaborated with previously.

Purchase accounting

The following table summarizes the fair values of the assets acquired and liabilities assumed for the acquisitions accounted for using the purchase method of accounting in 2022:

	NHT Bradenton, LLC	NHT Park City, LLC	Total
Fair value of consideration transferred:	$ 25,973	$ 29,616	$ 55,589
	25,973	29,616	55,589
Property and equipment	24,251	29,660	53,911
Right of use asset	1,445	—	1,445
Intangible assets	304	340	644
Other liabilities	(27)	(384)	(411)
Fair value of net assets acquired and liabilities assumed	$ 25,973	$ 29,616	$ 55,589

The Company acquired the Park City and Bradenton properties for $56,000 and received a credit from the seller of the Park City property in the amount of $200.

Descriptions of the net assets acquired

NHT Park City, LLC

On February 15, 2022, the OP acquired 100% of the LLC interests in NHT Park City, LLC, which owns the Hyatt Place hotel in Park City, Utah ("Park City"). The Park City property is a 122-room hotel located near Park City ski mountain. Originally built in 2016, the property is almost exclusively focused on leisure travel. Additionally, we requested, and Hyatt granted, the addition of a destination fee for all guests, which should materially increase NOI achieved pre-pandemic.

NHT Bradenton, LLC

On February 23, 2022, the OP acquired 100% of the LLC interests in NHT Bradenton, LLC, which owns the Hampton Inn & Suites hotel in Bradenton, Florida ("Bradenton"). The Bradenton property is a 119-room hotel that hosts multiple major league baseball teams during spring training and is a leisure destination area year-round given the temperate climate in the winter and access to the beach. This property represents a traditional value-add opportunity for NHT. Over the last several years this property has lost RevPAR index to the competitor set, however we believe that with the right renovations, Bradenton should be able to close the gap on the competitor set while sitting in the heart of a growing economy in southern Florida.

There were no contributions or purchases of net assets for the three months ended March 31, 2023.

Note 6. Dispositions and Assets Held for Sale

	March 31, 2023	March 31, 2022
Revenues		
Rooms	$ 666	$ 3,106
Food and beverage	44	125
Other income	18	95
Total revenues	728	3,326
Hotel operating expenses		
Operating expenses	(540)	(1,713)
Operating general and administrative expenses	(174)	(651)
Total hotel operating expenses	(714)	(2,364)
Operating income	14	962
Other income and (expenses)		
Depreciation of property and equipment	—	(893)
Finance costs from operations	(2)	(553)
Total other income and (expenses)	(2)	(1,446)
Income (loss) from discontinued operations before income taxes	12	(484)
Net income (loss) and comprehensive income (loss) from discontinued operations	$ 12	$ (484)

On August 24, 2022, the Company sold the DT Vancouver Property for $14,500, on September 30, 2022, the Company sold the DT Beaverton Property for $14,500, and on December 8, 2022, the Company sold the DT Bend Property for $38,500. The Company used the proceeds from the sale of the DT Bend Property to retire the outstanding debt on the DT Portfolio (DT Loan, Mezz A Loan and Mezz B Loan).

On March 8, 2023, the Company began the marketing process to sell the remaining two DoubleTree properties of Tigard and Olympia as well as the Holiday Inn in Nashville. The Company expects the transactions to close in the second and third quarters of 2023.

	March 31, 2023	December 31, 2022
Trade and other receivables	$ 515	$ 28
Prepaid and other assets	639	173
Property and equipment, net	132,514	14,755
Assets held for sale	$ 133,668	$ 14,956
Accounts payable and other accrued liabilities	$ 3,312	$ 331
HIX Nashville loan	64,685	-
Liabilities directly associated with assets held for sale	$ 67,997	$ 331

Note 7. Fixed Assets and Leases

a) Property and Equipment, Net

	Land and Land Improvements	Buildings and Improvements	Construction in Progress	Furniture, Fixtures and Equipment	Total
Cost:					
Balance, December 31, 2021	$ 40,836	$ 254,449	$ 588	$ 43,808	$ 339,681
Additions - during the period	$ 4	103	2,239	1,105	3,451
Additions - acquired	$ 4,730	42,298	—	6,486	53,514
Assets sold	$ (7,769)	(51,270)	(84)	(6,452)	(65,575)
Assets held for sale	$ (1,478)	(13,451)	(36)	(2,234)	(17,199)
Casualty loss	$ —	(850)	—	(25)	(875)
Impairment recovery (loss) - during the period	$ 273	734	(144)	7	870
Balance, December 31, 2022	$ 36,596	$ 232,013	$ 2,563	$ 42,695	$ 313,867
Additions - during the period	—	406	—	88	494
Assets held for sale	(14,150)	(107,487)	(1,202)	(15,729)	(138,568)
Balance, March 31, 2023	$ 22,446	$ 124,932	$ 1,361	$ 27,054	$ 175,793
Accumulated depreciation:					
Balance, December 31, 2021	$ 4	$ 22,011	$ —	$ 20,102	$ 42,117
Depreciation expense - during the period	2	6,316	—	5,786	12,104
Depreciation expense - assets held for sale	—	66	—	70	136
Depreciation expense - assets sold during the period	—	697	—	549	1,246
Accumulated depreciation - assets sold	—	(67)	—	(16)	(83)
Accumulated depreciation - assets held for sale	—	(4,621)	—	(4,124)	(8,745)
Adjustment for casualty loss during the period	—	(1,132)	—	(1,312)	(2,444)
Balance, December 31, 2022	$ 6	$ 23,270	$ —	$ 21,055	$ 44,331
Depreciation expense - during the period	—	922	—	925	1,847
Accumulated depreciation - assets held for sale	(4)	(11,876)	—	(8,909)	(20,789)
Balance, March 31, 2023	$ 2	$ 12,316	$ —	$ 13,071	$ 25,389
Carrying amount, December 31, 2022	$ 36,590	$ 208,743	$ 2,563	$ 21,640	$ 269,536
Carrying amount, March 31, 2023	$ 22,444	$ 112,616	$ 1,361	$ 13,983	$ 150,404

The Company's fixed asset additions are primarily related to (i) various upgrades and improvements required by the Company's franchise agreements; (ii) the Company's renovation program; and (iii) typical ongoing capital maintenance items. Depreciation during the period includes depreciation of land improvements.

As mentioned in Note 3(f), non-financial assets are reviewed at each reporting date to determine if there is any indication of impairment or recovery. The Company recorded no impairment for the three months ended March 31, 2023. In assessing the value in

use of the real estate assets, the cash flow estimates were derived from detailed financial forecasts prepared by the Company for 2023. The forecasted cash flow is extended through March 31, 2028 and asset values were determined using a discounted cash flow analysis with terminal cap rates and discount rates used in the most recent appraisals provided by a recognized national valuation firm and adjusted to consider how various research analysts are now pricing other publicly traded hospitality REITs.

As of March 31, 2023, the Company has classified two assets as held for sale in the consolidated Statement of Financial Position. See Note 6.

b) Leases

The Company's leases consist of land and vehicles at March 31, 2023, and December 31, 2022.

Right of Use Asset	**Land**	**Vehicles**	**Total**
Balance, December 31, 2021	$ 3,013	$ 81	$ 3,094
Acquisitions	1,445	—	1,445
Balance, December 31, 2022	$ 4,458	$ 81	$ 4,539
Balance, March 31, 2023	$ 4,458	$ 81	$ 4,539
Accumulated depreciation:			
Balance, December 31, 2021	$ 900	$ 65	$ 965
Depreciation - During the period	318	16	334
Balance, December 31, 2022	$ 1,218	$ 81	$ 1,299
Depreciation - During the period	47	—	47
Balance, March 31, 2023	$ 1,265	$ 81	$ 1,346
Carrying amount, December 31, 2022	$ 3,240	$ —	$ 3,240
Carrying amount, March 31, 2023	$ 3,193	$ —	$ 3,193

Lease Liability	**Land**	**Vehicles**	**Total**
Balance, December 31, 2021	$ 1,207	$ 17	$ 1,224
Interest expense	4	—	4
Changes from financing cash flows:			
Lease liability paid	(148)	(17)	(165)
Balance, December 31, 2022	$ 1,063	$ —	$ 1,063
Interest expense	1	—	1
Changes from financing cash flows:			
Lease liability paid	(43)	—	(43)
Balance, March 31, 2023	$ 1,021	$ —	$ 1,021
Carrying amount, December 31, 2022	$ 1,063	$ —	$ 1,063
Carrying amount, March 31, 2023	$ 1,021	$ —	$ 1,021

Note 8. Restricted Cash

The Company funded restricted cash reserves for brand-mandated PIPs and furniture, fixtures and equipment upgrades arising from the execution of the Company's franchise agreement and future insurance and property tax expenses. Restricted cash reserves for PIP programs are typically expected to be spent over an 18–24-month period once work begins. The amounts are released to the Company as the expenditures are incurred or paid directly to the service provider. Additionally, the Company presents reserves and escrows for taxes and insurance as restricted cash. Cash proceeds in reserve accounts are primarily held by a lender, though in some cases they are held by the Company. Cash reserves to be held by lenders are only available to meet the expenses for which they are reserved against and cannot be used to extinguish general liabilities. The funds for the renovation of the St. Pete Property are included in furniture, fixtures and equipment ("FF&E") reserves in the table below.

The following table summarizes the amounts of cash reserves in each of these categories as of March 31, 2023 and December 31, 2022:

	March 31, 2023	December 31, 2022
PIPs reserve	$ 175	$ 175
FF&E Reserves	5,158	4,556
Property tax reserve	2,122	2,397
Insurance, cash collateral and other reserves	319	222
Total restricted cash	$ 7,774	$ 7,350

Note 9. Operating Expenses

The following table summarizes components of operating expenses for the three months ended March 31, 2023 and March 31, 2022 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended	
	March 31, 2023	March 31, 2022
Payroll	$ 3,916	$ 2,987
Franchise fees	1,375	903
Cost of goods sold	1,021	824
Utilities	447	342
Supplies and equipment	559	424
Property taxes and insurance	3,851	3,676
Other operating expenses	242	99
Repairs and maintenance	220	203
Operating expenses	$ 11,631	$ 9,458

The Company recognizes the property tax levy on January 1st of the calendar year in accordance with IFRIC 21.

Note 10. Operating General and Administrative Expenses

The following table summarizes components of general and administrative expenses for the three months ended March 31, 2023 and March 31, 2022 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended	
	March 31, 2023	March 31, 2022
Marketing	$ 1,241	$ 803
Operations G&A	844	600
Property management fees	496	362
Other administrative expenses	261	176
Operating general and administrative expenses	$ 2,842	$ 1,941

Note 11. Corporate General and Administrative Expenses

The following table summarizes components of corporate general and administrative expenses for the three months ended March 31, 2023 and March 31, 2022 which are included in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss):

	For the Three Months Ended	
	March 31, 2023	March 31, 2022
Audit fees and financial reporting	$ 175	$ 229
Tax preparation	(36)	25
Consulting fees	3	29
D&O Insurance	37	—
Legal fees	79	45
Trustee fees and stock compensation	(228)	371
TSXV listing fees	146	16
Other payroll/compensation	29	—
Other administrative expenses	153	31
Corporate general and administrative expenses	$ 358	$ 746

Note 12. Accounts Payable and Other Accrued Liabilities

The following table summarizes components of accounts payable and other accrued liabilities as of March 31, 2023 and December 31, 2022, which are included in the Consolidated Statements of Financial Position:

	March 31, 2023	December 31, 2022
		(Restated)
Trade payables	$ 3,239	$ 2,440
Payroll and payroll taxes payable	545	695
Property taxes payable	866	1,315
Sales and occupancy tax payable	3,648	781
Property management fees payable	209	851
Interest payable on outstanding debt[1]	4,108	9,484
Franchise fees payable	547	442
Deposit liability and advanced bookings	112	19
Other payables	8,469	1,477
Professional service fees payable	909	55
Acquisition costs payable	475	475
Advisory fee payable	7,346	6,802
Distributions payable to Class B unitholders	1,034	1,034
Accounts payable and other accrued liabilities[1]	$ 31,507	$ 25,870

[1] Adjusted for the effect of the Misstatement as described in Note 24.

On November 15, 2019, the Company filed a prospectus registering $500 million additional units, debt securities, subscription receipts and warrants with the intent to raise capital in a secondary offering of the Company's Units (the "Offering"). After launching the Offering, the Company abandoned the Offering on December 18, 2019. As a result of the Company's efforts to close its previously disclosed merger with, *inter alia,* Condor Hospitality Trust, Inc., the Company has unpaid expenses related to the transaction of $475 as of March 31, 2023, which are related primarily to legal and audit expenses and are included in acquisition costs payable.

Accounts payable and other accrued liabilities of $3,312 are associated with assets held for sale at March 31, 2023, and $331 at December 31, 2022. The balance of accounts payable and other accrued liabilities on the Consolidated Statement of Financial Position does not include this amount as it is presented separately and included in liabilities directly associated with the assets held for sale. See Note 6.

Note 13. Notes Payable, Net, Mezzanine Loans, Net and PPP Loans

The following tables further describe mortgages and other debt instruments as of March 31, 2023 and December 31, 2022, which are included in the Consolidated Statements of Financial Position:

Notes Payable

	March 31, 2023	December 31, 2022
Notes payable	$ 178,867	$ 179,327
Less: current maturities	(77,353)	(1,386)
Less: assets held for sale	(64,685)	—
Less: unamortized portion of deferred financing costs	(1,466)	(1,669)
Notes payable, net	$ 35,363	$ 176,272

Mezzanine Loans

	March 31, 2023	December 31, 2022
Mezzanine loans	$ 17,400	$ 18,000
Less: current maturities	(17,410)	(18,000)
Plus: accrued financing costs	10	—
Mezzanine loans, net	$ —	$ —

On January 8, 2019, in connection with the acquisition of the Nashville Property, the Company assumed the existing loan on the property of $72,500 with an outstanding balance of $64,685 (the "HIX Loan"). The HIX Loan is secured by the Nashville Property and bears interest at a fixed rate equal to 5.12% and matures on June 30, 2026.

The HIX Loan contains customary representations, warranties, and events of default, which require the HIX Borrowers to comply with affirmative and negative covenants. On September 18, 2020, the lender delivered a formal notice of default to the HIX Borrowers. On May 26, 2021, the HIX Borrowers executed a forbearance agreement with the lender. See Note 20(b) for further discussion surrounding the Nashville Property.

On January 8, 2019, the Company, through the OP, entered into a $35,000 mezzanine facility (the "Mezz Facility") with a large non-bank company. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville Property acquired on January 8, 2019. The Mezz Facility is secured by a pledge of the membership units in NHT 2325 Stemmons, NHT DFW Portfolio, and NHT SP, bears interest at a variable rate equal to the 30-day LIBOR plus 6.25% and had an original maturity date of January 8, 2020. As of March 31, 2023, the Mezz Facility had an effective interest rate of 11.44% and matures on July 8, 2023. For the period from January 1, 2021, to March 31, 2023, the Company paid $479 in interest and $600 in principal on the Mezz Facility, with an additional accrual of $5,165 of interest.

On February 28, 2019, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $59,400 Note A loan (the "Note A Loan") and a $28,600 Note B loan (the "Note B Loan"). The Note A Loan and Note B Loan are secured by the HGI Property, the HWS Portfolio and the St. Pete Property. The Note A Loan bears interest at a variable rate equal to the 30-day LIBOR plus 2.00% and matures on March 1, 2024. The Note B Loan bears interest at a variable rate equal to the 30-day LIBOR plus 6.46% and matures on March 1, 2024. As of March 31, 2023, the Note A Loan and the Note B Loan had an effective interest rate of 7.19% and 11.65%, respectively. For the period from January 1, 2023, to March 31, 2023, the Company paid $835 and $682 in interest on the Note A Loan and the Note B loan, respectively. See Note 24.

On February 15, 2022, in connection with the acquisition of the Park City and Bradenton properties, the Company, through subsidiaries of the OP, entered into a borrowing arrangement for a $39,300 loan (the "PC & B Loan") with a large non-bank company. The outstanding balance on the PC & B Loan at March 31, 2023, is $36,829 with $2,471 available to draw on for renovation purposes. The Company will begin renovations at both properties in mid-2023.

The PC & B Loan, the HIX Loan, the Note A Loan and Note B Loan (collectively referred to as the "Notes Payable"), and the Mezz Facility (collectively referred to as the "Mezzanine Loans" and together with the "Notes Payable" are referred to as the "Loans") contain customary representations, warranties, and events of default, which require the Company to comply with affirmative and negative covenants.

As discussed in Note 2, as of March 31, 2023, the Company is in good standing with the lenders on all of its outstanding Loans.

In February and March 2021, all 10 of our properties in the Initial Portfolio received a second loan from the PPP with total proceeds from the loans amounting to $4,000. In February 2022, the SBA granted forgiveness of the second loan. The Company recognized the loans and all accrued interest in profit or loss in 2022, with no remaining SBA forgiveness for the three months ended March 31, 2023.

The SBA, in consultation with the U.S. Department of the Treasury, has published guidance for borrowers concerning forgiveness of PPP loans. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the date of disbursement of the loan and the SBA remittance of the forgiveness amount. The borrower is also responsible for paying accrued interest on any amount of the loan that is not forgiven.

The table below shows future payments on the Loans, excluding amortization of deferred financing costs, payable within the next five calendar years subsequent to March 31, 2023.

	Notes Payable	Mezzanine Loans	Total
2023	1,395	17,410	18,805
2024	78,803	—	78,803
2025	38,365	—	38,365
2026	60,304	—	60,304
Total	$ 178,867	$ 17,410	$ 196,277

As of March 31, 2023 and December 31, 2022, the Company has $82,723 of convertible notes due to its affiliates. The notes have rates ranging from 1.93% to 7.50% while outstanding and mature in 20 years in most cases. The Company's convertible notes conversion is subject to TSXV approval.

	March 31, 2023	December 31, 2022
Convertible affiliate notes	$ 82,723	$ 82,723

Note 14. Class B Units

On January 8, 2019, the OP issued Class B Units with a fair value of $67,881. The Class B Units of the OP are economically equivalent to Units and are entitled to receive distributions equal to those provided to holders of Units. These Class B Units have been classified as a liability in accordance with IAS 32, as they are redeemable instruments at the option of the holders.

Class B Units are measured at fair value with any changes in fair value recorded in profit or loss. The fair value adjustments of Class B Units are calculated using the Company's Unit closing price as of the end of the reporting period. An increase in the Unit closing price over the period results in a fair value loss whereas a decrease in the Unit closing price over the period results in a fair value gain.

As allowed under IFRS 13, *Fair Value Measurement,* if an asset or a liability measured at fair value has a bid price and an ask price, the price within the bid-ask spread that is the most representative of fair value in the circumstances shall be used to measure fair value. The Company has recorded Class B Units at their fair value, which has been assessed to equal the closing market price of the Units at each valuation date (Level 2).

The 10-day volume weighted average price ("VWAP") of the Units for the 10 trading days immediately preceding the end of the period is the basis of measurement the Company uses to record fair value adjustments of the Class B Units. The 10-day VWAP at March 31, 2023 was $1.01 and the fair value adjustment of the Class B Units for the three months ended March 31, 2023 was $(101).

The Company's notes due to affiliates are, subject to TSXV approval, convertible at any time at the election of the holders into Class B Units.

On December 13, 2021, the Company granted 2,475,000 profit interest units ("PIUs") in the OP to officers of the Company and employees of the Advisor. Upon conversion, grantees will receive Class B Units of the OP. As of March 31, 2023, 883,125 of the PIU units have vested. See Note 23 for more information on PIUs granted and vesting schedules.

The following table presents the outstanding units and the change in fair value of the Class B Units for the three months ended March 31, 2023:

	Units	Fair value
Redeemable noncontrolling interests in the OP, January 1, 2023	205,597	$ 309
Net loss attributable to Class B redeemable Units of the OP	—	(26)
Change in fair value of Class B Units redeemable Units of the OP	—	(101)
Adjustment to reflect redemption value of redeemable Class B Units of the OP	—	26
Redeemable noncontrolling interests in the OP, March 31, 2023	205,597	$ 208

Note 15. Finance Costs

The following table summarizes finance costs for the three months ended March 31, 2023 and March 31, 2022:

	For the Three Months Ended	
	March 31, 2023	March 31, 2022 (Restated)
Interest on debt[1]	$ 5,575	$ 4,048
Amortization of deferred financing costs	210	281
Change in value of interest rate cap	135	(326)
Interest on due to affiliate	—	458
Fees related to Nashville forbearance agreement	(3)	12
Finance costs from operations[1]	$ 5,917	$ 4,474
Fair value adjustment of Class B Units	(101)	(289)
Total finance costs	$ 5,816	$ 4,185

[1] Adjusted for the effect of the Misstatement as described in Note 24.

Note 16. Income Taxes

(a) Income tax (expense)/recovery:

The Company has recorded current tax expense/recovery for taxes associated with its direct and indirect subsidiaries. The income tax expense/recovery in the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss) is as follows:

	For the Three Months Ended	
	March 31, 2023	March 31, 2022
Net income before income tax	$ (3,534)	$ 792
Less: income/(loss) relating to entities not subject to income tax	(3,769)	(1,258)
Net income before tax relating to taxable subsidiaries	235	2,050
Deferred income tax benefit	20	121
Income taxes	(242)	(57)
Income tax recovery (expense)	$ (222)	$ 64

(b) Deferred income tax benefit:

As of March 31, 2023 and December 31, 2022, the Company has an estimated tax asset of $4,856 and $4,836, respectively, recorded in the Consolidated Statement of Financial Position for certain temporary book-to-tax differences as well as net operating losses associated with its direct and indirect subsidiaries. A summary of the composition of such tax benefits is provided in the table below.

	March 31, 2023	December 31, 2022
Reserves not currently deductible	$ 259	$ 379
Net operating losses carried forward	4,597	4,457
Total tax assets	$ 4,856	$ 4,836

Note 17. Unitholders' Capital

The Company is authorized to issue an unlimited number of Units. Each Unit represents a proportionate undivided beneficial ownership interest in the Company. Each Unit is transferable and entitles the holder thereof to: (i) an equal participation in distributions of the Company; (ii) rights of redemption; and (iii) one vote at all meetings of unitholders.

There were no changes to the Units or Unitholders' Capital for the period from January 1, 2023, to March 31, 2023 or from the period January 1, 2022, to March 31, 2022.

In 2021, the Company granted 549,687 deferred units to the independent trustees. These deferred units are issued but not issued and outstanding Units. See Note 23 for further discussion on deferred units and profit interest units.

Note 18. Fair Value of Financial Instruments and Derivatives

a) Comparison of fair value to carrying amount

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value may be based on other observable current market transactions in the same instrument, without modification or on a valuation technique using market-based inputs. Fair value measurements recognized in the Interim Consolidated Financial Statements are categorized using the following fair value hierarchy that reflects the significance of inputs used in determining the fair values:

- Level 1: Quoted (unadjusted) market prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, directly or indirectly.
- Level 3: Inputs for the asset or liability that are not based on observable market data (unobservable inputs).

As of March 31, 2023 and December 31, 2022, the carrying amounts of the Company's cash and cash equivalents, restricted cash, trade and other receivables, accounts payables and other accrued liabilities approximated their fair values due to the short-term nature of these financial assets and liabilities.

The fair value of the Loans is estimated by discounting the future cash flows using discount rates that reflect current market conditions for instruments having similar terms and conditions. At March 31, 2023, the Notes Payable were discounted using rates between 7.19% and 11.65% and the Mezzanine Loan was discounted using the rate 10.50%. Discount rates are either provided by lenders or are observable in the open market. As of March 31, 2023, the fair value of the Company's Loans exceeded their carrying value by approximately $5,598 and are considered Level 2 in the fair value hierarchy as inputs are observable directly or indirectly.

The fair value of the redeemable Class B Units is determined based on their redemption value. The redemption value is based on the fair value of the Company's Units at the redemption date, and therefore, is calculated based on the fair value of the Company's Units at the date of the Interim Consolidated Financial Statements. Since the valuation of the Units are based on observable inputs such as quoted prices for similar instruments in active markets, redeemable non-controlling interests in the OP are classified as Level 2 of the fair value hierarchy.

For the three months ended March 31, 2023, there were no transfers between the different levels of the fair value hierarchy.

(b) Derivative Financial Instruments and Hedging Activities

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company manages interest rate risks primarily by managing the amount, sources, and duration of its debt funding and the use of derivative financial instruments.

The Company performs market valuations on its derivative financial instruments. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate caps are determined using the market standard methodology of discounting the future expected cash receipts that would occur if variable interest rates rose above the strike rate of the caps. The variable interest rates used in the calculation of projected receipts on the cap are based on an expectation of future interest rates derived from observable market interest rate curves and volatilities.

Interest rate caps involve the receipt of variable-rate amounts from a counterparty if interest rates rise above the strike rate on the contract in exchange for an up-front premium. The Company entered into interest rate cap agreements upon acquisition of the Park City and Bradenton properties in February 2022. As of March 31, 2023, the interest rate cap agreements which the Company has entered into effectively cap one-month LIBOR on $36,829 of the Company's floating rate mortgage and mezzanine indebtedness at a weighted average rate of 2.00%.

To comply with the provisions of IFRS 9, *Financial Instruments,* the Company incorporates credit valuation adjustments to appropriately reflect both the Company's own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with the Company's derivatives utilize Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by the Company and its counterparties. The Company has determined that the significance of the impact of the credit valuation adjustments made to its derivative contracts, which determination was based on the fair value of each individual contract, was not significant to the overall valuation. Additionally, in the case of interest rate caps, the Company has no performance obligation, so no credit valuation adjustment is necessary. As a result, all of the Company's derivatives held as of March 31, 2023 and December 31, 2022, were classified as Level 2 of the fair value hierarchy.

Changes in the fair value of the interest rate caps are recorded directly in Finance costs from operations. For the three months ended March 31, 2023, the Company incurred minimal interest expense related to changes in the fair value of interest rate caps. The fair value of the interest rate caps is $1,602 as of March 31, 2023 and is recorded as Interest rate caps in the Consolidated Statement of Financial Position.

As of March 31, 2023, the Company had the following outstanding interest rate caps:

Type of Derivative	Hedged Financial Instrument	Notional	Strike Rate	Reference Rate		Termination Date
Interest rate cap	Note payable	$ 39,300	2.00%	One-month SOFR	2.00%	March 5, 2025

*c) **Financial risk management***

The Company may be exposed to a number of risks in its normal course of operations from the use of financial instruments. These risks, and the actions taken to manage them, are as follows:

(i) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in the market interest rates.

A majority of the Company's Loans bears interest at a variable rate and are either subject to a LIBOR floor or have interest rate caps in place. Fluctuations in interest rates will impact the cost of financing incurred in the future. The Company monitors its interest rate exposure on an ongoing basis.

(ii) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. The maximum exposure to credit risk is the full carrying amount of the financial instrument. The Company is exposed to credit risk with respect to its interest rate caps, interest rate swaps and trade and other receivables. The credit risk for interest rate caps and interest rate swaps are discussed in Note 18 (b). Credit risk of trade and other receivables is mitigated by initiating a prompt collection process. The Company is also exposed to credit risk with respect to cash and cash equivalents, restricted cash, and counterparties on derivative contracts. This credit risk of such counterparties is mitigated by only transacting with large financial institutions.

(iii) Liquidity risk

The Company's principal liquidity needs arise from working capital requirements, debt servicing and repayment obligations, payments on unhedged interest rate swaps, planned funding of property improvements, leasing costs, distributions to unitholders, property development and acquisition funding requirements. Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they come due. Property and equipment investments tend to be relatively illiquid, with the degree of liquidity generally fluctuating in relation to demand for and the perceived desirability of such investments.

If the Company was required to sell the property, the proceeds to the Company may be significantly less than the property's carrying amount.

Liquidity risk is managed through cash flow forecasting. Management monitors forecasts of the Company's liquidity requirements to ensure it has sufficient cash to meet operational needs through maintaining sufficient cash and/or availability on undrawn loan agreements and ensuring that it meets its financial covenants. Such forecasting involves a significant degree of judgment, takes into consideration current and projected macroeconomic conditions, the Company's cash collection efforts, debt financing plans, covenant compliance required under the terms of debt agreements and internal targets. There is a risk that such liquidity forecasts may not be achieved, and that currently available debt financing may no longer be available to the Company at terms and conditions that are favorable to the Company, or at all.

As of March 31, 2023, the Company had a working capital deficiency of $42,166, which is primarily the result of the $17,410 Mezz Facility, which matures on July 8, 2023. Additional contractual obligations and contingencies are outlined in Note 20. As mentioned in Note 2(a), there is substantial doubt as to whether the Company can meet all of its obligations as they become due. This is primarily the result of the $17,410 Mezz Facility that matured on January 8, 2020, (and as of March 8, 2022, was further extended by the lender until July 8, 2023) but also as a result of the impact to the Company's revenue decline due to the COVID-19 pandemic. In order to continue as a going concern, management is actively working towards addressing the Company's liquidity concerns, including the following: (i) negotiating with lenders to extend or otherwise restructure the terms of our loans and obtain relief from covenants in the near term; and (ii) converting payables to an affiliate into Class B Units. In addition, subject to market conditions, the Company may seek to raise funding through new debt and equity financing, including sale-leaseback and ground lease arrangements, though there is no assurance the Company will be able to obtain such financing. The particular features and quality of the underlying assets and the debt and equity market parameters existing at the time of financing may impact the ability to obtain financing.

The following table provides information on the carrying amounts and the non-discounted contractual maturities of financial liabilities with fixed repayment terms, including estimated interest payments using the 30-day LIBOR rate of 5.19% as of March 31, 2023 as restated:

	Carrying Amount	Contractual Cash Flows	Reclassified as Held for Sale	1 Year	More than 1 Year
Notes payable	$ 177,401	$ 178,867	$ 64,685	$ 77,353	$ 36,829
Mezzanine loan	17,410	17,410	—	17,410	—
Interest payable on notes and mezzanine loans	4,108	30,002	—	9,575	20,427
Accounts payable and other accrued liabilities	24,087	20,775	3,312	20,775	—
Lease liability	1,021	1,197	—	160	1,037
Total	$ 224,027	$ 248,251	$ 67,997	$ 125,273	$ 58,293

Note 19. Capital Management

The Company defines capital as the aggregate of unitholders' equity, Class B Units, notes payable and mezzanine loans. The Company's objectives in managing capital are to maintain a level of capital that: complies with investment and debt restrictions pursuant to the Company's operating agreement; complies with existing debt covenants; funds its business strategies; and builds long-term members' value. Capital adequacy is monitored by the Company by assessing performance against the approved annual plan throughout the year and by monitoring adherence to investment and debt restrictions contained in the Company's operating agreement and debt covenants.

Note 20. Commitments and Contingencies

a) Franchise agreement

The Company's properties are operated under franchise agreements (the "Franchise Agreements") with Franchisors. The Franchise Agreements require the payment of a monthly royalty fee and monthly marketing fee on the property's gross room revenue. For the three months ended March 31, 2023, franchise fees were $1,375 and are included in operating expenses. Details regarding the Franchise Agreements are presented in the following table:

					(% of Gross Rooms Sales)	
Property	**Brand**	**Execution Date**	**Term (Years)**	**Expiration Date**	**Franchise Fees**	**Marketing Fees**
Dallas Hilton Garden Inn	Hilton	December 31, 2014	15	December 31, 2029	5.50%	4.30%
Addison HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Plano HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Las Colinas HomeWood Suites	Hilton	May 4, 2017	25	May 31, 2032	5.50%	3.50%
Olympia DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
Tigard DoubleTree	Hilton	May 5, 2018	25	May 31, 2033	5.00%	4.00%
St. Petersburg Marriott	Marriott	September 25, 2018	20	September 25, 2038	6%/3%[1]	1.00%
Nashville Holiday Inn Express	Intercontinental Group	January 8, 2019	20	January 8, 2039	3.00%	3.00%
Hyatt Place Park City	Hyatt	February 15, 2022	20	February 23, 2042	5.00%	3.50%
Bradenton Hampton Inn & Suites	Hilton	February 22, 2022	15	February 28, 2037	6.00%	4.00%

[1] 6% of gross rooms sales / 3% of gross food and beverage sales.

b) Litigation

In the normal course of operations, the Company may become subject to a variety of legal and other claims. While it is not possible to ascertain the ultimate outcome of all such matters, the Company evaluates all claims on their apparent merits and, if necessary, the Company accrues for its best estimate of the costs to satisfy such claims.

As a result of the financial impact that the COVID-19 pandemic has had on the Nashville Property and the inability of the hotel to meet its financial covenants and obligations, RSS Multiple – DE NT, LLC, the current lender ("Lender"), filed suit against the HIX Borrowers and the Loan Guarantor, seeking, among other things, to appoint a receiver and to foreclose on their security interest.

On May 26, 2021, the HIX Borrowers and Loan Guarantor executed a forbearance agreement with the Lender that will, when followed, cure the defaults identified by the Lender and bring the loan into good standing. The agreement contains various compliance dates, but the final action in compliance with the forbearance agreement, must occur by February 1, 2022. The HIX Borrowers met the compliance requirements by February 1, 2022. As of March 31, 2023, the HIX Borrowers and Loan Guarantor are currently in good standing under the forbearance agreement.

Note 21. Related party transactions

The Interim Consolidated Financial Statements include the following transactions with related parties:

Advisory Fees

In accordance with the agreement entered into with the Advisor (the "Advisory Agreement"), the Company pays the Advisor an advisory fee equal to 1.00% of the REIT Asset Value (as defined below). Under the direct supervision of the Company, the duties performed by the Company's Advisor under the terms of the Advisory Agreement include, but are not limited to: providing daily management for the Company, selecting and working with third party service providers, overseeing the third party manager, formulating an investment strategy for the Company and selecting suitable properties and investments, managing the Company's outstanding debt and its interest rate exposure through derivative instruments, determining when to sell assets, and managing the renovation program or overseeing a third party vendor that implements the renovation program. REIT Asset Value means the value of the Company's total assets, as determined in accordance with IFRS except that such value shall only consolidate the Company's and NHT Holdings, LLC assets plus the Company's pro rata share of leverage at the OP.

Pursuant to the terms of the Advisory Agreement, the Company will reimburse the Advisor for all documented Operating Expenses and Offering Expenses it incurs on behalf of the Company. "Operating Expenses" include legal, accounting, financial and due diligence services performed by the Advisor that outside professionals or outside consultants would otherwise perform, the Company's pro rata share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Advisor required for the Company's operations, and compensation expenses under the Omnibus Plan (as defined in Note 23). Operating Expenses do not include expenses for the advisory services described in the Advisory Agreement. Certain Operating Expenses, such as the Company's ratable share of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses incurred by the Advisor or its affiliates that relate to the operations of the Company, may be billed monthly to the Company under a shared services agreement. "Offering Expenses" include all expenses (other than underwriters' discounts) in connection with an offering, including, without limitation, legal, accounting, printing, mailing, and filing fees and other documented offering expenses.

The Advisor has reinstated the previously waived 2020 advisory fees and the rebate of accrued but unpaid fees as of December 31, 2019. The Company will begin paying advisory fees when it is able to resume payments while remaining cash flow positive.

Expense Cap

Pursuant to the terms of the Advisory Agreement, expenses paid or incurred by the Company for advisory fees payable to the Advisor and expenses incurred by the Advisor or its affiliates in connection with the services it provides to the Company and its subsidiaries will not exceed 1.5% of REIT Asset Value Assets for calendar year (or part thereof that the Advisory Agreement is in effect (the "Expense Cap")). The Expense Cap does not limit the reimbursement of expenses related to Offering Expenses. The Expense Cap also does not apply to legal, accounting, financial, due diligence and other service fees incurred in connection with mergers and acquisitions, extraordinary litigation, or other events outside the Company's ordinary course of business or any out-of-pocket acquisitions or due diligence expenses incurred in connection with the acquisition or disposition of real estate assets. For the three months ended March 31, 2023 and March 31, 2022, the Company incurred expenses subject to the Expense Cap of $902 and $1,232, respectively.

Internalization Fee

The Company and/or the OP may elect to acquire all of the outstanding and issued equity interests of the Advisor (the "Internalization") by exercising its rights, in its sole discretion, under the Advisory Agreement (subject to certain terms and conditions) to affect an Internalization. The Company will pay the Advisor a fee equal to three times the prior 12 months' Advisory Fee. The Internalization Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date of the Internalization. There has been no internalization as of March 31, 2023.

Termination Fee

If the Company and/or the OP elect to terminate the Advisory Agreement, the Company will pay the Advisor a fee (the "Termination Fee") equal to three times the prior 12 months' Advisory Fee. The Termination Fee is limited to 7.5% of the combined equity value of the Company and the OP on a consolidated basis as of the date the Advisory Agreement is terminated.

Loans from Affiliates

As of March 31, 2023, the OP has entered into several convertible notes with affiliates totaling $82,723 since January 8, 2019. The proceeds of the notes were used for general corporate and working capital purposes and have been consolidated into one account on the Consolidated Statements of Financial Position.

Other Related Party Transactions

The Company has in the past, and may in the future, utilize the services of affiliated parties. For the three months ended March 31, 2023, the Company paid de minimis fees to an affiliated bank, NexBank N.A. ("NexBank"), as the Company and its subsidiaries have several bank accounts at NexBank with a cumulative balance of $194 as of March 31, 2023. NexBank is an affiliate of the Advisor through common beneficial ownership.

Note 22. Supplemental Cash Flow Disclosure

Reconciliation of changes in liabilities, including movements of liabilities to cash flows arising from financing activities for the three months ended March 31, 2023 were as follows:

	Notes Payable, Net	Mezzanine Loans, Net	Total
Balance, December 31, 2022	$ 177,658	$ 18,000	$ 195,658
Liability related:			
Principal payments made	(460)	(600)	(1,060)
Amortization of deferred financing costs on outstanding debt	203	10	213
Balance, March 31, 2023	$ 177,401	$ 17,410	$ 194,811
Current portion	$ 77,353	$ 17,410	$ 94,763
Held for Sale	$ 64,685	$ —	$ 64,685
Long-term portion	$ 35,363	$ —	$ 35,363

Note 23. Incentive Compensation Plan

The Company has adopted an omnibus equity incentive plan (the "Omnibus Plan") to allow for the grant of equity incentive awards to key officers and employees of the Company, independent trustees, and key employees of the Advisor. As part of the independent trustees' compensation, it is anticipated they will be granted deferred units ("DUs") in the future and may receive, at their election, 100% of their board compensation in the form of DUs. Under the Omnibus Plan, subject to adjustments according to the terms of the plan, the maximum number of Units available for issuance is 3,026,155, representing 20% of the issued and outstanding Units of the Company at the time the Omnibus Plan was adopted.

On June 28, 2021, the Company granted 339,687 DUs to the independent trustees. On December 13, 2021, the Company granted 210,000 DUs to the independent trustees. These DUs are issued but not outstanding and vested immediately. On December 13, 2021, the Company granted 2,475,000 PIUs in the OP to officers of the Company (2,029,200) and employees of the Advisor (445,800). The PIUs will vest ratably over four years (i.e., 25% per year), however, 50% of the PIUs can vest sooner if the value of the units in the table below is achieved, as determined by a recognized national valuation firm which performs regular valuations of the units. In no case can PIUs vest within one year of grant:

Vesting %		Upon Unit Price Achieving[1]	PIUs Vested
12.50%	$	2.00	294,375
12.50%		2.50	294,375
12.50%		3.00	294,375
12.50%		4.00	294,375
Total			1,177,500

[1]Price to be adjusted for dilutive events.

Assuming none of the performance metrics are met, the PIUs will vest as shown in the below table:

Vesting %	Date	PIUs Vested
25.00%	December 6, 2022	588,750
25.00%	December 6, 2023	588,750
25.00%	December 6, 2024	588,750
25.00%	December 6, 2025	588,750
Total		2,355,000

On December 6, 2022, 588,750 PIUs vested to officers of the company and employees of affiliates of the Advisor. Additionally, 294,375 PIUs vested on December 31, 2022, as the units reached the first price threshold. 120,000 units were forfeited as two employees of affiliates of the Advisor left their roles before the vesting dates.

Description	Units		Fair Value
PIUs vested in the OP, January 1, 2023	883,125	$	1,816
PIUs FV adjustment	—		(481)
Q1 PIU liability accrued over the quarter	—		217
PIUs vested in the OP, March 31, 2023	883,125	$	1,552

Upon conversion, grantees of the PIUs will receive Class B Units of the OP. As of March 31, 2023, 549,687 DUs and 2,475,000 PIUs have been granted under the Omnibus Plan with 1,468 DUs or PIUs remaining that may be granted.

On May 31, 2022, the Board of Trustees passed a resolution adopting a deferred unit plan (the "Deferred Unit Plan"). The Deferred Unit Plan was subsequently approved by unitholders at the annual general meeting held on June 30, 2022. The maximum number of DUs reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As of March 31, 2023, no DUs have been issued under this plan.

Note 24. Mezz Loan Minimum Multiple Amount Restatement

As discussed in Note 13, on January 8, 2019, the Company, through the OP, entered into the $35,000 Mezz Facility. The proceeds from the Mezz Facility were used to help fund a portion of the purchase price of the Nashville Property acquired on January 8, 2019. The Mezz Facility included a provision which allows the lender to earn a minimum return on their capital (the "Minimum Return"). Although the final amount of the Minimum Return will not be known until the Mezz Facility is paid in full, the Minimum Return

attributable to each period is able to be reasonably estimated and, as such, should have been accrued in each respective period. The Company had not accrued the additional interest payable related to the Minimum Return (the "Misstatement") as required under IFRS for the periods from inception (January 9, 2019) through December 31, 2022. The Minimum Return will be owed in full by the Company at maturity of the Mezz Facility, which is currently scheduled for July 8, 2023, along with the principal balance and applicable exit fees.

Management has determined that the impact of the Misstatement is not material to the consolidated financial statements for the years 2019, 2020, 2021, and 2022.

The cumulative balance of the Minimum Return from origination through December 31, 2022 of $5,165 has been recorded as a reduction to the opening Unitholders' Deficit and as an increase to accounts payable and other accrued liabilities on the Consolidated Statement of Financial Position for the three months ended March 31, 2023 and as a reduction to the ending Unitholders' Deficit Consolidated Statement of Financial Position for the year ended December 31, 2022 presented herein. Each prior period has been updated to reflect the impact of the Misstatement.

The amount of the Minimum Return related to each of the prior years is set forth in the table below:

Period	Increase to Accounts Payable and Other Accrued Liabilities	Increase to Finance Costs from Operations
January 8, 2019 - December 31, 2019	$ 1,154	$ 1,154
Year Ended December 31, 2020	2,454	1,300
Year Ended December 31, 2021	3,973	1,519
Year Ended December 31, 2022	5,165	1,192

The tables below show the updated balances for each prior period had the Minimum Return been property recorded since origination of the Mezz Facility,

	NOTES	December 31, 2022		December 31, 2021		December 31, 2020		December 31, 2019	
		Prior	Adjusted	Prior	Adjusted	Prior	Adjusted	Prior	Adjusted
LIABILITIES AND UNITHOLDERS' DEFICIT									
Current liabilities									
Accounts payable and other accrued liabilities	12	$ 20,374	$ 25,539	$ 24,175	$ 28,148	$ 23,456	$ 25,910	$ 19,759	$ 20,913
Total current liabilities		40,091	45,256	129,659	133,632	64,304	66,758	55,936	57,090
Total Liabilities		302,274	307,439	318,015	321,988	310,824	313,278	279,961	281,115
Unitholders' Deficit		5,931	766	(754)	(4,727)	(26,009)	(28,463)	82,073	80,919
TOTAL LIABILITIES AND UNITHOLDERS' DEFICIT		$ 308,205	$ 308,205	$ 317,261	$ 317,261	$ 284,815	$ 284,815	$ 362,034	$ 362,034

NEXPOINT HOSPITALITY TRUST
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(AMOUNTS IN THOUSANDS OF U.S. DOLLARS EXCEPT UNIT COUNTS AND PER UNIT AMOUNTS)

	Notes	Twelve Months Ended			
		December 31, 2022		December 31, 2021	
Revenues		Prior	Adjusted	Prior	Adjusted
Finance costs from operations	15	(17,713)	(18,905)	(18,389)	(19,908)
Total other income and (expenses)		(18,805)	(19,997)	16,242	14,723
Income (losses) before income taxes		571	(621)	24,513	22,994
Net income (loss) and comprehensive income (loss) from continuing operations		$ 1,985	$ 793	$ 25,313	$ 23,794
Net income (loss) and comprehensive income (loss)		$ 6,685	$ 5,493	$ 24,271	$ 22,752
Basic and diluted income per unit					
Continuing operations		0.07	0.03	0.86	0.81
Discontinued operations		0.16	0.16	(0.04)	(0.04)
Gain/Loss per unit		$ 0.23	$ 0.19	$ 0.82	$ 0.77
Basic and diluted weighted average number of Units outstanding		29,901,742	29,901,742	29,352,055	29,352,055

	Notes	Twelve Months Ended			
		December 31, 2020		December 31, 2019	
Revenues		Prior	Adjusted	Prior	Adjusted
Finance costs from operations		(18,800)	(20,100)	(20,292)	(21,446)
Total other income and (expenses)		(117,301)	(118,601)	(33,965)	(35,119)
Income (losses) before income taxes		(113,020)	(114,320)	(7,783)	(8,937)
Net income (loss) and comprehensive income (loss) from continuing operations		$ (112,336)	$ (113,636)	$ (7,289)	$ (8,443)
Net income (loss) and comprehensive income (loss)		$ (112,336)	$ (113,636)	$ (7,289)	$ (8,443)
Basic and diluted income per unit					
Continuing operations		(3.83)	(3.87)	(0.25)	(0.29)
Discontinued operations		—	—	—	—
Gain/Loss per unit		$ (3.83)	$ (3.87)	$ (0.25)	$ (0.29)
Basic and diluted weighted average number of Units outstanding		29,352,055	29,352,055	29,352,055	29,352,055

	Notes	Twelve Months Ended			
		December 31, 2022		December 31, 2021	
		Prior	Adjusted	Prior	Adjusted
Cash flows from operating activities					
Net income (loss)[1]		6,685	5,493	24,271	22,752
Adjustments to reconcile net income to net cash used in operating activities:					
Finance costs from operations[1]	15	17,713	18,905	18,389	19,908
Net cash provided by operating activities		23,387	23,387	4,922	4,922

	Notes	Twelve Months Ended			
		December 31, 2020		December 31, 2019	
		Prior	Adjusted	Prior	Adjusted
Cash flows from operating activities					
Net income (loss)[1]		(112,336)	(113,636)	(7,289)	(8,443)
Adjustments to reconcile net income to net cash used in operating activities:					
Finance costs from operations[1]	15	18,800	20,100	20,292	21,446
Net cash provided by operating activities		(803)	(803)	20,918	20,918

Note 25. Subsequent Events

NHT evaluated subsequent events through May 30, 2023 to determine if any significant events occurred subsequent to the balance sheet date that would have a material impact on the Interim Consolidated Financial Statements and note there are no subsequent events to disclose.

TAB 10

View All News

NexPoint Hospitality Trust Announces Undertaking Regarding Amendments to COVID Loans

June 26, 2023

DALLAS and TORONTO, June 26, 2023 /CNW/ -- NexPoint Hospitality Trust ("NHT" or the "REIT"), (TSX-V: NHT.U) announced today that, at the request of the TSX Venture Exchange, it has provided an undertaking to amend the convertible promissory notes issued to NexPoint Real Estate Opportunities, LLC and Highland Income Fund (the "**Lenders**") during the COVID-19 pandemic (the "**COVID Loans**") to (i) reduce the conversion term to five years from the date of issuance; (ii) establish a minimum acceptable conversion price based on market prices at the time of each particular advance; and (iii) remove the conversion of interest, such that only principal under the COVID Loans is convertible. For one of the COVID Loans, in an amount of US$8.5 million advanced on February 22, 2022, the REIT has agreed to amend the loan to remove the conversion feature altogether. As each of the Lenders is a related party of the REIT under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"), in order to enter into the amendments to the COVID Loans, the REIT has undertaken to seek disinterested unitholder approval at its 2023 annual and special meeting of unitholders.

The COVID Loans were in the aggregate amount of US$56,165,000. The proceeds from the COVID Loans were used to fund the REIT's operating expenses and interest and principal payments on outstanding indebtedness during the COVID 19 pandemic to allow the REIT to continue as a going concern.

About NHT

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. NHT is focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 10 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

Contact:
Investor Relations
IR@nexpoint.com

Media Inquiries
MediaRelations@nexpoint.com

SOURCE NexPoint Hospitality Trust

View All News

TAB 11

REVISED 1

TSX TRUST COMPANY

VIA ELECTRONIC TRANSMISSION

August 31, 2023

TO ALL APPLICABLE EXCHANGES AND COMMISSIONS:

RE: **NEXPOINT HOSPITALITY TRUST**
Confirmation of Notice of Record and Meeting Dates

We are pleased to confirm that Notice of Record and Meeting Dates was sent to The Canadian Depository for Securities.

We advise the following with respect to the upcoming Annual General and Special Meeting of Security Holders for the subject issuer:

1	ISIN:	CA65344N1078
	CUSIP:	65344N107
2	Date Fixed for the Meeting:	**October 12, 2023**
3	Record Date for Notice:	August 28, 2023
4	Record Date for Voting:	August 28, 2023
5	Beneficial Ownership Determination Date:	August 28, 2023
6	Classes or Series of Securities that entitle the holder to receive Notice of the Meeting:	UNITS
7	Classes or Series of Securities that entitle the holder to vote at the meeting:	UNITS
8	Business to be conducted at the meeting:	Annual General and Special
9	Notice-and-Access:	
	Registered Shareholders:	NO
	Beneficial Holders:	NO
	Stratification Level:	Not Applicable
10	Reporting issuer is sending proxy-related materials directly to Non-Objecting Beneficial Owners:	NO
11	Issuer paying for delivery to Objecting Beneficial Owners:	YES

Yours truly,
TSX Trust Company

VANCOUVER
650 West Georgia Street,
Suite 2700
Vancouver, BC V6B 4N9

T 604 689-3334

CALGARY
Telus Sky Building
2110, 685 Centre Street SW
Calgary Alberta T2G 1S5

T 403 218-2800

TORONTO
301 - 100 Adelaide Street West
Toronto ON M5H 4H1

Toll Free 1-866-600-5869
T 416 361-0930

MONTRÉAL
1701 - 1190, avenue des
Canadiens-de-Montréal, C. P. 37
Montréal (Québec) H3B 0G7

T 514 395-5964

TAB 12

NEXPOINT

HOSPITALITY TRUST

NOTICE OF ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

AND

MANAGEMENT INFORMATION CIRCULAR

ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

TO BE HELD ON OCTOBER 12, 2023

September 11, 2023

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APPENDICES

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Appendix “E” Board Charter E-1

Appendix “F” Audit Committee Charter F-1

NOTICE OF ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

NOTICE IS HEREBY GIVEN that an annual and special meeting (the "**Meeting**") of the holders of trust units ("**Unitholders**") of NexPoint Hospitality Trust ("**NHT**" or the "**REIT**") will be held virtually via live webcast on October 12, 2023 at 10:00 a.m. (Toronto time), for the following purposes:

1. **TO RECEIVE** and consider the financial statements of NHT for the year ended December 31, 2022, and the report of the auditor thereon;

2. **TO ELECT** members of the board of trustees of NHT for the ensuing year;

3. **TO APPOINT** the auditor of NHT for the ensuing year and to authorize the board of trustees of NHT to fix the remuneration of the auditor;

4. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "A" to the accompanying information circular) approving the amended and restated deferred unit plan of the REIT, which resolution, in order to be effective, must be passed by the affirmative vote of a simple majority of the votes cast by the disinterested Unitholders, excluding the votes cast by such Unitholders that are required to be excluded pursuant to TSXV Policy 4.4 – *Security Based Compensation* ("**TSXV Policy 4.4**");

5. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "C" to the accompanying information circular) approving and ratifying the grant of 1,295,668 deferred units to NHT's independent trustees on September 11, 2023;

6. **TO CONSIDER**, and if deemed advisable, to pass an ordinary resolution (in the form attached as Appendix "D" to the accompanying information circular) approving certain amendments to the convertible promissory notes issued by the REIT between June 2021 and September 2022, which resolution, to be effective, must be passed by an affirmative vote of a simple majority of the votes cast by the Unitholders, excluding the votes cast by such Unitholders that are required to be excluded pursuant to Multilateral Instrument 61 - 101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"); and

7. **TO TRANSACT** such other business as may properly come before the Meeting or any adjournment thereof.

The information circular contains details of the matters to be considered at the Meeting. No other matters are contemplated, however, any permitted amendment to or variation of any matter identified in this notice may properly be considered at the Meeting. The Meeting may also consider the transaction of such other business as may properly come before the Meeting or any adjournment thereof.

The Meeting will be held in a virtual-only format, which will be conducted via live webcast over the internet. Unitholders will have an equal opportunity to participate at the Meeting regardless of their geographic location. Unitholders who choose to attend the Meeting will do so by accessing a live webcast of the Meeting via the internet by visiting https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023). Unitholders will be able to listen to the Meeting live and submit questions while the Meeting is being held. Unitholders who are unable to attend the virtual Meeting are requested to sign, date and return the form of proxy or voting instruction form received in accordance with the instructions provided.

If you wish to appoint a proxyholder other than the management nominees identified in the form of proxy or voting instruction form, be it yourself or a third party, you must carefully follow the instructions in the attached information circular and on your form of proxy or voting instruction form. These instructions include the additional step of registering such proxyholder with our transfer agent, TSX Trust Company, after submitting the form of proxy or voting instruction form, as applicable. Failure to register the proxyholder with our transfer agent will result in the proxyholder not receiving a control number. Without a control number, the proxyholder will not be able to participate in or vote at the virtual Meeting. It is the responsibility of the Unitholder to register their proxyholder

with TSX Trust Company in advance of the Meeting by completing and returning a "Request for Control Number" form, by no later than 10:00 a.m. (Toronto time) on October 10, 2023 or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario) prior to the time of such postponed or adjourned meeting. The "Request for Control Number" form is available at https://www.tsxtrust.com/control-number-request.

If you are a Registered Holder (as defined in the information circular), you must vote your proxy before Tuesday, October 10, 2023 at 10:00 a.m. (Toronto time), or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario) prior to the time of such postponed or adjourned meeting, in order for such vote to be valid at the Meeting. Voting by proxy will not prevent you from voting online at the Meeting if you attend the virtual Meeting but will ensure that your vote will be counted if you are unable to attend.

Included with this letter is a form of proxy for use by Registered Holders. Whether or not you intend to attend the Meeting, you are requested to complete, sign, date and return the enclosed form of proxy. To be valid, proxies must be signed and deposited with TSX Trust by mail to P.O. Box 721, Agincourt, ON M1S 0A1, Attention: Proxy Department; by facsimile to 1-416-595-9593; or electronically online with your 12-digit Control Number at www.meeting-vote.com, by no later than 10:00 a.m. (Toronto time) on Tuesday, October 10, 2023, or, if the Meeting is adjourned or postponed, at least 48 hours prior to such adjourned or postponed Meeting (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario).

Unitholders who hold their units through a nominee such as a broker, an intermediary, a trustee or other person (each, an "**Intermediary**"), or who otherwise do not hold their units in their own name ("**Beneficial Holders**") should note that units held by such Intermediaries on behalf of a Beneficial Holder can only be voted at the direction of the Beneficial Holder. Existing regulatory policy requires Intermediaries to seek voting instructions from Beneficial Holders in advance of unitholder meetings. Intermediaries have their own mailing procedures and provide their own return instructions to Beneficial Holders, which should be carefully followed by Beneficial Holders in order to ensure that their units are voted at the Meeting. The information circular provides additional information relating to the matters to be dealt with at the Meeting and forms part of this notice.

If you have any questions or need assistance with the completion and delivery of your proxy or voting instruction form, please contact TSX Trust Company by phone at 416-682-3860 or 1-800-387-0825 (toll-free in North America), or by e-mail at proxyvote@tmx.com.

The financial statements for the year ended December 31, 2022 and the report of the auditor thereon are available on the SEDAR website at www.sedarplus.ca.

Unitholders of record at the close of business on August 28, 2023 (the "**Record Date**") are entitled to notice of, and to vote at, the Meeting.

DATED at Toronto, Ontario this 11th day of September, 2023.

BY ORDER OF THE BOARD OF TRUSTEES

"James Dondero"

Chair of the Board of Trustees
NexPoint Hospitality Trust

NEXPOINT
HOSPITALITY TRUST

MANAGEMENT INFORMATION CIRCULAR

Unless otherwise indicated herein, or the context otherwise requires, "**NHT**" or the "**REIT**" refers to NexPoint Hospitality Trust, including its direct and indirect subsidiaries. Unless otherwise indicated herein, all dollar amounts are stated in U.S. dollars and references to dollars or "**$**" are to U.S. currency. The board of trustees of NHT is referred to herein as the "**Board**" or the "**Trustees**", and a "**Trustee**" means any one of them.

This management information circular (the "**Information Circular**") is furnished in connection with the solicitation of proxies by or on behalf of management of NHT, for use at the annual and special meeting (the "**Meeting**") of holders ("**Unitholders**") of trust units ("**Units**") of NHT scheduled to be held on Thursday, October 12, 2023 virtually via live webcast at 10:00 a.m. (Toronto time), and at all postponements or adjournments thereof, for the purposes set forth in the accompanying notice of the Meeting (the "**Notice of Meeting**"). Unitholders of record at the close of business on August 28, 2023 (the "**Record Date**") will be entitled to vote at the Meeting.

The Meeting will be held in a virtual-only format, which will be conducted via live webcast over the internet. Unitholders will have an equal opportunity to participate at the Meeting regardless of their geographic location. A summary of the information Unitholders will need to attend the Meeting online is provided below under "*Attending and Voting at the Virtual Meeting*".

Except as otherwise stated in this Information Circular, the information contained herein is given as of September 11, 2023.

PROXY SOLICITATION AND VOTING

Solicitation of Proxies

The solicitation of proxies is being made by or on behalf of management. It is expected that the solicitation will be primarily by mail, but proxies may also be solicited personally, by telephone or other form of correspondence. NHT will bear the cost in respect of the solicitation of proxies for the Meeting and will bear the legal, printing and other costs associated with the preparation of the Information Circular. NHT will also pay the fees and costs of intermediaries for their services in transmitting proxy-related material in accordance with National Instrument 54-101 — *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**"). This cost is expected to be nominal.

Appointment of Proxies

Unitholders will receive a form of proxy or voting instruction form (the "**Form of Proxy**") for use in connection with the Meeting. The persons named in such Form of Proxy are currently Trustees or officers of NHT. **A Unitholder who wishes to appoint some other person to represent him, her or it at the Meeting may do so by crossing out the persons named in the Form of Proxy and inserting such person's name in the blank space provided in the Form of Proxy or by completing another proper Form of Proxy. Such other person need not be a Unitholder of NHT.**

The Unitholder must also follow the additional step of registering such proxyholder with our transfer agent, TSX Trust Company, after submitting the Form of Proxy. Failure to register the proxyholder with our transfer agent will result in the proxyholder not receiving a control number. Without a control number, the proxyholder will not be able to participate in or vote at the virtual meeting. It is the responsibility of the Unitholder to register their proxyholder with TSX Trust Company in advance of the Meeting by completing and returning a "Request for Control Number" form no later than 10:00 am (Toronto time) on October 10, 2023 or, if the Meeting is postponed or adjourned, by no later than 48 hours (excluding Saturdays, Sundays and statutory holidays) preceding the time of such adjourned

meeting (the "**Proxy Deadline**") The "Request for Control Number" form is available at https://www.tsxtrust.com/control-number-request.

The document appointing a proxy must be in writing and completed and signed by a Unitholder or his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Instructions provided by a Unitholder must be in writing and completed and signed by the Unitholder or his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Persons signing as officers, attorneys, executors, administrators, and trustees or similarly otherwise should so indicate and provide satisfactory evidence of such authority.

Revocation of Proxies

Proxies given by Unitholders for use at the Meeting may be revoked at any time prior to their use by depositing an instrument in writing executed by the Unitholder or by his or her attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized. Revocations of proxies must be deposited in one of the manners indicated on the Form of Proxy not later than two business days prior to the Meeting or any adjournment thereof at which the proxy is to be used.

Only Registered Holders (as defined below) have the right to revoke a proxy. Beneficial Holders (as defined below) who wish to change their vote must make appropriate arrangements with their respective dealers or other intermediaries.

Voting of Proxies

The persons named in the Form of Proxy will vote, or withhold from voting, the Units in respect of which they are appointed, on any ballot that may be called for, in accordance with the instructions of the Unitholder as indicated on the Form of Proxy. In the absence of such specification, such Units will be voted at the Meeting as follows:

- **FOR the election of those persons listed in this Information Circular as the proposed Trustees for the ensuing year;**
- **FOR the appointment of Frazier & Deeter, LLC, as auditor of NHT for the ensuing year and to authorize the Board to fix the auditor's remuneration;**
- **FOR the approval of the resolution adopting an amended and restated deferred unit plan for the REIT;**
- **FOR the approval of the resolution approving and ratifying the grant of 1,295,668 deferred units to the REIT's independent trustees on September 11, 2023; and**
- **FOR the approval of the resolution approving the amendments to the convertible promissory notes issued by the REIT between June 2021 and September 2022.**

For more information on these issues, please see the section entitled "*Matters to be Considered at the Meeting*" in this Information Circular.

The persons appointed under the Form of Proxy are conferred with discretionary authority with respect to amendments to or variations of matters identified in the Form of Proxy and the Notice of Meeting and with respect to other matters which may properly come before the Meeting. In the event that amendments or variations to matters identified in the Notice of Meeting are properly brought before the Meeting, it is the intention of the persons designated in the Form of Proxy to vote in accordance with their best judgment on such matter or business. As at the date of this Information Circular, the Trustees know of no such amendments, variations or other matters.

Quorum

The quorum at the Meeting or any adjournment thereof shall be individuals deemed to be present at the virtual Meeting in person or represented by proxy, not being less than two in number and such persons holding or representing by proxy in aggregate not less than 25% of the total number of outstanding Units.

INFORMATION FOR BENEFICIAL HOLDERS OF SECURITIES

Information set forth in this section is very important to persons who do not hold Units in their own name. A Unitholder who beneficially owns Units (a "**Beneficial Holder**") that are registered in the name of an intermediary (such as a securities broker, financial institution, trustee, custodian or other nominee who holds securities on behalf of the Beneficial Holder or in the name of a clearing agency in which the intermediary is a participant) should note that only proxies or instructions deposited by securityholders whose names are on the records of NHT as the registered holders of Units ("**Registered Holders**") can be recognized and acted upon at the Meeting.

Units that are listed in an account statement provided to a Beneficial Holder by a broker are likely not registered in the Beneficial Holder's own name on the records of NHT. Such Units are more likely to be registered in the name of CDS Clearing and Depository Services Inc. ("**CDS**") or its nominee.

Applicable regulatory policy in Canada requires brokers and other intermediaries to seek voting instructions from Beneficial Holders in advance of securityholder meetings. Every broker or other intermediary has its own mailing procedures and provides its own return instructions, which should be carefully followed by Beneficial Holders in order to ensure that their Units are voted at the Meeting. Often, the form of proxy supplied to a Beneficial Holder by its broker is identical to that provided to registered securityholders. However, its purpose is limited to instructing the registered securityholder how to vote on behalf of the Beneficial Holder. Most brokers now delegate responsibility for obtaining instructions from clients to Broadridge Investor Communications Solutions ("**Broadridge**"). Broadridge typically prepares a machine-readable voting instruction form, mails those forms to the Beneficial Holders and asks Beneficial Holders to return the proxy forms to Broadridge. Broadridge then tabulates the results of all instructions received and provides appropriate instructions representing the voting of the securities to be represented at the Meeting. A Beneficial Holder receiving a Broadridge voting instruction form cannot use that voting instruction form to vote Units directly at the Meeting. The voting instruction form must be returned to Broadridge well in advance of the Meeting in order to have the Units voted. Proxy-related materials will not be sent by NHT directly to "non-objecting beneficial owners" under NI 54-101. NHT intends to pay for intermediaries to deliver proxy-related materials to "objecting beneficial owners" and Form 54-101F7 (the request for voting instructions), in accordance with NI 54-101.

Although Beneficial Holders may not be recognized directly at the Meeting for the purposes of voting Units registered in the name of CDS or their broker or other intermediary, a Beneficial Holder may attend the Meeting as proxy holder for the Registered Holder and vote their Units in that capacity. **Beneficial Holders who wish to attend the Meeting and indirectly vote their own Units as proxy holder for the Registered Holder should enter their own names on the Form of Proxy provided to them and return the same to their broker or other intermediary (or the agent of such broker or other intermediary) in accordance with the instructions provided by such broker, intermediary or agent well in advance of the Meeting. Beneficial Holders can only be validated and indirectly vote their own Units as proxy holder for the Registered Holder by completing the Form of Proxy provided to them and returning the same to their broker or other intermediary in accordance with the instructions provided.**

ATTENDING AND VOTING AT THE VIRTUAL MEETING

Attendance

NHT is holding the Meeting in a virtual-only format, which will be conducted via live webcast. Unitholders will not be able to attend the Meeting in person. Unitholders will be able to attend, participate and submit questions online at the virtual Meeting via live webcast. Unitholders will also be able to vote prior to the Meeting by completing their Form of Proxy.

The Meeting can be accessed as a Unitholder or as a guest at the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023).

If you attend the Meeting online, it is important that you are connected to the internet at all times during the Meeting in order to participate. It is your responsibility to ensure connectivity for the duration of the Meeting. You should allow 30 minutes prior to the start of the Meeting to check in online.

Registered Holders

Registered Holders can vote Units held in their name as the Unitholder of record online at the Meeting or by proxy. To vote Units personally, Registered Holders must submit the Form of Proxy appointing themselves as proxyholder by the Proxy Deadline. However, even if you plan to attend the Meeting, NHT recommends that you vote your Units in advance, so that your vote will be counted if you later decide not to attend the Meeting. Voting by proxy can be completed by returning the Form of Proxy.

Included with this circular is a Form of Proxy for use by Registered Holders. Whether or not you intend to attend the Meeting, you are requested to complete, sign, date and return the enclosed form of proxy. To be valid, proxies must be signed and deposited with TSX Trust by mail to P.O. Box 721, Agincourt, ON M1S 0A1, Attention: Proxy Department; by facsimile to 1-416-595-9593; or electronically online with your 12-digit Control Number at www.meeting-vote.com, by no later than 10:00 a.m. (Toronto time) on Tuesday, October 10, 2023 or, if the Meeting is adjourned or postponed, at least 48 hours prior to such adjourned or postponed Meeting (excluding Saturdays, Sundays and statutory holidays in the Province of Ontario). The chair of the Meeting may waive, without notice, the time limit for deposit of proxies.

If a Registered Holder does not wish to attend and vote at the Meeting online (or have another person attend and vote on his or her behalf), the Form of Proxy must be completed, signed and returned in accordance with the instructions on the form.

Registered Holders can attend and vote online during the Meeting at the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023) by selecting "I have a control number", entering your 12-digit control number, which can be located on your Form of Proxy, and entering the password: "nexpoint2023" (case sensitive).

Beneficial Holders

Beneficial Holders can vote their Units online at the Meeting or by proxy. Beneficial Holders will receive from their intermediary a Form of Proxy for the number of Units beneficially owned. **Beneficial Holders who wish to attend the Meeting and indirectly vote their own Units as proxy holder for the Registered Holder should enter their own names on the Form of Proxy provided to them and return the same to their broker or other intermediary (or the agent of such broker or other intermediary) in accordance with the instructions provided by such broker, intermediary or agent well in advance of the Meeting. Beneficial Holders can only be validated and indirectly vote their own Units as proxy holder for the Registered Holder by completing the Form of Proxy provided to them and returning the same to their broker or other intermediary in accordance with the instructions provided.**

However, even if you plan to attend the Meeting, NHT recommends that you vote your Units in advance, so that your vote will be counted if you later decide not to attend the Meeting. Beneficial holders should follow the instructions on the form they receive and contact their intermediaries promptly if they need assistance. Beneficial Holders can vote by accessing the following URL: https://virtual-meetings.tsxtrust.com/1546 (password: nexpoint2023) and entering the 12-digit control number printed on the Form of Proxy and following the instructions on the screen.

If a Beneficial Holder does not wish to attend and vote at the Meeting online (or have another person attend and vote on his or her behalf), the Form of Proxy must be completed, signed and returned in accordance with the directions on the form.

VOTING SECURITIES AND PRINCIPAL HOLDERS THEREOF

Units

NHT is authorized to issue an unlimited number of Units. The Units are listed and posted for trading on the TSX Venture Exchange (the "**TSXV**") under the symbol "NHT.U". No Unit has any preference or priority over another. Each Unit represents a Unitholder's proportionate undivided beneficial ownership interest in NHT and confers the right to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by NHT.

As of the date hereof, there were 29,352,055 Units outstanding.

Class B Units

NHT Operating Partnership, LLC (the "**OP**"), the operating partnership of NHT, has class B units ("**Class B Units**") outstanding. Class B Units do not carry a voting right with respect to matters put before Unitholders of NHT for a vote. However, the Class B Units are, in all material respects, economically equivalent to the Units on a per unit basis, subject to certain customary anti-dilution adjustments. The holders of Class B Units are entitled to receive distributions from the OP on the same per unit basis as holders of Units.

After Class B Units have been issued for at least 12 months (subject to acceleration in certain circumstances), holders of such Class B Units, acting individually, have the right to cause the OP to redeem all or a portion of such Class B Units for a cash payment to be paid by the OP. The OP shall not be obligated to satisfy such redemption right if NHT Holdings, LLC ("**NHH**") elects to purchase the Class B Units in exchange for a cash payment or equivalent value in Units, as determined by NHH (and NHT, indirectly) in its sole discretion. If NHH elects to redeem such Class B Units for the equivalent value in Units, NHT will generally deliver (indirectly) one Unit for each Class B Unit redeemed (subject to customary anti-dilution adjustments). As of the date hereof, there were 205,597 Class B Units outstanding.

Eligibility for Voting

At the Meeting, each Unitholder of record at the close of business on the Record Date will be entitled to one vote for each Unit held on all matters proposed to come before the Meeting. Any Unitholder who was a Unitholder on the Record Date shall be entitled to receive notice of and vote at the Meeting or any adjournment thereof, even though he, she or it has since that date disposed of his, her or its Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at the Meeting or any adjournment thereof or to be treated as a Unitholder of record for purposes of such other action.

Principal Unitholders

To the knowledge of NHT and its executive officers, the only person or company that beneficially owned, directly or indirectly, or exercised control or direction over, voting securities of NHT carrying 10% or more of the voting rights attached to all outstanding Units of NHT as of the date hereof, was:

Name	Number of Units Owned, Controlled or Directed[(1)]	Percentage of Outstanding Units	Number of Class B Units Owned, Controlled or Directed	Percentage of Outstanding Units (determined as if all Class B Units are redeemed for Units)[(2)]
James Dondero[(3)]	21,170,538	72.13%	0	71.62%

Notes:

(1) The number of Units beneficially owned includes any Units over which the person has sole or shared voting power or investment power. No person has any right to acquire additional Units through the exercise of any stock option or other right. Unless otherwise indicated, each person has sole investment and voting power (or shares such power with his or her spouse) over the Units set forth in the table.

(2) The percentages shown are based on 29,352,055 Units and 205,597 Class B Units Outstanding as of the date hereof.

(3) Includes 13,571,131 Units owned by NexPoint Real Estate Opportunities, LLC, 5,394,662 Units owned by The Dugaboy Investment Trust, 1,045,848 Units owned by NHT Holdco, LLC, 1,068,519 Units owned by Governance RE Ltd. and 90,378 Units owned by NexPoint Real Estate Advisors, L.P.; each of which is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

Management of NHT understands that the Units registered in the name of CDS are beneficially owned through various dealers and other intermediaries on behalf of their clients and other parties. The names of the Beneficial Holders of such Units are not known to NHT. Except as set out above, NHT and its executive officers have no knowledge of any person or company that beneficially owns, directly or indirectly, or exercises control or direction over 10% or more of the outstanding Units of NHT.

Voting Results

Voting results of the Meeting will be filed on SEDAR at www.sedarplus.ca following the Meeting.

MATTERS TO BE CONSIDERED AT THE MEETING

1. Financial Statements

The financial statements of NHT for the year ended December 31, 2022, and the auditor's report thereon will be placed before the Unitholders at the Meeting. No formal action will be taken at the Meeting to approve the financial statements. If any Unitholder has questions regarding such financial statements, such questions may be brought forward at the Meeting.

2. Election of Trustees

The present term of office of each Trustee of NHT will expire upon the election of Trustees at the Meeting. It is proposed that each of the persons whose name appears below be elected as a Trustee of NHT to serve until the close of the next annual meeting of Unitholders or until his or her successor is elected.

Advance Notice Policy

NHT's amended and restated declaration of trust dated March 27, 2019 (as subsequently amended by the first amendment to the amended and restated declaration of trust dated September 16, 2020, and further amended by the second amendment to the amended and restated declaration of trust dated October 25, 2021, the "**Declaration of Trust**") contains an advance notice policy (the "**Advance Notice Policy**") which requires a nominating Unitholder to provide notice to the Trustees of proposed Trustee nominations not less than 30 days prior to the date of the applicable annual meeting (being not later than September 12, 2023 for the purposes of the Meeting). This advanced notice period is intended to give NHT and its Unitholders sufficient time to consider any proposed nominees. A copy of the Declaration of Trust, which sets out the Advance Notice Policy, is available on the SEDAR website at www.sedarplus.ca.

Majority Voting Policy

The Board has adopted a majority voting policy (the "**Majority Voting Policy**") in Trustee elections that applies at any meeting of Unitholders where an uncontested election of Trustees is held, including at the Meeting. Pursuant to this policy, if the number of proxy votes withheld for a particular Trustee nominee is greater than the votes in favour of such nominee, the Trustee nominee shall immediately tender his or her resignation to the Chair of the Board following the Meeting. Following receipt of a resignation submitted pursuant to this policy, the compensation, governance, and nominating committee of the Board (the "**Compensation, Governance and Nominating Committee**") shall consider whether or not to accept the offer of resignation and shall recommend to the Board whether or not to accept it. With the exception of special circumstances that would warrant the continued service of the applicable Trustee on the Board, the Compensation, Governance and Nominating Committee shall accept and recommend acceptance of the resignation by the Board. Within 90 days following the Meeting, the Board shall make

its decision, on the Compensation, Governance and Nominating Committee's recommendation. Following the Board's decision on the resignation, the Board shall promptly disclose, via press release (a copy of which shall be provided to the TSXV), its decision as to whether or not to accept the Trustee's resignation offer, including the reasons for rejecting the resignation offer, if applicable. A Trustee who tenders his or her resignation pursuant to the Majority Voting Policy will not be permitted to participate in any meeting of the Board or the Compensation, Governance and Nominating Committee at which the resignation is considered. In the event of a "contested election", where the number of nominees for trustee exceeds the number of trustees to be elected, subject to applicable law, the voting method to be applied for purposes of electing trustees at the meeting will be determined by the Chair of the meeting in his or her sole discretion.

Nominees

Pursuant to an investor rights agreement among NHT and certain Unitholders of NHT who are principals and affiliates of NexPoint Real Estate Advisors VI, L.P. (collectively, the "**NexPoint Holders**") dated March 29, 2019 (the "**Investor Rights Agreement**"), the NexPoint Holders are granted the right to nominate two Trustees (such nominees are subject to election together with the remaining Trustees at annual meetings of Unitholders) subject to the NexPoint Holders owning, in the aggregate, 20% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), such number being reduced to one nominee if the NexPoint Holders own, in the aggregate, less than 20% but 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units). Upon the NexPoint Holders' aggregate ownership falling below 10%, the NexPoint Holders will not have any Board nomination rights. Notwithstanding the foregoing, where the Board is comprised of four or fewer Trustees, as long as the NexPoint Holders own, in the aggregate, 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), the NexPoint Holders are granted the right to nominate a maximum of one Trustee. For so long as the NexPoint Holders have nomination rights under the Investor Rights Agreement, the Board of Trustees will be restricted from nominating more than five Trustees. For clarity, this restriction does not affect the ability of a Unitholder to nominate Trustees in accordance with the terms of the Declaration of Trust or applicable law. The Investor Rights Agreement is available on the SEDAR website at www.sedarplus.ca.

As of the Record Date, the Board was comprised of four Trustees and the NexPoint Holders owned, in the aggregate, 29.7% of the outstanding Units (determined as if all Class B Units are redeemed for Units) and are therefore entitled to nominate one Trustee at the Meeting. Currently, James Dondero, who serves on the Board pursuant to the NexPoint Holders' nomination right, is nominated for re-election pursuant to the NexPoint Holders' nomination right at the Meeting.

The persons named in the Form of Proxy, if not expressly directed to the contrary in such Form of Proxy, intend to vote for the election, as Trustees, of the proposed nominees whose names are set out below. It is not contemplated that any of the proposed nominees will be unable to serve as a Trustee but, if that should occur for any reason prior to the Meeting, the persons named in the Form of Proxy reserve the right to vote for another nominee at their discretion. Each nominee elected as a Trustee will hold office until the close of the next annual meeting of the Unitholders or until his or her successor is elected or appointed. The Declaration of Trust provides for the Board to consist of a minimum of one and a maximum of nine Trustees. The Board currently has four Trustees and it is proposed that four Trustees be elected at the Meeting.

About the Nominees

The following information sets forth the names of, and certain other biographical information for, the four individuals proposed to be nominated for election as Trustees at the Meeting.

JAMES DONDERO	**Principal Occupation**
Age: 60	Mr. Dondero serves as a Trustee of NHT and is Chair of the Board. He is a member of NHT's Audit Committee and Compensation, Governance and Nominating Committee. Mr. Dondero also serves as NHT's Chief Executive Officer. He is the President of NexPoint

Location: Dallas, Texas, USA Trustee Since: February 2019 Status: **NOT INDEPENDENT**	Advisors, LP, which he founded in 2012. Mr. Dondero has over 30 years of experience investing in credit and equity markets and has helped pioneer credit asset classes with portfolio management experience ranging in several asset classes, including real estate securities, corporate securities and direct lending. Mr. Dondero received a B.S. in Commerce (Accounting and Finance) from the University of Virginia, and is a Certified Public Accountant, Certified Managerial Accountant and a Chartered Financial Analyst.
	Other Public Board Memberships
	N/A
	Board / Committee Memberships
	Board (Chair) Compensation, Governance and Nominating Committee Audit Committee

Securities Beneficially Owned or Controlled (as at September 8, 2023)

Units		**Profits LTIP Units**		**Total Units and Profits LTIP Units**		**Unit Ownership Requirement**	
Number[(1)]	Market Value[(2)]	Number	Market Value[(2)]	Number[(1)]	Market Value[(2)]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[(3)]
21,170,538	$10,585,269	389,025	$194,513	21,559,563	$10,779,782	$5,000,000	Yes

Notes:

(1) Includes 13,571,131 Units owned by NexPoint Real Estate Opportunities, LLC, 5,394,662 Units owned by The Dugaboy Investment Trust, 1,045,848 Units owned by NHT Holdco, LLC, 1,068,519 Units owned by Governance RE Ltd. and 90,378 Units owned by NexPoint Real Estate Advisors, L.P.; each of which is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

(2) These amounts were determined by multiplying the number of Units or Profits LTIP Units (as defined below) (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

NEIL LABATTE	**Principal Occupation**
Age: **66** Location: Toronto, Ontario, Canada Trustee Since: December 2018 Status: **INDEPENDENT**	Mr. Labatte serves as a Trustee of NHT and is Lead Trustee of the Board. Mr. Labatte currently serves on the boards of BSR Real Estate Investment Trust (where he serves as Chair) and Triovest Inc. (a Canada-wide diversified private real estate investment and management corporation). He was previously a director of Skyline Investments Inc. (Tel Aviv Stock Exchange), Jack Nathan Medical Corp. (TSXV) and Pomeroy Hotels (a private entity). He also previously served as a director for HealthLease Properties REIT, Alpha Peak and Holloway Lodging Corporation, all current or former TSX-listed entities. Mr. Labatte is the former President and Chief Executive Officer of the Legacy Hotels REIT. He became President in 1999 and Chief Executive Officer in 2003, holding both titles until the Legacy Hotels REIT was sold in September 2007. He also served as a trustee of the Legacy Hotels REIT from April 2003 until September 2007. Mr. Labatte joined Fairmont Hotels & Resorts in 1997 as Vice President Acquisitions, and from October 2001 to December 31, 2004 served as Senior Vice President, Real Estate and was a member of the organization's Executive Committee. Mr. Labatte possesses over 35 years of experience within the real estate sector.

	For four years prior to joining Fairmont Hotels & Resorts, Mr. Labatte was a founder, principal and board member of AEW Mexico Company, a Dallas, Texas private equity real estate investment management company formed with one of the largest institutional real estate private equity companies in the United States. For the 12 years prior to the formation of AEW Mexico Company, he was involved in the hotel and real estate sectors in the capacity of investment banker and consultant. Mr. Labatte received his B.Sc. and M.Sc. in Finance from the University of Utah. Mr. Labatte played professional hockey with the St. Louis Blues and Salt Lake Golden Eagles from 1977-1982. He was previously Co-Chairman of the NHL Alumni Association.
	Other Public Board Memberships
	BSR Real Estate Investment Trust (TSX)
	Board / Committee Memberships
	Board (Lead Trustee) Compensation, Governance and Nominating Committee (Chair) Audit Committee

Securities Beneficially Owned or Controlled (as at September 8, 2023)

Units		**Deferred Units**[1]		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value	Number	Market Value[2]	Number	Market Value[2]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[3]
–	–	972,312	$486,156	972,312	$486,156	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees (as defined below) payable to the independent Trustees to be paid in the form of Deferred Units (as defined below) in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Labatte in respect of fiscal 2020 and 2019 were $93,000 and $47,250 respectively. Mr. Labatte elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Labatte's service and performance during the COVID-19 pandemic, and to encourage Mr. Labatte to participate in the future growth of the REIT, Mr. Labatte was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Labatte was $88,500, of which $56,250 was paid in cash and the remaining $32,250 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $90,750 and $50,000 of Trustee Fees were payable to Mr. Labatte. Mr. Labatte elected to receive such fees in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 692,000 Deferred Units to Mr. Labatte in respect of his remaining portion of 2021 Trustee Fees, 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. As of the date hereof, Mr. Labatte holds 972,312 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

GRAHAM SENST	Principal Occupation
Age: **74** Location: Toronto, Ontario, Canada Trustee Since: February 2019 Status: **INDEPENDENT**	Mr. Senst serves as a Trustee of NHT. He is also the Chair of NHT's Audit Committee and a member of NHT's Compensation, Governance and Nominating Committee. Mr. Senst served as President of the Institute of Canadian Real Estate Investment Managers until its sale in August 2012. Prior to this role, Mr. Senst served as Managing Director of KingSett Capital Real Estate Income Fund and as an Executive Vice President of Bentall Capital and Penreal Capital Management. Mr. Senst also served as an Executive Vice President of Bentall Investment Management. Prior to joining Bentall in April 2003, Mr. Senst served as Vice President of Real Estate for the OMERS Administration Corp. (also known as Ontario Municipal Employees Retirement System). Mr. Senst has many years of senior real estate investment experience as a Vice President with a major Ontario pension fund and other Canadian financial institutions. Prior to joining OMERS, Mr. Senst served as Vice President of Real Estate at a Subsidiary of Mackenzie Financial Corporation, where he developed debt and equity investment products for various Mackenzie funds. Mr. Senst served as the Vice President of Corporate Real Estate at both Canada Trust and Truscan Realty. He served as a Member of the Advisory Board at KingSett Capital Income Fund, Morgan Stanley Real Estate Fund IV and Soros Real Estate Investors, C.V. and as a trustee of Residential Equities Real Estate Investment Trust (ResREIT). He also served as a Director of Oxford Properties Group, Inc. Mr. Senst served as a trustee of Milestone Apartments Real Estate Investment Trust (including as the Chair of the Investment Committee) and Partners REIT (including as the Chair of the Audit Committee). He is currently a trustee of BSR Real Estate Investment Trust. Mr. Senst holds an Honours of Business Administration and a Masters of Business Administration from the Ivey School of Business at the University of Western Ontario in London, Ontario and is a 2011 graduate of the Institute of Corporate Directors.
	Other Public Board Memberships
	BSR Real Estate Investment Trust (TSX)
	Board / Committee Memberships
	Board Compensation, Governance and Nominating Committee Audit Committee (Chair)

Securities Beneficially Owned or Controlled (as at September 8, 2023)

Units		**Deferred Units**[(1)]		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value	Number	Market Value[(2)]	Number	Market Value[(2)]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement?[(3)]
–	–	673,043	$336,522	673,043	$336,522	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Senst in respect of fiscal 2020 and 2019 were $88,000 and $43,500 respectively. Mr. Senst elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Senst's service and performance during the COVID-19 pandemic, and to encourage Mr. Senst to participate in the future growth of the REIT, Mr. Senst was granted 105,000 Deferred Units which vested immediately.

In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Senst was $83,500, of which $53,333 was paid in cash and the remaining $30,167 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $70,750 and $37,500 of Trustee Fees were payable to Mr. Senst. Mr. Senst elected to receive his 2022 Trustee Fees in the form of Deferred Units, and his accrued 2023 Trustee Fees (as of June 30, 2023) in cash. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 403,668 Deferred Units to Mr. Senst in respect of his remaining portion of 2021 Trustee Fees and 2022 Trustee Fees. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. As of the date hereof, Mr. Senst holds 673,043 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

JERRY PATAVA	**Principal Occupation**
Age: 69 Location: Toronto, Ontario, Canada Trustee Since: August 2022 Status: **INDEPENDENT**	Jerry Patava serves as a Trustee of NHT. Previously, he served as the Chair of Great Gulf Group from January 2020 to January 2023, and Chief Executive Officer from July 2007 to January 2020. He also served as a Board member and Chair of Ashton Woods USA LLC from February 2009 to December 2022. Before joining Great Gulf and affiliates, he served as Executive Vice President and Chief Financial Officer of Fairmont Hotels & Resorts Inc. and as a trustee and Executive Vice President, Chief Financial Officer, and Treasurer of Legacy Hotels Real Estate Investment Trust. From 1990 to 1998, he was Vice President and Treasurer of Canadian Pacific Limited. Prior thereto, he was a Vice President and Director of RBC Dominion Securities. Mr. Patava has more than four decades of experience in real estate and finance. He has served on numerous public and private boards of directors in North America and internationally across a broad spectrum of industries including energy, newspapers and infrastructure. He is currently a member of the Fiera Capital Corporation Independent Review Committee. Mr. Patava holds a Bachelor of Arts from the University of Toronto and a Master of Business Administration from York University.
	Other Public Board Memberships
	N/A
	Board / Committee Memberships
	Board Compensation, Governance and Nominating Committee Audit Committee

Securities Beneficially Owned or Controlled (as at September 8, 2023)							
Units		**Deferred Units[1]**		**Total Units and Deferred Units**		**Unit Ownership Requirement**	
Number	Market Value[2]	Number	Market Value	Number	Market Value[2]	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement[3]
–	–	200,000	$100,000	200,000	$100,000	3X Annual Cash Retainer	Yes

Notes:

(1) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Patava in respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023) is US$20,000 and US$30,000 respectively. Mr. Patava elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 200,000 Deferred Units to Mr. Patava in respect of his remaining portion of his 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. As of the date hereof, Mr. Patava holds 200,000 Deferred Units.

(2) These amounts were determined by multiplying the number of Units or Deferred Units (as applicable) by the closing price of the Units on September 8, 2023, being $0.50 per Unit.

(3) NHT's unit ownership policy provides that each Trustee has within the later of five years from the date of (i) the policy and (ii) becoming a Trustee to comply with the guidelines therein. NHT's unit ownership policy also provides that, for the purposes of the policy, the value of Units held is calculated using the higher of the cost base and current market price.

Corporate Cease Trade Orders or Bankruptcies

Other than as set forth below, during the past 10 years, no nominee proposed for election has been a director, chief executive officer or chief financial officer of any company that:

(a) was subject to a cease trade order or similar order or an order that denied the company access to any exemption under securities legislation for a period of more than 30 consecutive days while the nominee was acting in such capacity; or

(b) was subject to a cease trade order or similar order or an order that denied the company access to any exemption under securities legislation for a period of more than 30 consecutive days that was issued after the nominee ceased to act in such capacity and which resulted from an event that occurred while the nominee was acting in such capacity.

During the past 10 years, no nominee proposed for election has been a director or executive officer of any company that, while the nominee was acting in such capacity, or within a year of the nominee ceasing to act in such capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

Mr. Dondero, on the date outlined below, was an executive officer of Highland Capital Management, L.P. ("**HCMLP**"). On October 16, 2019, HCMLP announced that it had filed a petition in the United States Bankruptcy Court for the District of Delaware, seeking voluntary Chapter 11 protection. HCMLP filed a plan of reorganization, which was approved by the United States Bankruptcy Court for the Northern District of Texas in February 2021 and subsequently became effective on August 11, 2021. As part of its plan of reorganization, HCMLP appointed a litigation trustee, whose sole purpose was to investigate, prosecute, settle, or otherwise resolve claims of HCMLP's estate.

Mr. Labatte, on the date outlined below, was a director and/or officer of Talon International Inc. and several affiliated entities, including Talon International Development Inc., TFB Inc., 2263847 Ontario Limited and 2270039 Ontario Limited. On November 1, 2016, such corporations became parties to a receivership order from the Ontario Superior Court of Justice (Commercial List) appointing a court-appointed receiver of certain assets of such entities used in relation to the Trump International Hotel & Tower in Toronto, Ontario. The sale of such assets to various third parties was facilitated through the receivership process.

Personal Bankruptcies

No nominee proposed for election has, within the 10 years prior to the date of this Information Circular, become bankrupt or made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or

instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the nominee.

Penalties or Sanctions

No nominee proposed for election has been subject to any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority or been subject to any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor making an investment decision.

Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the election, as Trustees, of the proposed nominees set out above.

3. Appointment of Auditors

The audit committee of NHT (the "**Audit Committee**") recommends to the Unitholders that Frazier & Deeter, LLC be appointed as the independent auditor of NHT, to hold office until the close of the next annual general meeting of the Unitholders or until its successor is appointed, and that the Trustees be authorized to fix the remuneration of the auditor. Frazier & Deeter, LLC has been the auditor of NHT since February 25, 2021.

Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR of the appointment of Frazier & Deeter, LLC as auditor of NHT to hold office until the next annual general meeting of Unitholders and the authorization of the Board to fix its remuneration.

4. Approval of Amended and Restated Deferred Unit Plan

On August 11, 2023, the Board approved (subject to disinterested Unitholder approval) the amendment and restatement of the REIT's deferred unit plan dated June 30, 2022 (the "**Deferred Unit Plan**") to: (i) remove the Insider Participation Limits (as defined below); and (ii) amend the definition of "Trustee" to explicitly exclude James Dondero, Chief Executive Officer of the REIT, as a participant thereunder (the "**Amended and Restated Deferred Unit Plan**").

The purpose of the Deferred Unit Plan is to enhance the ability of the REIT and any of its subsidiaries to attract, motivate and retain non-employee Trustees of the REIT ("**Participants**"), to reward such persons for their sustained contributions, and to encourage such persons to take into account the long-term performance of the REIT. A deferred trust unit of NHT ("**Deferred Unit**") is an award of a notional investment in the Units reflected on an unfunded, book-entry account maintained by NHT. For a summary of the current terms of the Deferred Unit Plan, see below under "*Compensation – Deferred Unit Plan*".

Under the current Deferred Unit Plan, there are certain restrictions (the "**Insider Participation Limits**") on the granting of Deferred Units to Participants and the issuance of Units to Insiders (as such term is defined in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time (the "**TSXV Corporate Finance Manual**") of the REIT.

NHT wishes to amend and restate the Deferred Unit Plan to remove the following Insider Participation Limits:

(a) The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued to Insiders (as a group) shall not exceed 10% of the issued and outstanding Units at any point in time, subject to the requisite disinterested Unitholder approval required by the TSXV; and

(b) The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued in any 12 month period to Insiders (as a group) shall not exceed 10% of the issued and outstanding Units, calculated as at the date any

such security based compensation award is granted or issued to any Insider, subject to the requisite disinterested Unitholder approval required by the TSXV.

Given the prior issuances of Profits LTIP Units under the omnibus equity incentive plan of NHT (the "**Omnibus Plan**") and Deferred Units under the Deferred Unit Plan, the Insider Participation Limits, if maintained, would severely curtail the REIT's ability to grant Deferred Units to the independent Trustees. The Board believes it is important to maintain the ability to issue Deferred Units to the independent Trustees in order to align their interests with those of the Unitholders.

The Amended and Restated Deferred Unit Plan was conditionally approved by the TSXV on August 30, 2023, subject to the satisfaction of certain conditions, including obtaining disinterested Unitholder approval.

Disinterested Unitholder Approval

The amendment to remove the Insider Participation Limits requires "disinterested unitholder approval" per TSXV Policy 4.4. As a result, the resolution approving the Amended and Restated Deferred Unit Plan (the "**Amended Deferred Unit Plan Resolution**") will require the approval by a majority of the votes cast by all Unitholders at the Meeting, present in person or by proxy at the Meeting, excluding the votes attaching to the Units beneficially owned by the Trustees eligible to participate under the Deferred Unit Plan and their "associates" and "affiliates" (as defined in TSXV Policy 4.4).

For the purposes of the disinterested unitholder approval requirement of TSXV Policy 4.4, any votes attaching to Units held by Neil Labatte, Graham Senst and Jerry Patava (the "**Interested Parties**") will be excluded in determining whether disinterested Unitholder approval for the Amended Deferred Unit Plan Resolution is obtained. As of the Record Date, the Interested Parties do not hold any Units.

NHT's disinterested Unitholders will be asked to consider and, if deemed advisable, pass the Amended Deferred Unit Plan Resolution in the form set out in Appendix "A" to this Information Circular. Unitholders are encouraged to review the proposed Amended and Restated Deferred Unit Plan attached as Appendix "B" to this Information Circular. In the event that disinterested Unitholder approval of the Amended Deferred Unit Plan Resolution is not obtained at the Meeting, the current Deferred Unit Plan will remain in full force and effect.

The Board has unanimously approved the Amended and Restated Deferred Unit Plan and recommends that the Unitholders vote FOR the Amended Deferred Unit Plan Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Amended Deferred Unit Plan Resolution.

5. Approval of Previous Grant of Deferred Units

In accordance with TSXV Policy 4.4 and the terms of the REIT's Deferred Unit Plan, the REIT conditionally granted 1,295,668 Deferred Units to independent Trustees of the REIT on September 11, 2023 (the "**Prior DSU Grant**"). The Prior DSU Grant is in excess of Insider Participation Limits (as described above) and is subject to ratification by Unitholders at the Meeting (in addition to approval of the Amended and Restated Deferred Unit Plan). At the Meeting, Unitholders will be asked to approve by ordinary resolution the ratification of the Prior DSU Grant (the "**Prior DSU Grant Resolution**").

The Prior DSU Grant will require "disinterested unitholder approval" pursuant to the TSXV policies. As a result, the Prior DSU Grant Resolution will require the approval by a majority of the votes cast by all Unitholders at the Meeting, present in person or by proxy at the Meeting, excluding the votes attaching to the Units beneficially owned by the Trustees eligible to participate under the Deferred Unit Plan and their "associates" and "affiliates" (as defined in TSXV Policy 4.4).

For the purposes of the disinterested unitholder approval requirement of TSXV Policy 4.4, any votes attaching to the Interested Parties will be excluded in determining whether disinterested Unitholder approval for the Prior DSU Grant Resolution is obtained. As of the Record Date, the Interested Parties do not hold any Units.

NHT's disinterested Unitholders will be asked to consider and, if deemed advisable, pass the Prior DSU Grant Resolution in the form set out in Appendix "C" to this Information Circular. In the event that disinterested Unitholder approval of the Prior DSU Grant Resolution is not obtained at the Meeting, the Prior DSU Grant will be terminated.

The Board has unanimously approved the Prior DSU Grant and recommends that the Unitholders vote FOR the Prior DSU Grant Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Prior DSU Grant Resolution.

6. Approval of Amendments to COVID Loans

Background and Purpose of COVID Loans

The REIT received 32 loans from entities controlled or managed by James Dondero between June 2021 and September 2022 in the aggregate amount of US$56,165,000 (the "**COVID Loans**"). The proceeds from the COVID Loans were principally used to fund the REIT's operating expenses, interest and principal payments on outstanding indebtedness during the COVID-19 pandemic to allow the REIT to continue as a going concern.

A portion of the proceeds from the COVID Loans were also used to fund certain acquisitions aimed at improving the REIT's financial condition. Prior to 2021, the REIT's portfolio was primarily focused on the business travel market. However, throughout 2021 and early 2022, the REIT observed that leisure travel was beginning to recover from the pandemic at a significantly faster rate than the business travel market. At that time, although the REIT continued to be in significant financial distress, it determined that its future financial condition could be significantly improved if it could replace some of its hotels focused on the business travel market with hotels focused on the leisure travel market. The REIT believed that shifting its asset mix in this manner would generate positive cash flow for the REIT more quickly than would be the case with its existing portfolio, thereby putting the REIT in a stronger position to recover from the COVID-19 pandemic. As a result, in February 2022, the REIT used certain of the proceeds from the COVID Loans to acquire two hotel properties focused on the leisure travel market. Shortly thereafter, the REIT commenced a marketing process to sell five of its hotel properties which primarily catered to the business travel market.

Each of the COVID Loans is unsecured, has a 20-year term and bears interest at interest rates ranging from 2.25% per year to 7.5% per year (which were market interest rates at the time of their issuance). The principal and interest owing under the COVID Loans is convertible into Class B Units of the OP, at the option of the holder at any time, based on the value of a Class B Unit at the time of conversion.

The COVID Loans were provided by funds managed or controlled by Mr. Dondero, the REIT's controlling Unitholder. Mr. Dondero, through the entities he manages or controls, holds an approximate 72.13% interest in the outstanding Units of the REIT. As a result, the REIT treated the COVID Loans as a "related party transaction" under MI 61-101, which subjects the COVID Loans to the formal valuation (the "**Formal Valuation Requirement**") and minority approval requirements set forth in Part 5 of MI 61-101 (the "**Minority Approval Requirement**"), unless an exemption was available.

Exemption from Formal Valuation Requirement

As a TSXV-listed issuer, the REIT relied upon the exemption from the Formal Valuation Requirement in Section 5.5(b) of MI 61-101 (the "**Specified Markets Exemption**"), which provides that an issuer is exempt from the formal valuation requirements if its securities are not listed on the Toronto Stock Exchange, the Aequitas NEO Exchange Inc., the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

Exemption from Minority Approval Requirement

At the time the COVID Loans were issued, the REIT relied upon the exemption under Section 5.7(1)(a) of MI 61-101. In addition, the REIT had available, and relied upon, the exemption in Section 5.7(1)(e) of MI 61-101 (the "**Financial Hardship Exemption**") to exempt the REIT from the Minority Approval Requirement. The Financial Hardship Exemption was available to the REIT based on the following criteria:

(i) The REIT was in serious financial difficulty.

As a hospitality REIT that owned 11 hotel properties across the United States at the beginning of the COVID-19 pandemic, the global response to the COVID-19 pandemic had a devastating impact on the REIT's operations. In April 2020, occupancy declined from an average of 75.1% across the REIT's portfolio to a low of 12.5%. In May 2020, a going concern note was included in the REIT's annual financial statements, highlighting the REIT's serious financial difficulties and possible risk of bankruptcy.

(ii) The COVID Loans were designed to improve the financial position of the REIT.

As a result of the COVID-19 pandemic, the REIT experienced material decreases in revenues, results of operations and cash flows. The impact to the global economy caused by the response to the COVID-19 pandemic also negatively impacted the REIT's ability to obtain new financing. The COVID Loans were advanced, in most cases, in critical moments to principally fund the REIT's ongoing operating expenses and to satisfy interest and principal payments due on third party debt. In certain situations, the proceeds from the COVID Loans were used to fund acquisitions designed to improve the financial condition of the REIT. Without the COVID Loans, the REIT would likely not have been able to continue its operations as a going concern.

(iii) The COVID Loans were not subject to court approval under bankruptcy or insolvency law.

At the time of the COVID Loans, the REIT was not subject to court oversight or approval under any bankruptcy or insolvency laws.

(iv) The REIT had two independent trustees in respect of the COVID Loans.

During the time that the COVID Loans were advanced to the REIT, the REIT had two independent trustees, namely Neil Labatte and Graham Senst. The independent trustees did not participate in the COVID Loans, were free from any interest in the COVID Loans, and were unrelated to the entities managed or controlled by Mr. Dondero that provided the COVID Loans.

(v) The REIT's board of trustees, acting in good faith, determined, and at least two-thirds of the independent trustees, determine that subparagraphs (i) and (ii) apply, and that the terms of the COVID Loans were reasonable in the circumstances of the REIT.

After carefully considering and reviewing all the factors surrounding the REIT, Mr. Labatte and Mr. Senst determined that: (i) the REIT was in serious financial difficulty; (ii) the COVID Loans would improve the financial condition of the REIT; and (iii) the terms of the COVID Loans were fair and reasonable in the circumstances of the REIT.

Amendments to COVID Loans

The COVID Loans were filed with the TSXV at various points during 2021 and 2022, as loan submissions pursuant to TSXV Policy 5.1 – *Loans, Loan Bonuses, Finder's Fees and Commissions* ("**Policy 5.1**").

Although the REIT believed that the COVID Loans were properly subject to Policy 5.1 and was not informed of any alternative treatment of the COVID Loans at the time of the filings, in December 2022, the TSXV advised the REIT that the COVID Loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – *Private Placements* rather than loans under Policy 5.1. Due to this determination, the TSXV required the following

amendments (the "**Amendments**") to the COVID Loans: (i) either the conversion feature be removed or limited to five years from the date of issuance of the COVID Loan; (ii) the conversion feature be limited to the principal amount of the COVID Loan (rather than the principal amount including interest); and (iii) the conversion price be fixed at a price equal to the market price of the REIT's Units on the TSXV at the time of the issuance of the COVID Loan.

If the Amendments are implemented, only the principal amount of each of the COVID Loans will be convertible into Class B Units for five-year terms ending between July 1, 2026 and September 30, 2027; however, the term of the COVID Loans shall remain as 20 years from their date of issuance. Any conversion of principal or interest of the COVID Loans into Class B Units or Units after the expiry of the 5-year conversion window will be subject to the approval of the Trustees and the TSXV. For one COVID Loan for an amount of US$8.5 million, the conversion right will be removed altogether. In addition, if the Amendments are implemented, the COVID Loans with conversion rights will be for an aggregate amount of US$47,665,000 and the conversion price for the principal outstanding will be fixed at prices ranging from US$1.60 to US$2.50 in satisfaction of the requirements of the TSXV. Accordingly, to the extent the Amendments are implemented, a maximum number of 21,075,012 Class B Units or Units will be issuable upon conversion of the COVID Loans.

The Board, having undertaken a thorough review of, and having: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units, and (iii) consulted with its legal advisors, concluded that the Amendments are in the best interests of the REIT and agreed to pursue the approval of the Amendments. The REIT has obtained the requisite approval from the entities that provided the COVID Loans to implement the Amendments. However, as the Amendments constitute a "related party transaction" under MI 61-101, the REIT must receive "minority approval" of the Amendments under MI 61-101, as more particularly described below. If the Amendments are not approved at the Meeting, the REIT will engage with the TSXV to seek alternative solutions to the satisfy the TSXV listing requirements; however, there can be no assurance that a satisfactory solution will be found, and if a solution is not found, the TSXV may halt trading in the Units, suspend trading in the Units and/or initiate a delisting review of the REIT's Units as, absent the Amendments, the REIT would not be in compliance with TSXV listing requirements.

Minority Approval under MI 61-101

The REIT is a reporting issuer in certain of the provinces of Canada and, accordingly, is subject to applicable securities laws of such provinces, including MI 61-101. MI 61-101 is intended to regulate certain transactions which raise the potential for conflicts of interest, including related party transactions, to ensure that all securityholders of an issuer are treated in a manner that is fair and that is perceived to be fair.

The Amendments constitute a "related party transaction" within the meaning of MI 61-101, as the Amendments have the effect of amending the terms of the COVID Loans, which are securities of the REIT beneficially owned or over which control is exercised by Mr. Dondero (a "related party" of the REIT because of the fact that Mr. Dondero beneficially owns or controls Units of the REIT that carry more than 10% of the voting rights attached to all of the REIT's issued and outstanding Units). The Amendments are not subject to the formal valuation requirements of Section 5.4 of MI 61-101, as the Specified Markets Exemption is available to the REIT (see above under *"Matters to be Considered at the Meeting – 6. Approval of Amendments to COVID Loans - Exemption from Formal Valuation Requirement"*).

MI 61-101 requires that a related party transaction be subject to "minority approval" (as defined in MI 61-101) of every class of "affected securities" of the issuer, in each case voting separately as a class. As such, the resolution approving the Amendments to the COVID Loans (the "**Amended COVID Loans Resolution**") will require the affirmative vote of at least a majority of the votes cast by the Unitholders (the "**Minority Unitholders**"), present in person or represented by proxy at the Meeting, excluding the votes attached to the Unitholders that are beneficially owned or over which control or direction is exercised by Mr. Dondero, and any "related party" of the REIT within the meaning of MI 61-101 (subject to the exceptions set out therein) and any person acting jointly or in concert with the foregoing in respect of the Amended COVID Loans Resolution. The full text of the Amended COVID Loans Resolution is set forth in Appendix "D" to this Information Circular.

For purposes of the minority approval requirements of MI 61-101, to the knowledge of the REIT after reasonable inquiry, the votes attached to the 21,170,538 Units beneficially owned, directly or indirectly, or over which control or direction is exercised by Mr. Dondero, or his "related parties" or "joint actors" (as defined in MI 61-101) (such entities, the "**Interested Unitholders**"), representing, as of the Record Date, approximately 72.13% of the issued and outstanding Units, will be excluded in determining whether minority approval for the Amended COVID Loans Resolution is obtained.

As of the Record Date, the Units to be excluded for the purposes of minority approval requirement are set out below:

Unitholder(1)	Number of Units Owned, Controlled or Directed	Percentage of Outstanding Units(2)
NexPoint Real Estate Opportunities, LLC	13,571,131	46.24%
The Dugaboy Investment Trust	5,394,662	18.38%
NHT Holdco, LLC	1,045,848	3.56%
Governance RE Ltd	1,068,519	3.63%
NexPoint Real Estate Advisors, L.P.	90,378	0.31%

Notes:

(1) The percentages shown are based on 29,352,055 Units outstanding as of the date hereof.

(2) Each of the Unitholders listed above is directly or indirectly controlled by, or acting jointly and in concert with, James Dondero.

The Board has unanimously approved the Amendments to the COVID Loans (with James Dondero declaring his interest in the Amendments and abstaining from voting) and recommends that the Unitholders vote FOR the Amended COVID Loans Resolution. Unless otherwise instructed, the persons named in the enclosed Form of Proxy intend to vote such Form of Proxy FOR the Amended COVID Loans Resolution.

Additional Information Required by MI 61-101

(i) Trading Price and Volume

The Units are listed on the TSXV under the symbol "NHT.U". The following table sets out the monthly reported high and low trading prices and trading volumes of the Units on the TSXV for the periods indicated:

TSXV Trading Summary of Units			
Period	**High ($)**	**Low ($)**	**Volume (#)**
August, 2023	$0.50	$0.50	750
July, 2023	$0.50	$0.50	1,500
June, 2023	$0.50	$0.50	1,500
May, 2023	$1.00	$1.00	227
April, 2023	N/A	N/A	0
March, 2023	$1.50	$1.00	20,200
February, 2023	$1.50	$1.50	3,800

The closing price of the Units on the TSXV on September 8, 2023, being the last trading day prior to the date of this Information Circular, was $0.50. The closing price of the Units on the TSXV on June 23, 2023, being the last trading day prior to the public announcement of the Amendments to the COVID Loans, was $1.00.

(ii) Ownership of Securities of the REIT

The following table sets forth the number, designation and the percentage of outstanding Units or Deferred Units beneficially owned or over which control or direction is exercised by each trustee and officer of the REIT:

Names and Relationship with the REIT	Ownership or control over Units or Deferred Units of the REIT(1)
JAMES DONDERO Chief Executive Officer, Trustee, Chair of the Board	21,170,538 Units 72.13%
NEIL LABATTE Trustee	972,312 Deferred Units 3.31%(2)
GRAHAM SENST Trustee	673,043 Deferred Units 2.29%(3)
JERRY PATAVA Trustee	200,000 Deferred Units 0.68%(4)
JESSE BLAIR III Executive Vice President, Head of Lodging	98,639 Units 0.34%
BRIAN MITTS Chief Financial Officer & Corporate Secretary	-
PAUL RICHARDS Vice President, Asset Management	-
MATTHEW MCGRANER Chief Investment Officer	875,846 Units 2.98%

Notes:

(1) The percentages shown are based on 29,352,055 Units outstanding as of the date hereof.

(2) Determined as if the 972,312 Deferred Units were redeemed for 972,312 Units.

(3) Determined as if the 673,043 Deferred Units were redeemed for 673,043 Units.

(4) Determined as if the 200,000 Deferred Units were redeemed for 200,000 Units.

(iii) Material Changes in the Affairs of the REIT and Other Material Facts

Except as described or referred to in this Information Circular, NHT is not aware of any material fact concerning the securities or any other matter not previously generally disclosed and known to NHT which would reasonably be expected to affect the decision of Unitholders to accept or reject the Amended COVID Loans Resolution. Except as described or referred to in this Information Circular or as otherwise publicly disclosed, NHT has no current plans or proposals to make any material change in its business, corporate structure, management or personnel.

(iv) Previous Purchases and Sales of Securities

No securities of the REIT were purchased or sold by the REIT during the twelve months preceding the date of the Amendments.

COMPENSATION

Overview

The Compensation, Governance and Nominating Committee oversees compensation programs and related governance matters. NHT's senior management team consists of individuals employed by NexPoint Real Estate Advisors VI, L.P. (the "**Advisor**") (or an affiliate thereof). The Advisor provides advisory services to NHT pursuant to the Amended and Restated Advisory Agreement by and among NHT, NHH and the Advisor dated March 29, 2019 (the "**Advisory Agreement**"), for which NHT pays the Advisor certain fees (the "**Advisory Fee**"). On April 29, 2020, in light of developments related to the outbreak of COVID-19 and corresponding impact on the hospitality industry, the Advisor agreed to waive the Advisory Fee and certain expenses provided for in the Advisory Agreement until operations of NHT and NHH stabilized. On November 25, 2020, the Advisor reinstated the Advisory Fee, however, the Advisor agreed to defer payment of the Advisory Fee until NHT is cash flow positive and can sustain the payments. The Advisor did not collect any fees for the year ended December 31, 2022. However, in August 2023, the REIT commenced repayment of a portion of the accrued Advisory Fees. See below under "*Advisory and Management Agreements*".

The following discussion describes the significant elements of NHT's executive compensation program. The Chief Executive Officer, Chief Financial Officer, Chief Information Officer, Executive Vice President, Head of Lodging and Vice President, Asset Management are referred to herein as the "**named executive officers**" in accordance with applicable Canadian securities laws. The named executive officers are employees of the Advisor (or an affiliate thereof) and the Advisor has sole responsibility for determining the compensation of the named executive officers, other than with respect to the granting of Unit-based compensation, which is the responsibility of the independent Trustees. NHT does not have any employment agreements with members of senior management and does not pay any cash compensation to any individuals serving as officers. A portion of the compensation paid to those employees of the Advisor is attributable to time spent on the activities of NHT.

Principal Elements of Compensation

The compensation of the named executive officers includes three principal elements: (a) base salary which will be paid by the Advisor; (b) discretionary cash bonuses which will be paid by the Advisor; and (c) long-term incentives, which may consist of restricted equity units, performance-based awards, Deferred Units, options, membership units of the OP designated as "Profits LTIP Units" or other equity-based incentive compensation awards granted under the Omnibus Plan and/or the Deferred Unit Plan, each as described in further detail below.

Base Salaries

Base salaries are intended to provide an appropriate level of fixed compensation that will assist in employee retention and recruitment. Base salaries are determined on an individual basis, taking into consideration the past, current and potential contribution to NHT's success, the position and responsibilities of the named executive officers and competitive industry pay practices for other real estate investment trusts and companies of comparable size. Base salaries are paid by the Advisor or its affiliates, not NHT.

Annual Cash Bonuses

Annual cash bonuses are discretionary and are not awarded pursuant to a formal incentive plan. Annual cash bonuses are awarded based on qualitative and quantitative performance standards and reward the performance of the named executive officer individually. The determination of NHT's performance may vary from year to year depending on economic conditions and conditions in the real estate industry, and may be based on measures such

as Unit price performance, the meeting of financial targets against budget, the meeting of acquisition objectives and balance sheet performance. Individual performance factors vary, and may include completion of specific projects or transactions and the execution of day-to-day management responsibilities. Annual cash bonuses are paid by the Advisor or its affiliates, not NHT.

Long-Term Compensation Plans

Grants of (i) equity-based incentive awards under the Omnibus Plan (which may include restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on Units), and (ii) Deferred Units under the Deferred Unit Plan are used to align the interests of the named executive officers more closely with the interests of the Unitholders, since they are tied to NHT's financial and Unit trading performance and vest or accrue over a number of years. The Board, acting on the recommendation of the Compensation, Governance and Nominating Committee, may designate individuals eligible to receive grants of equity-based incentive awards. In determining grants of such awards, an individual's performance and contributions to NHT's success, relative position, tenure and past grants will be taken into consideration.

Deferred Unit Plan

The following is a summary of the terms of the REIT's current Deferred Unit Plan dated June 30, 2022. The Deferred Unit Plan allows for the grant of Deferred Units to Participants.

The REIT intends to amend and restate its Deferred Unit Plan, subject to obtaining the approval of disinterested Unitholders and the TSXV. Readers are advised to review the proposed amendments to the Deferred Unit Plan above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*", along with the full text of the proposed Amended and Restated Deferred Unit Plan appended hereto as Appendix "B".

Authorized Units

The maximum number of Deferred Units reserved for issuance under the Deferred Unit Plan at any time is 2,844,256 (representing approximately 9.7% of NHT's outstanding Units as of the date hereof). As of the date hereof, 1,295,668 Deferred Units have been granted under the Deferred Unit Plan which are subject to approval by Unitholders pursuant to the Prior DSU Grant Resolution. Pursuant to the TSXV policies, the number of Units issuable pursuant to all of NHT's security based compensation arrangements in aggregate is a fixed specified number of Units up to a maximum of 20% of NHT's issued and outstanding Units as at the date of implementation of the Deferred Unit Plan. NHT currently maintains one other security based compensation plan, the Omnibus Plan, which allows for the grant of various equity-based awards to eligible participants. The maximum number of Units that are available for issuance under the Omnibus Plan is 3,026,155 (representing approximately 10.3% of NHT's outstanding Units as of the date hereof).

If any Deferred Unit granted under the Deferred Unit Plan is terminated, surrendered, forfeited, expired or is cancelled, new Deferred Units may thereafter be granted covering such Units, subject to any required prior approval by the TSXV or other stock exchange upon which the Units are then listed. At all times, the REIT will reserve and keep available a sufficient number of Units to satisfy the requirements of all outstanding Deferred Units granted under the Deferred Unit Plan.

Administration

The Deferred Unit Plan will be administered by the Board and the Compensation, Governance and Nominating Committee. The administration of the Deferred Unit Plan shall be subject to and performed in conformity with all applicable laws, regulations, orders of governmental or regulatory authorities and the requirements of any stock exchange on which the Units are listed. Should the Compensation, Governance and Nominating Committee, in its sole discretion, determine that it is not desirable or feasible to provide for the redemption of Deferred Units in Units, including by reason of any such laws, regulations, rules, orders or requirements, it shall notify the Participants of

such determination and on receipt of such notice each Participant shall have the option of electing that such redemption obligations be satisfied by means of a cash payment by the REIT equal to the Average Market Price (as defined below) of the Units that would otherwise be delivered to a Participant in settlement of Deferred Units on the redemption date (less any applicable withholding taxes). Each Participant shall comply with all such laws, regulations, rules, orders and requirements, and shall furnish the REIT with any and all information and undertakings, as may be required to ensure compliance therewith.

Granted and Elected Deferred Units

Participants may be awarded Deferred Units, each of which is economically equivalent to one Unit, from time to time at the discretion of the Board on recommendation of the Compensation, Governance and Nominating Committee ("**Granted DUs**"). Participants may also, subject to the terms of the Deferred Unit Plan, elect to receive up to 100% of his or her annual retainer (including fees for serving as Chair of the Board or a committee of the Board) and meeting fees for a calendar year otherwise payable in cash ("**Trustee Fees**") in the form of Deferred Units ("**Elected DUs**" and, together with the Granted DUs, shall all be considered Deferred Units for purposes of the Deferred Unit Plan).

The number of Deferred Units granted at any particular time pursuant to the Deferred Unit Plan will be equal to (i) the elected amount in respect of Trustee Fees, as determined by a Trustee, divided by the Average Market Price of a Unit on the award date, plus (ii) the Granted DUs, if any, granted to such Trustee. "**Average Market Price**" of a Unit means the volume weighted average price of the Units traded on the TSXV, for the five trading days immediately preceding such date (or, if such Units are not then listed and posted for trading on the TSXV, on such stock exchange on which the Units are listed and posted for trading as may be selected for such purpose by the Board); provided that, for so long as the Units are listed and posted for trading on the TSXV, the Average Market Price shall not be less than the market price, as calculated under the policies of the TSXV and provided, further, that with respect to Deferred Units issued to a U.S. taxpayer, such Participant and the number of Units subject to such issuance shall be identified by the Board prior to the start of the applicable five trading day period. In no event shall the Average Market Price be less than the Discounted Market Price (as such term is defined in the TSXV Corporate Finance Manual).

Under no circumstances shall Deferred Units be considered Units nor entitle a Participant to any rights as a Unitholder, including, without limitation, voting rights, distribution entitlements (other than as set out below) or rights on liquidation.

Whenever cash distributions are paid on the Units, additional Deferred Units will be credited to the Participant's Deferred Unit account ("**Additional DUs**"). The number of such Additional DUs to be credited to a Participant's Deferred Unit account in respect of a cash distribution paid on the Units shall be calculated by dividing the amount which is equal to the aggregate distributions that would have been paid to such Participant if the Deferred Units in the Participant's Deferred Unit account had been Units divided by the Average Market Price on the distribution payment date. Deferred Units credited to a Participant shall count towards a Trustees' ownership requirements as prescribed from time to time by the Board. For greater certainty, any Additional DUs shall count toward the limits set forth in Article 11 of the Deferred Unit Plan. Where an award of Additional DUs would be prohibited by the limits set forth in Article 11 of the Deferred Unit Plan, the REIT may make a cash distribution to the applicable Participant in lieu of Additional DUs.

Vesting

Elected DUs granted to Trustees pursuant to the terms of the Deferred Unit Plan will vest immediately upon grant (including any Additional Deferred Units issued pursuant to Elected DUs credited to a Participant's account in connection with cash distributions as described above).

Granted DUs granted to Trustees pursuant to the terms of the Deferred Unit Plan will vest on the first anniversary of the date of grant (including any Additional Deferred Units issued pursuant to Granted DUs credited to a Participant's account in connection with cash distributions as described above).

The Board may, in its discretion, at any time, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any other Unitholder or other approval which may be required, permit the acceleration of vesting of any or all Deferred Units or waive termination of any or all Deferred Units, in the manner and on the terms as may be authorized by the Board.

Redemption and Termination

Except with respect to Participants that are U.S. taxpayers, the Deferred Units (or a portion thereof) shall be redeemable by the Participant (or, where the Participant has died, his or her estate) on or after the date (the "**Termination Date**") on which the Participant ceases to be a Trustee, provided any such redemption date is not later than one year following the date the Participant ceases to be a Trustee. For greater certainty, in the event that a Participant (or his or her estate) has not redeemed his or her Deferred Units prior to the date that is one year following the Termination Date, such Deferred Units shall be automatically redeemed on the date that is one year following the Termination Date without any action required on the part of the Participant (or his or her estate). If the Compensation, Governance and Nominating Committee terminates the Deferred Unit Plan, Deferred Units previously credited to Participants shall remain outstanding and in effect and shall be settled subject to and in accordance with the applicable terms and conditions of the plan in effect immediately prior to the termination.

For Participants that are Canadian residents and are not U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit account will be redeemed automatically on the date on which the Participant files a written notice of redemption in the prescribed form with the Chief Financial Officer of the REIT (the "**Redemption Date**") for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

For Participants that are U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit account will be redeemed automatically on the date of the Trustee's Separation from Service for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above. "**Separation from Service**" has the meaning given to such phrase in U.S. Treasury Regulation § 1.409A-1(h).

Any cash payments made by the REIT to a Participant in respect of Deferred Units to be redeemed for cash shall be calculated by multiplying the number of Deferred Units to be redeemed for cash by the Average Market Price per Unit as at the Redemption Date or date of the Trustee's Separation from Service, as applicable.

No fractional Units will be issued pursuant to the redemption of Deferred Units. At the time of redemption, fractional Deferred Units shall be rounded down, and no payment shall be made to the Participant with respect to the fractional Deferred Units standing to the Participant's credit after the maximum number of whole Units due to such Participant have been issued by the REIT.

Upon payment in full of the value of the vested Deferred Units and the forfeiture of the unvested Deferred Units, the Deferred Units shall be cancelled.

Notwithstanding anything else in Article 10 of the Deferred Unit Plan, in the event of the death of a Participant, all previously awarded Deferred Units shall be redeemable only within one year after such death, and then only by the person or persons to whom the Participant's rights under the Deferred Units shall pass by the Participant's will or the laws of descent and distribution.

Change in Control

In the event of certain consolidations, mergers or similar transactions of NHT, certain sales or other disposition of NHT's Units, certain liquidation events or sales or dispositions of all or substantially all of NHT's assets, the Board may provide for the conversion, exercise or exchange of outstanding awards for new awards, or, if no equivalent

awards are available, for the accelerated vesting or delivery of Units under awards, or for a cash-out of outstanding awards.

Adjustments

In the event of any Unit distribution, Unit split, combinations or exchange of Units, merger, consolidation, spin-off or other distribution of NHT's assets to the Unitholders (other than normal cash distributions), or any other similar change affecting the Units, the account of each Participant and the Deferred Units outstanding under the Deferred Unit Plan shall be adjusted in such manner, if any, as the Board may in its discretion deem appropriate to reflect the event. However, no amount will be paid to, or in respect of, a Participant under the Deferred Unit Plan or pursuant to any other arrangement, and no additional Deferred Units will be granted to such Participant to compensate for a downward fluctuation in the price of the Units, nor will any other form of benefit be conferred upon, or in respect of, a Participant for such purpose.

Restrictions on Grants of Deferred Units

The following restrictions are placed on grants of Deferred Units under the current Deferred Unit Plan:

- the maximum aggregate number of Units issuable to insiders (as a group) pursuant to all security based compensation arrangements of NHT shall not exceed 10% of NHT's issued and outstanding Units at any point in time, subject to the requisite disinterested Unitholder approval required by the TSXV;

- the maximum aggregate number of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued in any 12 month period to insiders (as a group) shall not exceed 10% of NHT's issued and outstanding Units, calculated as at the date any such security based compensation award is granted or issued to any Insider, subject to the requisite disinterested Unitholder approval required by the TSXV;

- the maximum aggregate number of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued in any 12 month period to any one person (and any entities that are wholly owned by that person) shall not exceed 5% of the issued and outstanding Units, calculated as at the date any security based compensation award is granted or issued to the person, subject to the requisite disinterested Unitholder approval required by the TSXV;

- no Deferred Unit may be granted if such grant would have the effect of causing the total number of Units subject to Deferred Units to exceed the total number of Units reserved for issuance under the Deferred Unit Plan; and

- the aggregate fair market value on the date of grant of Units issuable pursuant to all security based compensation arrangements of NHT granted or issued to any non-employee Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to awards (including Deferred Units) taken in lieu of any Trustee Fees and a one-time initial grant to a Trustee upon such Trustee joining the Board.

The REIT intends to amend and restate the current Deferred Unit Plan to remove the first two restrictions listed above, as described above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*".

Amendments

The Deferred Unit Plan provides that Unitholder approval is not required for any amendment to the Deferred Unit Plan except for any amendment or modification that:

- results in any increase in the number of Deferred Units issuable under the plan; or

- permit Deferred Units granted under the plan to be transferable or assignable other than for normal estate settlement purposes.

Without limiting the general amendment powers described above and for greater certainty, Unitholder approval is not required for amendments to the Deferred Unit Plan:

- for the purpose of making formal, minor or technical modifications to any of the provisions of the plan, including amendments of a "housekeeping" nature;

- to correct any ambiguity, defective provisions, error or omission in the provisions of the plan;

- to amend the vesting provisions of the Deferred Units, except for decreasing the vesting term of Granted DUs to less than one year from the award date; or

- any other amendment that does not require unitholder approval under applicable laws or the rules of the TSXV.

provided, however, that no such act shall diminish any rights accrued in respect of grants of Deferred Units made prior to the effective date of such amendment.

Omnibus Equity Incentive Plan

NHT adopted the Omnibus Plan on March 29, 2019. All equity and equity-based awards made or granted, including future grants to be made to named executive officers of NHT, are made under the Omnibus Plan. The Omnibus Plan provides eligible participants with compensation opportunities that encourage ownership of Units, enhance NHT's ability to attract, retain and motivate executive officers and other key members of management and incentivizes them to increase the long-term growth and equity value of NHT in alignment with the interests of Unitholders. The material features of the Omnibus Plan are summarized below.

Administration and Eligibility

The Omnibus Plan is administered by the Compensation, Governance and Nominating Committee. The Compensation, Governance and Nominating Committee has the authority to, among other things, determine eligibility for awards to be granted, determine, modify or waive the type or types of, form of settlement (whether in cash, Units or otherwise) of, and terms and conditions of, awards, to accelerate the vesting or exercisability of awards, to adopt rules, guidelines and practices governing the operation of the Omnibus Plan as the Compensation, Governance and Nominating Committee deems advisable, to interpret the terms and provisions of the Omnibus Plan and any award agreement, and to otherwise do all things necessary or appropriate to carry out the purposes of the Omnibus Plan.

Key officers and any employees of NHT, independent Trustees and key employees of the Advisor and its respective affiliates who, in the opinion of the Compensation, Governance and Nominating Committee, have dedicated significant time and attention to the affairs and business of NHT will be eligible to participate in the Omnibus Plan.

Authorized Units

Subject to adjustment, the maximum number of Units that are available for issuance under the Omnibus Plan is 3,026,155, representing 20% of the issued and outstanding Units of NHT at the time the Omnibus Plan was adopted, or such greater number as may be determined by the Board and approved by the Unitholders and, if required, by any relevant stock exchange or other regulatory authority; all of which may be delivered in satisfaction of restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units or any other applicable award, awarded under the Omnibus Plan. Units issued under the Omnibus Plan may be Units held in treasury or authorized but unissued Units of NHT not reserved for any other purpose. Units subject to an award that for any reason expires

without having been exercised, is cancelled, forfeited or terminated or otherwise is settled without the issuance of Units, will again be available for grant under the Omnibus Plan.

The following table summarizes certain information as of December 31, 2022 regarding compensation plans of NHT under which equity securities are authorized for issuance.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (#)	Weighted-average exercise price of outstanding options, warrants and rights ($)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in first column) (#)
Equity compensation plans approved by securityholders – Deferred Unit Plan[(1)]	N/A	N/A	2,844,256
Equity compensation plans not approved by securityholders – Omnibus Plan[(2)]	2,141,562	N/A	884,593

Notes:

(1) The Deferred Unit Plan was adopted by NHT's Unitholders on June 30, 2022. The maximum number of Deferred Units reserved for issuance under the Deferred Unit Plan at any time is 2,844,256. As of December 31, 2022, no Deferred Units have been issued under the Deferred Unit Plan. At the Meeting, Unitholders will be asked to approve and ratify the grant of 1,295,668 Deferred Units to the independent Trustees pursuant to the Amended and Restated Deferred Unit Plan.

(2) The Omnibus Plan was adopted in connection with NHT's initial public offering on March 29, 2019. On June 28, 2021, NHT issued an aggregate of 339,687 Deferred Units, in lieu of Trustee Fees earned since January 1, 2019, to the independent Trustees of NHT. Further, on December 13, 2021, NHT issued an additional 210,000 Deferred Units to the independent Trustees and 2,475,000 Profits LTIP Units to officers of NHT and employees of the Advisor based on the performance of the Board and management during the COVID-19 pandemic and to further incentivize each group to continue delivering value to NHT's Unitholders. As of December 31, 2022, there were 2,141,562 awards outstanding under the Omnibus Plan and 884,593 awards remaining that may be granted.

Types of Awards

The Omnibus Plan provides for awards of restricted equity units, performance-based awards, Deferred Units, Profits LTIP Units and other awards convertible, exercisable or exchangeable into or otherwise based on the Units. Eligibility distribution equivalents may also be provided in certain circumstances in connection with an award under the Omnibus Plan.

- Restricted Equity Units. A restricted equity unit award is an award denominated in notional units that entitles the participant to receive Units or cash measured by the value of the Units in the future. The delivery of Units or cash under a restricted equity unit award may be subject to the satisfaction of performance conditions or other vesting conditions.

- Performance Awards. A performance award is an award the vesting, settlement or exercisability of which is subject to specified performance criteria.

- Deferred Units. A Deferred Unit is an award of a notional investment in the Units reflected on an unfunded, book-entry account maintained by NHT. Deferred Units may be subject to performance conditions or other vesting conditions. Deferred Units may be settled in Units, cash measured by the value of a Unit, or a combination thereof.

- Profits LTIP Units. A Profits LTIP Unit is an award of a membership unit of the OP which qualifies as a profits interest for U.S. federal income tax purposes. Subject to certain exceptions set forth in the LLC Agreement of the OP, Profits LTIP Units are treated as Class B Units, with all of the rights, privileges

and obligations attendant thereto, except the right to vote in respect of matters put before members of the OP.

- Other Awards. Other awards are awards that are convertible into, exercisable or exchangeable for, or otherwise based on Units.

Vesting

The Compensation, Governance and Nominating Committee has the authority to determine the vesting schedule applicable to each award, and accelerate the vesting or exercisability of any award.

Change in Control

In the event of certain consolidations, mergers or similar transactions of NHT, certain sales or other disposition of NHT's Units, certain liquidation events or sales or dispositions of all or substantially all of NHT's assets, the Compensation, Governance and Nominating Committee may provide for the conversion, exercise or exchange of outstanding awards for new awards, or, if no equivalent awards are available, for the accelerated vesting or delivery of Units under awards, or for a cash-out of outstanding awards.

Adjustments

In the event of an extraordinary distribution, securities based distribution, stock split or combination (including a reverse stock split) or any recapitalization, business combination, merger, consolidation, spin-off, exchange of Units, liquidation or dissolution of NHT or other similar transaction affecting the Units, the Board will make adjustments as it determines in its sole discretion to the number and kind of Units available for issuance under the Omnibus Plan, the annual per-participant Unit limits, the number, class, exercise price (or base value), performance objectives applicable to outstanding awards and any other terms of outstanding awards affected by such transaction. The Compensation, Governance and Nominating Committee may also make adjustments of the type described in the preceding sentence to take into account distributions and events other than those listed above if it determines that adjustments are appropriate to avoid distortion in the operation of the Omnibus Plan.

Restrictions on Grants of Awards

The following restrictions are placed on grants of awards under the Omnibus Plan:

- the aggregate number of Units issuable to insiders shall not exceed 10% of NHT's total issued and outstanding Units;

- the aggregate number of Units issuable to insiders within any 12-month period shall not exceed 10% of NHT's total issued and outstanding Units;

- the aggregate number of Units reserved for issuance pursuant to awards granted to any one person (and any companies wholly owned by that person) in a 12-month period shall not exceed 5% of NHT's total issued and outstanding Units calculated on the date an award is granted to the person (unless the approval of disinterested Unitholders is obtained);

- the aggregate number of Units reserved for issuance pursuant to awards granted to any one consultant within any 12-month period shall not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the person;

- the aggregate number of Units reserved for issuance pursuant to awards granted within any 12-month period to all persons retained to provide investor relations activities must not exceed 2% of the issued and outstanding Units calculated on the date an award is granted to the person, provided that no

awards other than options shall be issuable to any person retained to provide investor relations activities;

- the aggregate fair value on the date of grant of all options granted to any one non-employee Trustee shall not exceed $200,000 per annum; and
- the aggregate fair market value on the date of grant of all awards granted to any one non-employee Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to (A) awards taken in lieu of any Trustee fees, and (B) a one-time initial grant to a Trustee upon such Trustee joining the Board.

Termination and Amendments

The Compensation, Governance and Nominating Committee may amend the Omnibus Plan or outstanding awards, or terminate the Omnibus Plan as to future grants of awards, except that the Compensation, Governance and Nominating Committee will not be able to alter the terms of an award if it would affect materially and adversely a participant's rights under the award without the participant's consent. Unitholder approval is required for any amendment to the Omnibus Plan that increases the number of Units available for issuance under the Omnibus Plan or the individual award limitations specified therein (except with respect to certain adjustments as described above), modifies the class of persons eligible for participation in the Omnibus Plan, extends the term of any award granted beyond its original expiration date, permits an award to be exercisable beyond 10 years from its grant date (except where an expiration date would have fallen within a blackout period of NHT), permits awards to be transferred other than for normal estate settlement purposes, or deletes or reduces the range of amendments which require approval of the Unitholders, or to the extent required by law.

Compensation Risk

The Compensation, Governance and Nominating Committee considers the implications of the risks associated with NHT's compensation policies and practices as part of its responsibility to ensure that the compensation for the Trustees and the named executive officers align the interests of the Trustees and named executive officers with Unitholders and NHT as a whole. NHT's insider trading policy prohibits all officers and Trustees of NHT from selling "short" or selling "call options" on any of NHT's securities and from purchasing financial instruments, such as prepaid variable forward contracts, equity swaps, collars or units of exchange funds that are designed to hedge or offset a decrease in the market value of equity securities granted to such executive officers and Trustees as compensation or held directly or indirectly by such person.

Unit Ownership Policy

NHT has established Unit ownership guidelines (the "**Unit Ownership Policy**") for the Trustees and executive officers of NHT to further align the interests of Trustees and executive officers with those of the Unitholders. The Unit Ownership Policy establishes minimum equity ownership levels for each Trustee and executive officer of NHT to be achieved within the later of five years from the date of (i) the policy, and (ii) becoming a member of senior management or a Trustee, as applicable. The Unit Ownership Policy provides for the following guidelines.

Participant	Target Equity Ownership Level
Chief Executive Officer	5 times annual base salary OR $5,000,000 (if no annual base salary)
Chief Financial Officer **Chief Investment Officer** **Executive Vice President, Head of Lodging** **Vice President, Asset Management**	1.5 times annual base salary

Participant	Target Equity Ownership Level
Trustees	3 times annual cash retainer (excluding retainers paid in respect of Board or Committee Chair roles)

Each Trustee and executive officer is required to continue to hold such minimum ownership levels for as long as they serve as a Trustee or executive officer of NHT. Awards granted under the Omnibus Plan are included in determining an individual's equity ownership value.

Compensation – Trustees

Individual Trustees add value to the Board and to NHT by bringing skills, knowledge and experiences that complement those of their colleagues, so that collectively, the Board provides diversity and balance in views and perspectives, ensuring a challenging and thoughtful exchange with management. Trustee attendance at meetings is mandatory and, additionally, there is an expectation that all Trustees will be available as needed outside of meetings. Board membership is reviewed annually to ensure the right mix and skills are present.

Trustee compensation is structured to recognize Trustees for their skills, knowledge, experiences and attention in overseeing the governance of NHT, and to align with Unitholders' interests. The Compensation, Governance and Nominating Committee reviews Trustee compensation and recommends any changes to the Board to ensure that Trustee compensation is competitive.

In respect of January 1, 2022 to March 31, 2022, the Trustee compensation framework was as follows:

Annual Board Retainer	
Non-management Trustee	$25,000
Meeting Fees	
Per Board or Committee Meeting	$1,500
Chair Retainers	
Lead Trustee	$10,000
Audit Committee Chair	$15,000
Compensation, Governance and Nominating Committee Chair	$10,000
Travel and Expenses	
Reasonable Travel and ancillary expenses	Reimbursed

On the recommendation of the Compensation, Governance and Nominating Committee, the Board changed the Trustee Fees payable to the independent Trustees of the REIT. The new Trustee compensation framework was effective April 1, 2022 and is as follows:

Annual Board Retainer	
Non-management Trustee	$40,000
Committee Fees	
Compensation, Governance and Nominating Committee	$10,000
Audit Committee	$10,000
Chair Retainers	
Lead Trustee	$25,000
Audit Committee Chair	$15,000
Compensation, Governance and Nominating Committee Chair	$15,000

Travel and Expenses	
Reasonable Travel and Ancillary Expenses	Reimbursed

The Trustees do not receive any additional remuneration for acting as directors on the boards of any of NHT's subsidiaries. Trustees who are also members of management do not receive any remuneration for their role as a Trustee. Trustees have the option to elect to receive up to 100% of all fees that are otherwise payable in cash (i.e. annual board retainer fee, meeting fees and additional retainers) in the form of Deferred Units.

NHT, on recommendation from the Compensation, Governance and Nominating Committee, will determine whether, and to what extent, NHT will match up to 100% of the total value of the fees that a Trustee elects to receive in the form of Deferred Units. Accordingly, the number of Deferred Units to be awarded to a Trustee is equal to (i) the value of all fees that the Trustee elects to receive in the form of Deferred Units plus any additional Deferred Units pursuant to NHT's obligation to match as contemplated by the Omnibus Plan, (ii) divided by the volume weighted average trading price of a Unit on the TSXV for the five trading days prior to the date of the award. Trustees must complete an election form to receive Deferred Units in lieu of the cash component of their fees (i) in the case of an existing Trustee, no later than December 31 of the year preceding the applicable grant year; and (ii) in the case of a newly appointed or elected Trustee, within 30 days of such appointment or election with respect to compensation paid for services to be performed after such date. Elections are irrevocable for the year in respect of which they are made.

In respect of fiscal 2021, the total value of Trustee Fees payable to the independent Trustees was $172,000 ($88,500 of which was payable to Mr. Labatte and $83,500 of which was payable to Mr. Senst). Mr. Labatte and Mr. Senst elected to receive $56,250 and $53,333, respectively in cash, with the remaining amounts to be paid in Deferred Units (the "**2021 Deferred Units**").

In respect of fiscal 2022, the total value of Trustee Fees payable to the independent Trustees was $181,500 ($90,750 of which was payable to Mr. Labatte, $70,750 of which was payable to Mr. Senst, and $20,000 of which was payable to Mr. Patava). Mr. Labatte, Mr. Senst and Mr. Patava elected to receive the full amount of their 2022 Trustee Fees in Deferred Units (the "**2022 Deferred Units**").

In respect of fiscal 2023, the total value of Trustee Fees that have accrued as of June 30, 2023 is $117,500 ($50,000 of which is payable to Mr. Labatte, $37,500 of which is payable to Mr. Senst and $30,000 of which is payable to Mr. Patava). Mr. Labatte and Mr. Patava elected to receive the full amount of their 2023 Trustee Fees (accrued as of June 30, 2023) in Deferred Units (the "**2023 Deferred Units**"), while Mr. Senst has elected to receive $37,500 in cash.

The 2021 Deferred Units, 2022 Deferred Units and 2023 Deferred Units (collectively, the "**Outstanding Trustee Fees**") have yet to be paid due to the Insider Participation Limits in the REIT's current Deferred Unit Plan. The Outstanding Trustee Fees were conditionally granted to the independent Trustees on September 11, 2023 and are subject to (i) the REIT obtaining disinterested Unitholder approval of the Amended and Restated Deferred Unit Plan (see above under *"Matters to be Considered at the Meeting– 4. Approval of Amended and Restated Deferred Unit Plan*") and (ii) the approval and ratification by Unitholders of the Prior DSU Grant (see above under *"Matters to be Considered at the Meeting–5. Approval of Previous Grant of Deferred Units*").

NHT, on recommendation from the Compensation, Governance and Nominating Committee, will determine whether, and to what extent, NHT will match up to 100% of the total value of the fees that a Trustee elects to receive in the form of Deferred Units. The REIT's current policy is to provide 100% matching for Deferred Units issued to the Trustees in lieu of their fees. Accordingly, the number of Deferred Units to be awarded to a Trustee is equal to (i) the value of all fees that the Trustee elects to receive in the form of Deferred Units plus any additional Deferred Units pursuant to NHT's obligation to match as contemplated by the Omnibus Plan, (ii) divided by the volume weighted average trading price of a Unit on the TSXV for the five trading days prior to the date of the award. Trustees must complete an election form to receive Deferred Units in lieu of the cash component of their fees (i) in the case of an existing Trustee, no later than December 31 of the year preceding the applicable grant year; and (ii) in the case of a newly appointed or elected Trustee, within 30 days of such appointment or election with respect to compensation

paid for services to be performed after such date. Elections are irrevocable for the year in respect of which they are made.

Table of Compensation Excluding Compensation Securities

The following table sets out information concerning the compensation paid by (i) the Advisor (or its affiliates) to the named executive officers in fiscal 2022 and 2021 in respect of the services provided by such officers to NHT and (ii) NHT to the Trustees; in each case, excluding compensation securities:

Name and Position	Year	Salary, consulting fee, retainer or commission ($)	Bonus ($)	Committee or meeting fees ($)	Value of perquisites ($)	Value of all other compensation ($)	Total compensation ($)[(1)]
James Dondero CEO, Trustee	2022	$100,000	$100,000	–	–	–	$200,000
	2021	$100,000	$100,000	–	–	–	$200,000
Brian Mitts CFO	2022	$75,000	$75,000	–	–	–	$150,000
	2021	$75,000	$75,000	–	–	–	$150,000
Matthew McGraner CIO	2022	$150,000	$150,000	–	–	–	$300,000
	2021	$150,000	$150,000	–	–	–	$300,000
Jesse Blair III Executive VP, Head of Lodging	2022	$150,000	$200,000	–	–	–	$350,000
	2021	$150,000	$150,000	–	–	–	$300,000
Paul Richards VP, Asset Management	2022	$50,000	$75,000	–	–	–	$125,000
	2021	$50,000	$75,000	–	–	–	$125,000
Neil Labatte[(2)] Trustee	2022	–	–	–	–	–	–
	2021	$26,250	–	$30,000	–	–	$56,250
Graham Senst[(3)] Trustee	2022	–	–	–	–	–	–
	2021	$23,333	–	$30,000	–	–	$53,333
Jerry Patava[(4)] Trustee	2022	–	–	–	–	–	–
	2021	–	–	–	–	–	–

Notes:

(1) All compensation for James Dondero (Chief Executive Officer), Brian Mitts (Chief Financial Officer), Matthew McGraner (Chief Investment Officer), Jesse Blair III (Executive Vice President, Head of Lodging) and Paul Richards (Vice President, Asset Management) is paid by the Advisor or its affiliates, and there is no reimbursement by NHT for such compensation. Messrs. Dondero, Mitts, McGraner, Blair and Richards act in a variety of capacities for the Advisor and their respective affiliates, and NHT, and accordingly, the total compensation that each such individual receives from the Advisor is not disclosed in this table, since total compensation is not solely attributable to the services that he will provide to NHT. The allocation of the total compensation disclosed in this table was determined by the Advisor solely for the purposes of this table, based on the time spent by each such individual in connection with NHT-related services during fiscal 2022 and 2021.

(2) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The trustee fees payable to Mr. Labatte in respect of fiscal 2020 and 2019

were $93,000 and $47,250 respectively. Mr. Labatte elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Labatte's service and performance during the COVID-19 pandemic, and to encourage Mr. Labatte to participate in the future growth of the REIT, Mr. Labatte was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Labatte was $88,500, of which $56,250 was paid in cash and the remaining $32,250 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $90,750 and $50,000 of Trustee Fees were payable to Mr. Labatte. Mr. Labatte elected to receive such fees in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 692,000 Deferred Units to Mr. Labatte in respect of his remaining portion of 2021 Trustee Fees, 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Labatte elected to receive in the form of Deferred Units. As of the date hereof, Mr. Labatte holds 972,312 Deferred Units

(3) The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Senst in respect of fiscal 2020 and 2019 were $88,000 and $43,500 respectively. Mr. Senst elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT, the Deferred Units awardable in respect of the Trustee Fees were awarded on June 28, 2021. On December 13, 2021, in consideration of Mr. Senst's service and performance during the COVID-19 pandemic, and to encourage Mr. Senst to participate in the future growth of the REIT, Mr. Senst was granted 105,000 Deferred Units which vested immediately. In respect of fiscal 2021, the total value of Trustee Fees payable to Mr. Senst was $83,500, of which $53,333 was paid in cash and the remaining $30,167 was to be paid in Deferred Units. In respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023), $70,750 and $37,500 of Trustee Fees were payable to Mr. Senst. Mr. Senst elected to receive his 2022 Trustee Fees in the form of Deferred Units, and his accrued 2023 Trustee Fees (as of June 30, 2023) in cash. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 403,668 Deferred Units to Mr. Senst in respect of his remaining portion of 2021 Trustee Fees and 2022 Trustee Fees. The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Senst elected to receive in the form of Deferred Units. As of the date hereof, Mr. Senst holds 673,043 Deferred Units.

(4) Mr. Patava was appointed to the Board on August 31, 2022. The Board may fix a maximum portion of the Trustee Fees payable to the independent Trustees to be paid in the form of Deferred Units in lieu of cash, subject to the election of the independent Trustees. The Trustee Fees payable to Mr. Patava in respect of fiscal 2022 and fiscal 2023 (as of June 30, 2023) is US$20,000 and US$30,000 respectively. Mr. Patava elected to receive such fees in the form of Deferred Units. The Board, on the recommendation of the Compensation, Governance and Nominating Committee matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. Due to various blackout periods observed by NHT and certain restrictions on granting security based compensation to insiders pursuant to TSXV Policy 4.4, on September 11, 2023, the REIT conditionally granted 200,000 Deferred Units to Mr. Patava in respect of his remaining portion of his 2022 Trustee Fees and 2023 Trustee Fees (accrued as of June 30, 2023). The Board, on the recommendation of the Compensation, Governance and Nominating Committee, matched 100% of the total value of Trustee Fees that Mr. Patava elected to receive in the form of Deferred Units. As of the date hereof, Mr. Patava holds 200,000 Deferred Units.

Advisory and Management Agreements

Advisory Agreement

Pursuant to the Advisory Agreement, subject to the overall supervision of the Board, the Advisor manages the day-to-day operations of, and provides investment management services to NHT. As consideration for the Advisor's services, NHT pays to the Advisor an Advisory Fee at an annualized rate of 1.00% of REIT Asset Value (as defined therein), less certain fee waivers and adjustments, together with reimbursement of certain general and administrative expenses. The Advisory Agreement has an initial term of two years. Following the initial term, the Advisory Agreement will continue in full force and effect, subject to early termination, so long as such continuance is approved at least annually by (i) the board of managers of NHH, and (ii) either (a) the Board or (b) a vote of the Unitholders.

On April 29, 2020, in light of developments related to the outbreak of COVID-19 and corresponding impact on the hospitality industry, the Advisor agreed to waive the Advisory Fee and certain expenses provided for in the Advisory Agreement until operations of NHT and NHH stabilized. On November 25, 2020, the Advisor reinstated the Advisory Fee, however, the Advisor agreed to defer payment of the Advisory Fee until NHT is cash flow positive and can sustain the payments. The Advisor did not collect any fees for the year ended December 31, 2022. However, in August 2023, the REIT commenced repayment of a portion of the accrued Advisory Fees.

Hotel Management Agreements

NHT's hotel properties are operated pursuant to hotel management agreements (the "**Hotel Management Agreements**") between the affiliates of Aimbridge Hospitality Holdings, LLC (collectively, the "**Manager**"), a professional third-party hotel management company, and the taxable subsidiaries of NHT ("**TRS Entities**") that lease the properties from the OP and its subsidiaries. The Hotel Management Agreements require the TRS Entities to pay a base fee to the Manager calculated as a percentage of hotel revenues generated by the hotel operations. In addition, the Hotel Management Agreements sometimes provide that the Manager can earn an incentive fee for meeting certain performance metrics. Neither NHT nor any of its affiliates has any ownership or economic interest in the Manager engaged by the TRS Entities.

GOVERNANCE PRACTICES

A summary of the responsibilities and activities and the membership of each of NHT's Board committees is set out below. National Policy 58-201 – *Corporate Governance Guidelines* establishes corporate governance guidelines that apply to all public companies. NHT has reviewed its own corporate governance practices in light of these guidelines. In certain cases, NHT's practices comply with the guidelines, however, the Board considers that some of the guidelines are not suitable for NHT at its current stage of development and, therefore, these guidelines have not been adopted. The Board is committed to sound corporate governance practices in the interest of its Unitholders. NHT will continue to review and implement corporate governance guidelines as the business of NHT progresses.

In accordance with the corporate governance guidelines set out under National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("**NI 58-101**"), the following is a summary of the governance practices of NHT.

Composition of Board of Trustees and Independence

The Board is comprised of four Trustees, a majority of whom are independent Canadian residents. Pursuant to NI 58-101, an independent Trustee is one who is free from any direct or indirect relationship which could, in the view of the Board, be reasonably expected to interfere with a Trustee's independent judgment. NHT has determined that Neil Labatte (Lead Trustee), Graham Senst and Jerry Patava are independent under NI 58-101, and that James Dondero, NHT's Chief Executive Officer, is not independent. All of the trusteeships and directorships of the Trustees with other public entities are disclosed in the biographical information for each Trustee set out under "*Matters to be Considered at the Meeting – 2. Election of Trustees*".

The independent Trustees hold *in-camera* sessions at the conclusion of each regularly scheduled Board and committee meeting. The Lead Trustee of the Board conducts the *in-camera* sessions of the Board and the Chair of each committee conducts the *in-camera* sessions of its committee, as applicable, without management or the other non-independent Trustees present.

Nomination of Trustees

Other than the NexPoint Holders' nominees nominated pursuant to the Investor Rights Agreement, all Board nominees are nominated by the Compensation, Governance and Nominating Committee, who make such nominations after considering the mix of skills and experience it believes are necessary to further NHT's goals. The written charter of the Compensation, Governance and Nominating Committee sets out the committee's responsibilities with respect to nominating Board member candidates, which include to: (i) review annually the competencies, skills and personal qualities of the Board, in light of current and expected future needs; (ii) seek individuals qualified (in the context of the needs of NHT) to become members of the Board; (iii) review and recommend to the Board, the membership and allocation of Board members to the various committees of the Board; and (iv) consider the level of diversity on the Board.

The Compensation, Governance and Nominating Committee will seek prospective candidates who are independent, have recognized functional and industry experience, sound business judgement, high ethical standards, time to

devote to the Board and the ability to contribute to the Board's diversity (with respect to gender, experience, geography, ethnicity and age).

Trustees elected at an annual meeting are elected for a term expiring at the close of the subsequent annual meeting and are eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders in accordance with the Declaration of Trust are appointed for a term expiring at the close of the next annual meeting and are eligible for election or re-election, as the case may be.

Effective August 31, 2022, upon recommendation of the Compensation, Governance and Nominating Committee, after considering the benefits of a larger Board with new skillsets and experiences, the Board approved the appointment of Jerry Patava as Trustee. Mr. Patava's extensive experience in the hospitality industry and in public company governance will significantly contribute to the Board.

Term Limits

NHT does not impose term limits on its Trustees, as it takes the view that term limits are an arbitrary mechanism for removing Trustees that can result in valuable, experienced Trustees being forced to leave the Board solely because of length of service. NHT is committed to ensuring that its Board is comprised of individuals with appropriate skill sets.

Board Mandate

The mandate of NHT's Board is one of stewardship and oversight of NHT and its business. In fulfilling its mandate, the Board has adopted a written charter setting out its responsibility for, among other things, (i) participating in the development of and approving a strategic plan for NHT; (ii) supervising the activities and managing the investments and affairs of NHT; (iii) approving major decisions regarding NHT; (iv) defining the roles and responsibilities of management; (v) reviewing and approving the business and investment objectives to be met by management; (vi) assessing the performance of and overseeing management; (vii) reviewing NHT's debt strategy; (viii) identifying and managing risk exposure; (ix) ensuring the integrity and adequacy of NHT's internal controls and management information systems; (x) succession planning; (xi) establishing committees of the Board, where required or prudent, and defining their mandate; (xii) maintaining records and providing reports to Unitholders; (xiii) ensuring effective and adequate communication with Unitholders, other stakeholders and the public; (xiv) determining the amount and timing of distributions to Unitholders; and (xv) acting for, voting on behalf of and representing NHT as a holder of interests of certain of its subsidiaries. A copy of the Board's written charter is attached to this Information Circular as Appendix "E".

Position Descriptions

Chair of the Board, Lead Trustee and Committee Chairs

The Board has adopted a written position description for the Chair of the Board and the Lead Trustee (for instances where the Chair of the Board is not independent within the meaning of NI 58-101), which sets out the Chair's and the Lead Trustee's key responsibilities, including, as applicable, duties relating to setting Board meeting agendas, chairing Board and Unitholder meetings, Trustee development and communicating with Unitholders and regulators. The Board has also adopted a written position description for each of the committee chairs which sets out each of the committee chair's key responsibilities, including duties relating to setting committee meeting agendas, chairing committee meetings and working with the respective committee members and management to ensure, to the greatest extent possible, the effective functioning of the committee.

Chief Executive Officer

The Board has adopted a written position description and mandate for the Chief Executive Officer of NHT which sets out the key responsibilities of the Chief Executive Officer. The primary functions of the Chief Executive Officer are to

lead management of the business and affairs of NHT, to lead the implementation of the resolutions and the policies of the Board and to communicate with Unitholders and regulators.

Orientation and Continuing Education

New Trustees

When new Trustees are elected to the Board, they can be expected to participate in an orientation program. The orientation program will familiarize new Trustees with NHT's business and operations, including structure, operations, and risks. They will be briefed on the role of the Board, its committees and the contributions individual Trustees are expected to make. New Trustees can also be expected to receive an orientation package containing all committee mandates and charters, copies of NHT's policies and other background information on NHT's business, operations and risks.

Continuing Education

NHT's continuing education program for its Trustees involves the ongoing evaluation by the Compensation, Governance and Nominating Committee of the skills and competencies of existing Trustees. The Board is currently comprised of highly qualified and experienced Trustees with impressive levels of skill and knowledge. The Trustees are seasoned business executives, directors or professionals with considerable experience, including as directors or trustees of other public companies. The Compensation, Governance and Nominating Committee continually monitors the composition of the Board and will recommend the adoption of a formal continuing education program should it be determined to be necessary.

Ethical Business Conduct

NHT has adopted a written code of business conduct and ethics (the "**Code of Conduct**") that applies to all Trustees, officers, and management of NHT and its subsidiaries. The objective of the Code of Conduct is to provide guidelines for maintaining the integrity, reputation, honesty, objectivity and impartiality of NHT and its subsidiaries. The Code of Conduct addresses compliance with laws, rules and regulations, conflicts of interest, corporate opportunities, protecting NHT's assets, confidentiality, information protection, competition and fair dealing with securityholders, gifts and entertainment, payments to government personnel, lobbying, discrimination and harassment, health and safety, accuracy of records and reporting and use of e-mail and Internet services. As part of the Code of Conduct, any person subject to the Code of Conduct is required to avoid or fully disclose interests or relationships that are harmful or detrimental to NHT's best interests or that may give rise to real, potential, or the appearance of, conflicts of interest. The Board has the ultimate responsibility for the stewardship of the Code of Conduct.

In order to ensure compliance with the Code of Conduct, NHT personnel are encouraged to talk to supervisors, managers or other appropriate personnel about observed illegal or unethical behavior and when in doubt about the best course of action in a particular situation. Employees may report violations of the Code of Conduct anonymously. It is the policy of NHT not to allow retaliation for reports of misconduct by others made in good faith. It is, at the same time, unacceptable to file a report knowing it is false.

Board Committees

The Board has established two committees: the Audit Committee and the Compensation, Governance and Nominating Committee.

Audit Committee

The Audit Committee consists of four Trustees, all of whom are persons determined by NHT to be financially literate within the meaning of National Instrument 52-110 – *Audit Committees* ("**NI 52-110**"), and a majority of whom are persons determined by NHT to be Independent Trustees within the meaning of NI 52-110.

The Audit Committee is currently comprised of Graham Senst (Chair), Neil Labatte, Jerry Patava and James Dondero. Mr. Senst, Mr. Labatte and Mr. Patava have been determined by NHT to be independent and are residents of Canada. Each of the Audit Committee members has an understanding of the accounting principles used to prepare financial statements and varied experience as to the general application of such accounting principles, as well as an understanding of the internal controls and procedures necessary for financial reporting. For details regarding the relevant education and experience of each member of the Audit Committee, see "*Matters to be Considered at the Meeting – 2. Election of Trustees*".

The Board has adopted a written charter for the Audit Committee, which sets out the Audit Committee's responsibilities. A copy of the Audit Committee's written charter is attached to this Information Circular as Appendix "F". The Audit Committee has direct communication channels with the Chief Financial Officer and the external auditors of NHT to discuss and review such issues as the Audit Committee may deem appropriate.

Part 6 of NI 52-110 exempts issuers listed on the TSXV from the requirements of Parts 3 (Composition of the Audit Committee) and 5 (Reporting Obligations) of NI-52-110. As a result, all of the members of the Committee are not required to be independent within the meaning of NI 52-110; however, NHT is required to provide on an annual basis, the disclosure regarding its Audit Committee made in this Information Circular.

Audit Committee Oversight

At no time since the commencement of NHT's most recently completed financial year was a recommendation of the Audit Committee to nominate or compensate an external auditor not adopted by the Board.

Reliance on Certain Exemptions

At no time since the commencement of NHT's most recently completely financial year has NHT relied on the exemption in section 2.4 of NI 52-110 (De Minimis Non-Audit Services), or an exemption from NI 52-110, in whole or in part, granted under Part 8 of NI 52-110.

Pre-approval Policies and Procedures

The Audit Committee has adopted specific policies and procedures for the engagement of non-audit services as described in the Audit Committee's written charter.

External Auditor Service Fees (By Category)

The aggregate fees billed by NHT's external auditors in the last two fiscal years for audit fees are as follows:

Financial Year Ending	Audit Fee	Audit Related Fees	Tax Fees	All Other Fees
2022	$284,000	$0	$172,200	$0
2021	$298,000	$0	$162,769	$0

Compensation, Governance and Nominating Committee

The Compensation, Governance and Nominating Committee must be comprised of at least three Trustees, a majority of whom must be persons determined by the Board to be independent Trustees and a majority of whom must be residents of Canada. The Compensation, Governance and Nominating Committee is charged with reviewing, overseeing and evaluating the compensation, corporate governance and nominating policies of NHT. The Compensation, Governance and Nominating Committee is currently comprised of Neil Labatte (Chair), Graham Senst, Jerry Patava and James Dondero. Mr. Senst, Mr. Labatte and Mr. Patava have been determined by NHT to be independent within the meaning of NI 52-110 and are residents of Canada.

INDEBTEDNESS OF TRUSTEES AND OFFICERS

None of the Trustees, executive officers, employees, former executive officers or former employees of NHT or any of its subsidiaries, and none of their respective associates, is or has at any time since the beginning of the most recently completed financial year been indebted to NHT or any of its subsidiaries or another entity whose indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar agreement or understanding provided by NHT or any of its subsidiaries.

INTERESTS OF CERTAIN PERSONS OR COMPANIES IN MATTERS TO BE ACTED UPON

Other than as disclosed herein, none of the Trustees or executive officers of NHT who have been a Trustee or executive officer at any time since the beginning of NHT's last financial year, none of the proposed nominees for election as Trustees of NHT, and no associate or affiliate of any of the foregoing, has any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, in any matter to be acted upon at the Meeting.

INTEREST OF INFORMED PERSONS IN MATERIAL TRANSACTIONS

Other than as set forth in this Information Circular and below, to the knowledge of the Trustees of NHT, no informed person (as defined in National Instrument 51-102 – *Continuous Disclosure Obligations*) of NHT, no proposed Trustee of NHT and no known associate or affiliate of any such informed person or proposed Trustee, since the commencement of the year ended December 31, 2022, has or has had any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, in any transaction which has or would materially affect NHT or any of its subsidiaries.

In connection with NHT's initial public offering, NHT acquired its portfolio of 11 hotel properties, in part, from certain principals and affiliates of the Advisor, including James Dondero (the "**Initial Contribution**"). Details of the Initial Contribution are set forth in NHT's final initial public offering prospectus dated March 27, 2019 available on the SEDAR website at www.sedarplus.ca.

On March 29, 2019, NHT entered into the Advisory Agreement with the Advisor, an entity affiliated with certain named executive officers, including James Dondero. The Advisory Agreement is available on the SEDAR website at www.sedarplus.ca.

NexPoint Real Estate Opportunities LLC ("**NREO**"), an entity indirectly controlled by James Dondero, loaned NHT an aggregate of $2,643,000 evidenced by two promissory notes dated as of January 8, 2019 and one promissory note dated as of May 6, 2019 for general working capital purposes (the "**Advance**"). The Advance carried an interest rate of 2.06% per annum and matured on January 8, 2020.

On December 27, 2019, NREO, redeemed 13,370,573 Class B Units and received 13,370,573 Units as consideration (the "**Redemption**"). Following the Redemption, NREO distributed 13,370,573 Units as a dividend to NexPoint Strategic Opportunities Fund, an entity indirectly controlled by James Dondero. The early warning report related to the Redemption is available on the SEDAR website at www.sedarplus.ca.

On February 10, 2020, NHT completed a non-brokered private placement offering, pursuant to which certain existing unitholders of NHT purchased an aggregate of 850,705 Units (the "**Private Placement**") for aggregate gross proceeds of $4,253,525. Certain subscribers in the Private Placement are directly or indirectly controlled by certain named executive officers, including James Dondero and Jesse Blair. A news release containing the particulars of the Private Placement is available on the SEDAR website at www.sedarplus.ca.

On October 14, 2020, NHT entered into an indemnification agreement with, *inter alia*, the Advisor pursuant to which the Advisor or funds advised by it or its affiliates agreed to fully fund two settlement payments totaling $4,750,000 (the "**Settlement Payments**") and indemnify NHT and its subsidiaries for any losses incurred in relation to the settlement agreement executed on October 14, 2020 with Condor Hospitality Trust Inc. ("**Condor**") following Condor's termination of the parties' previously announced merger agreement. In exchange for funding the

Settlement Payments, a subsidiary of NHT agreed to issue $4,750,000 principal amount of promissory notes to the entities funding the Settlement Payments.

On March 30, 2020, NHT announced that one of its subsidiaries had, between November 2020 and January 2021, issued convertible notes (the "**Notes**") in the aggregate principal amount of US$5.4 million to an affiliate of NHT's Advisor for general working capital purposes. The Advisor is affiliated with certain named executive officers, including James Dondero. The Notes carry an interest rate of 2.25% per annum, and are convertible into Class B Units at the option of the noteholder in its sole discretion. Any conversion of the Notes is subject to any required approval of the TSXV.

Between June 2021 and September 2022, the REIT received 32 loans from entities controlled or managed by James Dondero in the aggregate amount of US$56,165,000 (the "**COVID Loans**"). The TSXV has requested that the REIT make certain amendments to the COVID loans. See "*Matters to be Considered at the Meeting – 6. Approval of Amendments to COVID Loans*" for a description of the COVID Loans.

OTHER BUSINESS

The Trustees are not aware of any matters intended to come before the Meeting other than those items of business set forth in the Notice of Meeting accompanying this Information Circular. If any other matters properly come before the Meeting, it is the intention of the persons named in the Form of Proxy and voting instruction form to vote in respect of those matters in accordance with their judgment.

ADDITIONAL INFORMATION

Financial information is provided in NHT's financial statements and NHT's MD&A for the year ended December 31, 2022. Copies of NHT's financial statements for the year ended December 31, 2022, together with the auditors' report thereon, the MD&A and this Information Circular are available upon written request to NHT (at NexPoint Hospitality Trust 300 Crescent Court, Suite 700, Dallas, Texas 75201 USA, Attention: Brian Mitts, Chief Financial Officer). NHT may require payment of a reasonable charge if the request is made by a person who is not a Unitholder. These documents and additional information relating to NHT may also be found on the SEDAR website at www.sedarplus.ca and on NHT's website at www.nexpointhospitality.com.

APPROVAL OF TRUSTEES

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

The contents of this Information Circular and its distribution to Unitholders have been approved by the Board of Trustees.

BY ORDER OF THE BOARD OF TRUSTEES

Dated: September 11, 2023

"James Dondero"

Chair of the Board
NexPoint Hospitality Trust

APPENDIX "A"
RESOLUTION REGARDING APPROVAL OF AMENDED AND RESTATED DEFERRED UNIT PLAN

BE IT RESOLVED THAT:

1. The Amended and Restated Deferred Unit Plan of the REIT, in the form substantially set forth in Appendix "B" to the REIT's Information Circular dated September 11, 2023, is hereby confirmed, ratified and approved.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX "B"
AMENDED AND RESTATED DEFERRED UNIT PLAN

NEXPOINT HOSPITALITY TRUST

AMENDED AND RESTATED DEFERRED UNIT PLAN

September 11, 2023

NEXPOINT HOSPITALITY TRUST
AMENDED AND RESTATED DEFERRED UNIT PLAN

ARTICLE 1
PURPOSE

1.01 The purpose of this Plan is to advance the interests of NexPoint Hospitality Trust (the "**REIT**") by enhancing the ability of the REIT and any of its Subsidiaries to attract, motivate and retain Trustees of the REIT to reward such persons for their sustained contributions and to encourage such persons to take into account the long-term corporate performance of the REIT.

1.02 This Plan amends and restates the Deferred Unit Plan of the REIT dated June 30, 2022.

ARTICLE 2
DEFINITIONS

The following terms used in this Plan have the meanings set out below:

(a) "**Additional Deferred Units**" has the meaning ascribed thereto in Section 8.03;

(b) "**Advisor**" means NexPoint Real Estate Advisors VI, L.P., or any subsequent external advisor to the REIT hired to perform similar services;

(c) "**Affiliate**" has the meaning given to such term in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time;

(d) "**Applicable Withholding Taxes**" means any and all taxes and other source deductions or other amounts that the REIT or a Subsidiary is required by law to withhold from any amounts to be paid or credited under the Plan;

(e) "**Average Market Price**" at any date in respect of the Units shall be the volume weighted average price of the Units on the TSXV, for the five trading days immediately preceding such date (or, if such Units are not then listed and posted for trading on the TSXV, on such stock exchange on which the Units are listed and posted for trading as may be selected for such purpose by the Board); provided that, for so long as the Units are listed and posted for trading on the TSXV, the Average Market Price shall not be less than the market price, as calculated under the policies of the TSXV and provided, further, that with respect to a Deferred Unit issued to a U.S. taxpayer, such Participant and the number of Units subject to such issuance shall be identified by the Board prior to the start of the applicable five trading day period. In the event that such Units are not then listed and posted for trading on any Exchange, the Average Market Price shall be the fair market value of such Units as determined by the Board in its sole discretion and, with respect to an Award made to a U.S. taxpayer, in accordance with Section 409A of the Code. In no event shall the Average Market Price be less than the Discounted Market Price (as such term is defined in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time);

(f) "**Award Date**" means the date upon which the Deferred Units are granted;

(g) "**Board**" means the Board of Trustees of the REIT;

(h) "**Business Day**" means a day on which there is trading on the TSXV or such other stock exchange on which the Units are then listed and posted for trading, and if none, a day that is not Saturday or Sunday or a national legal holiday in Ontario;

(i) "**Change in Control**" means the occurrence of any one or more of the following events:

(i) any transaction at any time and by whatever means, whether or not the REIT is a party thereto, pursuant to which any Person or any group of two or more Persons acting jointly or in concert (other than the REIT or a wholly-owned Subsidiary) hereafter acquires the direct or indirect "beneficial ownership" (as defined in the *Securities Act* (Ontario)) of, or acquires the right to exercise Control or direction over, securities of the REIT representing more than 50% of the then issued and outstanding voting securities of the REIT, including, without limitation, as a result of a take-over bid, an exchange of securities, an amalgamation of the REIT with any other entity, an arrangement, a capital reorganization or any other business combination or reorganization;

(ii) the sale, assignment or other transfer of all or substantially all of the consolidated assets of the REIT to a Person other than a wholly-owned Subsidiary or subsidiary of NHT Operating Partnership, LLC;

(iii) the approval by the REIT's unitholders of a complete dissolution or liquidation of the REIT, other than in connection with the distribution of assets of the REIT to one or more Persons which were wholly-owned Subsidiaries prior to such event;

(iv) the occurrence of a transaction requiring approval of the REIT's unitholders whereby the REIT is acquired through consolidation, merger, exchange of securities, purchase of assets, amalgamation, statutory arrangement or otherwise by any other Person (other than a short form amalgamation or exchange of securities with a wholly-owned Subsidiary); or

(v) individuals who comprise the Board as of the last annual meeting of unitholders of the REIT (the "**Incumbent Board**") for any reason ceasing to constitute at least a majority of the members of the Board, unless the election, or nomination for election by the REIT's unitholders, of any new trustee was approved by a vote of at least a majority of the Incumbent Board, and in that case such new trustee shall be considered as a member of the Incumbent Board;

provided that, notwithstanding clauses (i), (ii), (iii) and (iv) above, a Change in Control shall be deemed not to have occurred pursuant to clauses (i), (ii), (iii) and

(iv) above if immediately following the transaction set forth in clause (i), (ii), (iii) and (iv) above: (A) the holders of securities of the REIT that immediately prior to the consummation of such transaction represented more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of trustees of the REIT hold (x) securities of the entity resulting from such transaction (including, for greater certainty, the Person succeeding to assets of the REIT in a transaction contemplated in clause (ii) above) (the "**Surviving Entity**") that represent more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of directors or trustees of the Surviving Entity, or (y) if applicable, securities of the entity that directly or indirectly has beneficial ownership of 100% of the securities eligible to elect directors or trustees of the Surviving Entity (the "**Parent Entity**") that represent more than 50% of the combined voting power of the then outstanding securities eligible to vote for the election of directors or trustees of the Parent Entity, and (B) no Person or group of two or more Persons, acting jointly or in concert, is the beneficial owner, directly or indirectly, of more than 50% of the voting power of the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) (any such transaction which satisfies all of the criteria specified in clauses (A) and (B) above being referred to as a "**Non-Qualifying Transaction**" and, following the Non-Qualifying Transaction, references in this definition of "Change in Control" to the "REIT" shall mean and refer to the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) and, if such entity is a company or a trust, references to the "Board" shall mean and refer to the board of directors or trustees, as applicable, of such entity).

Notwithstanding the foregoing, for purposes of any Deferred Unit that constitutes "deferred compensation" (within the meaning of Section 409A of the Code), the payment of which would be accelerated upon a Change in Control, a transaction will not be deemed a Change in Control for Awards granted to any Participant who is a U.S. taxpayer unless the transaction qualifies as "a change in control event" within the meaning of Section 409A of the Code;

(j) "**Control**" means:

(i) when applied to the relationship between a Person and a corporation, the beneficial ownership by that Person, directly or indirectly, of voting securities or other interests in such corporation entitling the holder to exercise control and direction in fact over the activities of such corporation;

(ii) when applied to the relationship between a Person and a partnership, limited partnership, trust or joint venture, means the contractual right to direct the affairs of the partnership, limited partnership, trust or joint venture; and

(iii) when applied in relation to a trust, the beneficial ownership at the relevant time of more than 50% of the property settled under the trust, and

the words "**Controlled by**", "**Controlling**" and similar words have corresponding meanings; provided that a Person who controls a corporation, partnership, limited partnership or joint venture will be deemed to Control a corporation, partnership,

limited partnership, trust or joint venture which is Controlled by such Person and so on;

(k) "**Code**" shall mean the *United States Internal Revenue Code* of 1986, as amended from time to time and any successor thereto;

(l) "**Compensation Committee**" means the Compensation, Governance and Nominating Committee of the Board;

(m) "**Deferred Unit**" means a bookkeeping entry, equivalent in value to a Unit, credited to a Participant's Deferred Unit Account in accordance with the terms and conditions of the Plan and for greater certainty consists of both Granted DUs and Elected DUs;

(n) "**Deferred Unit Account**" has the meaning ascribed thereto in Section 8.02;

(o) "**Elected Amount**" means such portion of the Trustee Fees as an Electing Person elects to receive in Elected DUs;

(p) "**Elected DUs**" has the meaning ascribed thereto in Section 6.01;

(q) "**Electing Person**" has the meaning ascribed thereto in Section 6.02;

(r) "**Election Notice**" has the meaning ascribed thereto in Section 6.02;

(s) "**Exchange**" means the TSXV and any other exchange on which the Units are or may be listed from time to time;

(t) "**Granted DUs**" has the meaning ascribed thereto in Section 5.02;

(u) "**Insider**" has the meaning given to such term in the TSXV Corporate Finance Manual, as such manual may be amended, supplemented or replaced from time to time;

(v) "**Officer**" means an executive or senior management employee of the REIT or any of its Subsidiaries;

(w) "**Participant**" has the meaning ascribed thereto in Section 5.01;

(x) "**Person**" means an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

(y) "**Plan**" means this Amended and Restated Deferred Unit Plan;

(z) "**Redemption Date**" has the meaning ascribed thereto in Section 10.02;

(aa) "**REIT**" has the meaning ascribed thereto in Article 1;

(bb) "**RTO**" has the meaning ascribed thereto in the TSXV Corporate Finance Manual.

(cc) "**Security Based Compensation Arrangement**" means an option, option plan, employee unit purchase plan, long-term incentive plan or any other compensation or incentive mechanism involving the issuance or potential issuance of Units to one or more directors, Trustees or Officers of the REIT or any Subsidiary, current or past full-time or part-time employees of the REIT or any Subsidiary, Insiders or service providers or consultants of the REIT or any Subsidiary including a Unit purchase from treasury by one or more Trustees, Officers, directors or officers of any Subsidiary, current or past full-time or part-time employees of the REIT or any Subsidiary, Insiders or service providers or consultants of the REIT or any Subsidiary which is financially assisted by the REIT or any Subsidiary by way of a loan, guarantee or otherwise;

(dd) "**Section 409A of the Code**" shall mean Section 409A of the Code, the U.S. Treasury Regulations promulgated thereunder as in effect from time to time, and related guidance as may be amended from time to time;

(ee) "**Separation from Service**" shall have the meaning given to such phrase in U.S. Treasury Regulation § 1.409A-1(h);

(ff) "**Subsidiary**" means any entity Controlled by the REIT;

(gg) "**Trustee**" means a non-employee trustee of the REIT, which for the purposes of determining Participants under the Plan, shall exclude James Dondero, Chief Executive Officer of the REIT;

(hh) "**Trustee Fees**" means the annual cash retainer (including fees for serving as Chair of the Board or a committee of the Board) and meeting fees payable by the REIT to a Trustee in a calendar year for service on the Board;

(ii) "**TSXV**" means the TSX Venture Exchange;

(jj) "**Unit**" means a trust unit of the REIT; and

(kk) "**Unitholder**" means a holder of Units.

ARTICLE 3
CONSTRUCTION AND INTERPRETATION

3.01 The effective date of the Plan is August [●], 2023. The Plan shall be governed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3.02 If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part hereof.

3.03 In the Plan, references to any gender include all genders; reference to the singular shall include the plural and vice versa, as the context shall require.

3.04 Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein contained.

ARTICLE 4
ADMINISTRATION

4.01 The Plan shall be administered by the Board and Compensation Committee.

4.02 The Compensation Committee is authorized, subject to the provisions of the Plan, to establish such rules and regulations as it deems necessary for the proper administration of the Plan, and to make determinations and take such other action in connection with or in relation to the Plan as it deems necessary or advisable. Each determination or action made or taken pursuant to the Plan, including interpretation of the Plan, shall be final and conclusive for all purposes and binding on all parties, absent manifest error.

4.03 The REIT will be responsible for all costs relating to the administration of the Plan.

4.04 The Compensation Committee may review and confirm the terms of the Plan from time to time and the Board may, upon recommendation of the Compensation Committee and subject to applicable stock exchange rules, amend or suspend the Plan in whole or in part as well as terminate the Plan without prior notice as it deems appropriate; provided, however, that any amendment to the Plan including an amendment that would increase the maximum amount of $200,000 referred to in Section 11.04, result in any increase in the number of Deferred Units issuable under the Plan will be subject to the approval of Unitholders.

Notwithstanding the foregoing and for greater certainty, the Board may at any time and from time to time, without Unitholder approval, amend any provision of the Plan, including, without limitation:

(a) for the purpose of making formal, minor or technical modifications to any of the provisions of the Plan, including amendments of a “housekeeping” nature;

(b) to correct any ambiguity, defective provision, error or omission in the provisions of the Plan;

(c) to amend the vesting provisions of the Deferred Units, except for decreasing the vesting term of Granted DUs to less than one year from the Award Date; or

(d) any other amendment that does not require unitholder approval under applicable laws or the rules of the TSXV;

provided, however, that no such act shall diminish any rights accrued in respect of grants of Deferred Units made prior to the effective date of such amendment.

If the Compensation Committee terminates the Plan, Deferred Units previously credited to Participants shall remain outstanding and in effect and shall be settled subject to and in accordance with the applicable terms and conditions of the Plan in effect immediately prior to the termination.

4.05 Unless otherwise determined by the Compensation Committee, the Plan shall remain an unfunded obligation of the REIT and the rights of Participants under the Plan shall be general unsecured obligations of the REIT.

4.06 A Participant shall be solely responsible for all federal, provincial, state and local taxes resulting from his or her participation in the Plan. In this regard, the REIT shall be able to deduct from any payments hereunder (whether in the form of securities or cash) or from any other remuneration otherwise payable to a Participant any Applicable Withholding Taxes or to require the Participant, as a condition to receiving entitlements under the Plan, to make arrangements satisfactory to the REIT to enable the REIT to satisfy its withholding obligations. Each Participant agrees to indemnify and save the REIT harmless from any and all amounts payable or incurred by the REIT or any of its Subsidiaries if it is subsequently determined that any greater amount should have been withheld in respect of Applicable Withholding Taxes.

ARTICLE 5
PARTICIPATION AND REGULAR GRANTS

5.01 Individuals who are *bona fide* Trustees of the REIT are participants in the Plan ("**Participants**").

5.02 Participants may be awarded Deferred Units from time to time at the discretion of the Board, on the recommendation of the Compensation Committee ("**Granted DUs**").

5.03 Nothing herein contained shall be deemed to give any person the right to be retained as a Trustee, Officer, employee or service provider of the REIT and its Subsidiaries.

ARTICLE 6
ELECTIONS BY TRUSTEES

6.01 Subject to Section 6.02, a Participant may, subject to the conditions stated herein, elect to receive up to 100% of his or her Trustee Fees otherwise payable in cash, in the form of Deferred Units ("**Elected DUs**" and together with the Granted DUs, shall all be considered Deferred Units). The Award Date for Elected DUs shall be the date that a Participant would have received the Trustee Fees otherwise payable in cash.

6.02 Each Participant that elects to receive Elected DUs (each, an "**Electing Person**") will be required to file a notice of election in the form of Schedule A-1 hereto (the "**Election Notice**") with the Chief Financial Officer of the REIT: (i) in the case of an existing Trustee, by December 31st in the year prior to the year to which such election is to apply; and (ii) in the case of a newly appointed Trustee, within 30 days of such appointment with respect to compensation paid for services to be performed after such date. If no election is made within the foregoing time frames, the Trustee shall be deemed to have elected not to receive any Elected DUs and to be paid his or her Trustee Fees entirely in cash.

6.03 Subject to Section 6.04, the election of a Trustee to be an Electing Person shall be deemed to apply to such proportion of the Trustee Fees set out in the Election Notice, payable to the Trustee subsequent to the filing of the Election Notice, and such Trustee is not required to file another Election Notice.

6.04 Each Electing Person is entitled once per calendar year to terminate his or her Election Notice by filing with the Chief Financial Officer of the REIT a notice in the form of Schedule A-2 hereto electing to terminate the receipt of Elected DUs. Such election shall be effective 30 days following receipt. Thereafter, any portion of such Trustee's Trustee Fees otherwise payable in cash and payable or paid in the same calendar year and, subject to complying with Section 6.02, all subsequent calendar years shall be paid in cash. For greater certainty, to the extent a Trustee terminates his or her Election Notice, he or she shall not be entitled to become an Electing Person again until the calendar year following the year in which the termination notice is delivered. For an Electing Person who is a U.S. taxpayer, his or her Election Notice may not be revoked or moedified with respect to the Elected DUs for any calendar year for which it is effective. The U.S. taxpayer Electing Person may terminate or modify his or her Election Notice with respect to compensation paid for services to be performed after such date by filing a new Election Notice before the first day of the calendar year to which such termination or modification applies.

ARTICLE 7
DEFERRED UNITS

7.01 Under no circumstances shall Deferred Units be considered Units nor entitle a Participant to any rights as a Unitholder, including, without limitation, voting rights, distribution entitlements (other than in accordance herewith) or rights on liquidation.

7.02 One Deferred Unit is economically equivalent to one Unit.

7.03 Elected DUs granted to Trustees pursuant to the terms of this Plan will vest immediately upon grant (including any Additional Deferred Units issued pursuant to Elected DUs credited to a Participant's account in connection with cash distributions pursuant to Section 8.03). Granted DUs granted to Trustees pursuant to the terms of this Plan will vest on the first anniversary of the Award Date (including any Additional Deferred Units issued pursuant to Granted DUs credited to a Participant's account in connection with cash distributions pursuant to Section 8.03).

ARTICLE 8
DEFERRED UNIT GRANTS AND ACCOUNTS

8.01 The number of Deferred Units (including fractional Deferred Units) granted at any particular time pursuant to this Plan will be equal to (i) the Elected Amount (in dollars) in respect of Trustee Fees which a Trustee has determined to take in the form of Deferred Units, as determined by a Trustee pursuant to an Election Notice (as contemplated by Section 6.02), divided by the Average Market Price of a Unit on the Award Date, plus (ii) the Granted DUs, if any, granted to such Trustee.

8.02 An account, to be known as a "**Deferred Unit Account**" shall be maintained by the REIT for each Participant and will be credited with grants of Deferred Units received by a Participant from time to time.

8.03 Whenever cash distributions are paid on the Units, additional Deferred Units will be credited to the Participant's Deferred Unit Account ("**Additional Deferred Units**"). The number of such Additional Deferred Units to be credited to a Participant's Deferred Unit Account in respect of a cash distribution paid on the Units shall be calculated by dividing the amount which is equal to the aggregate distributions that would have been paid to such Participant if the Deferred Units in the Participant's Deferred Unit Account had been Units divided by the Average Market Price on the distribution payment date.

8.04 For greater certainty, the number of Deferred Units credited to a Participant's Deferred Unit Account shall count towards that Participant's ownership requirements as prescribed from time to time by the Board.

8.05 For greater certainty, any Additional Deferred Units shall count toward the limits set forth in Article 11. Where an award of Additional Deferred Units would be prohibited by the limits set forth in Article 11, the REIT may make a cash distribution to the applicable Participant in lieu of Additional Deferred Units.

ARTICLE 9
ADJUSTMENTS AND EVENTS AFFECTING THE REIT

9.01 In the event of any Unit distribution, Unit split, combinations or exchange of Units, merger, consolidation, spin-off or other distribution of the REIT's assets to the Unitholders (other than normal cash distributions), or any other similar change affecting the Units, the account of each Participant and the Deferred Units outstanding under the Plan shall be adjusted in such manner, if any, as the Board may in its discretion deem appropriate to reflect the event. However, no amount will be paid to, or in respect of, a Participant under the Plan or pursuant to any other arrangement, and no additional Deferred Units will be granted to such Participant to compensate for a downward fluctuation in the price of the Units, nor will any other form of benefit be conferred upon, or in respect of, a Participant for such purpose.

9.02 Except as may be set forth in an award agreement or other written agreement between the REIT or a subsidiary of the REIT and the Participant, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required:

(a) Notwithstanding anything else in this Plan, the Board may, without the consent of any Participant, take such steps as it deems necessary or desirable, to ensure the preservation of the economic interests of the Participants in, and to prevent the dilution or enlargement of, any Deferred Units granted under the Plan, including to cause (i) the conversion or exchange of any outstanding Deferred Units into or for, rights or other securities of substantially equivalent value (or greater value), as determined by the Board in its discretion, in any entity participating in or resulting from a Change in Control (provided that for any Participant that is a resident of Canada for the purposes of the Tax Act, any such securities will be shares of a

corporation or units of a "mutual fund trust" (for the purposes of the Tax Act) and any such rights will be rights to acquire shares of a corporation or units of a "mutual fund trust", in any case of an entity that does not deal at arm's length with the REIT (for the purposes of the Tax Act) at the time such shares, units or rights are issued or granted); (ii) outstanding Deferred Units to vest and become exercisable, realizable, or payable, or restrictions applicable to a Deferred Unit to lapse, in whole or in part, prior to or upon consummation of a Change in Control, take-over bid, RTO or other similar transaction and, to the extent the Board determines, terminate upon or immediately prior to the effectiveness of such Change in Control, take-over bid, RTO or other similar transaction; or (iii) any combination of the foregoing. In taking any of the actions permitted under this Section 9.02(a), the Board will not be required to treat all Deferred Units similarly in the transaction. For greater certainty, the Board cannot cause any Participant that is a resident of Canada for the purposes of the Tax Act to receive anything other than shares of a corporation or units of a "mutual fund trust", or rights to acquire such shares or units, in any case of an entity that does not deal at arm's length with the REIT (for the purposes of the Tax Act) at the time such shares, units or rights are issued or granted.

(b) It is intended that any actions taken under this Section 9.02 will comply with the requirements of Section 409A of the Code with respect to Awards granted to U.S. taxpayers. For the avoidance of doubt, to the extent that there is a conflict in this Plan with Section 409A of the Code, Section 409A of the Code shall control.

9.03 Notwithstanding anything else in this Plan, the Board may, in its discretion, at any time, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required, permit the acceleration of vesting of any or all Deferred Units or waive termination of any or all Deferred Units, in the manner and on the terms as may be authorized by the Board; provided, that any such acceleration or waiver comply with the requirements of Section 409A of the Code with respect to Deferred Units granted to U.S. taxpayers.

ARTICLE 10
REDEMPTION AND TERMINATION OF DEFERRED UNITS

10.01 Except with respect to Participants that are U.S. taxpayers, the Deferred Units (or a portion thereof) shall be redeemable by the Participant (or, where the Participant has died, his or her estate) on or after the date (the "**Termination Date**") on which the Participant ceases to be a Trustee, provided any such redemption date is not later than one year following the date the Participant ceases to be a Trustee. For greater certainty, in the event that a Participant (or his or her estate) has not redeemed his or her Deferred Units prior to the date that is one year following the Termination Date, such Deferred Units shall be automatically redeemed on the date that is one year following the Termination Date without any action required on the part of the Participant (or his or her estate).

10.02 For Participants that are Canadian residents and are not U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit Account will be redeemed automatically on the date on which the Participant files a written notice of redemption in the form of Schedule B

hereto with the Chief Financial Officer of the REIT (the "**Redemption Date**") for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

10.03 For Participants that are U.S. taxpayers, each vested Deferred Unit credited to a Participant's Deferred Unit Account will be redeemed automatically on the date of the Trustee's Separation from Service for (i) one fully paid and non-assessable Unit issued from treasury to the Participant or as the Participant may direct, (ii) if so elected by the Participant, a cash payment, subject to the approval of the Board, or (iii) a combination of Units and cash as contemplated by paragraphs (i) and (ii) above.

10.04 Any cash payments made under this Article 10 by the REIT to a Participant in respect of Deferred Units to be redeemed for cash shall be calculated by multiplying the number of Deferred Units to be redeemed for cash by the Average Market Price per Unit as at the Redemption Date or date of the Trustee's Separation from Service, as applicable.

10.05 No fractional Units will be issued pursuant to the redemption of Deferred Units. At the time of redemption fractional Deferred Units shall be rounded down, and no payment shall be made to the Participant with respect to the fractional Deferred Units standing to the Participant's credit after the maximum number of whole Units due to such Participant have been issued by the REIT.

10.06 Upon payment in full of the value of the vested Deferred Units and the forfeiture of the unvested Deferred Units, the Deferred Units shall be cancelled.

10.07 Notwithstanding anything in this Article 10, in the event of the death of a Participant, all previously awarded Deferred Units shall be redeemable only within the one year after such death, and then only by the person or persons to whom the Participant's rights under the Deferred Units shall pass by the Participant's will or the laws of descent and distribution.

ARTICLE 11
NUMBER AND VALUE OF UNITS

11.01 The maximum number of Units reserved for issuance under this Plan at any time shall be 2,844,256. Notwithstanding the above, subject to applicable law or the requirements of the TSXV or any other stock exchange upon which the Units are listed and any Unitholder or other approval which may be required, the Board may, in its discretion, amend this Plan to increase such limit without notice to Participants, subject to Unitholder approval. If any Deferred Unit granted under this Plan is terminated, surrendered, forfeited, expired or is cancelled, new Deferred Units may thereafter be granted covering such Units, subject to any required prior approval by the TSXV or other stock exchange upon which the Units are listed. At all times, the REIT will reserve and keep available a sufficient number of Units to satisfy the requirements of all outstanding Deferred Units granted under this Plan.

11.02 The maximum aggregate number of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued in any 12 month period to any one person (and any entities that are wholly owned by that person) shall not exceed 5% of the

issued and outstanding Units, calculated as at the date any security based compensation award is granted or issued to the person, subject to the requisite disinterested Unitholder approval required by the TSXV.

11.03 No Deferred Unit may be granted if such grant would have the effect of causing the total number of Units subject to Deferred Units to exceed the total number of Units reserved for issuance pursuant to the exercise of Deferred Units as set forth in Section 11.01.

11.04 The aggregate fair market value on the Award Date of Units that are issuable pursuant to all Security Based Compensation Arrangements of the REIT granted or issued to any Trustee shall not exceed $200,000 per annum; provided that such limits shall not apply to awards (including Deferred Units) taken in lieu of any Trustee Fees and a one-time initial grant to a Trustee upon such Trustee joining the Board.

ARTICLE 12
ASSIGNMENT

12.01 In no event may the rights or interests of a Participant under the Plan be assigned, encumbered, pledged, transferred or alienated in any way, except to the extent that certain rights may pass to a beneficiary or legal representative upon death of a Participant, by will or as required by law.

12.02 Rights and obligations under the Plan may be assigned by the REIT to a successor in the business of the REIT.

ARTICLE 13
COMPLIANCE WITH APPLICABLE LAWS

13.01 The administration of the Plan shall be subject to and performed in conformity with all applicable laws, regulations, orders of governmental or regulatory authorities and the requirements of any stock exchange on which the Units are listed. Should the Compensation Committee, in its sole discretion, determine that it is not desirable or feasible to provide for the redemption of Deferred Units in Units pursuant to the provisions of Article 10, including by reason of any such laws, regulations, rules, orders or requirements, it shall notify the Participants of such determination and on receipt of such notice each Participant shall have the option of electing that such redemption obligations be satisfied by means of a cash payment by the REIT equal to the Average Market Price of the Units that would otherwise be delivered to a Participant in settlement of Deferred Units on the Redemption Date (less any Applicable Withholding Taxes). Each Participant shall comply with all such laws, regulations, rules, orders and requirements, and shall furnish the REIT with any and all information and undertakings, as may be required to ensure compliance therewith.

13.02 The REIT intends that the Plan and all Deferred Units be construed to avoid the imposition of additional taxes, interest, and penalties pursuant to Section 409A of the Code. Notwithstanding the REIT's intention, in the event any Deferred Unit is subject to such additional taxes, interest or penalties pursuant to Section 409A of the Code, the Board or the Compensation Committee, as applicable, may, in their sole discretion and without a Participant's prior consent, amend the Plan, adopt policies and procedures, or take any other actions (including amendments,

policies, procedures and actions with retroactive effect) as are necessary or appropriate to (a) exempt the Plan and/or any Deferred Unit from the application of Section 409A of the Code, (b) preserve the intended tax treatment of any such Deferred Unit, or (c) comply with the requirements of Section 409A of the Code, including without limitation any such regulations, guidance, compliance programs, and other interpretative authority that may be issued after the date of the grant. In no event shall the REIT or any of its Affiliates be liable for any additional tax, interest or penalties that may be imposed on a Participant under Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. To the extent a Participant who is a U.S. taxpayer is a "specified employee" within the meaning of U.S. Treasury Regulation § 1.409A-1(i) upon the Participant's Separation from Service, any amount payable upon such Separation from Service pursuant to a redemption under Article 10 will be delayed to the earliest Business Day following the end of the sixth month period from the date of such Participant's Separation from Service. Notwithstanding any provision in the Plan to the contrary, the timing of redemptions set forth in Article 10 with respect to U.S. taxpayers may be modified by the Compensation Committee as provided in U.S. Treasury Regulation § 1.409A-3(j)(4)(ix) with respect to the termination of a deferred compensation arrangement.

ARTICLE 14
NON-RECOURSE

14.01 Obligations created hereunder and any liability which arises in any manner whatsoever and of or in connection with this Plan are not personally binding upon, nor shall resort be had to, nor shall recourse or satisfaction be sought from, the private property of any trustee or officer of the REIT, any holder of units of the REIT, or annuitants under a plan of which a holder of units of the REIT acts as a trustee or carrier, but only the property of the REIT from time to time or a specific portion thereof shall be bound.

SCHEDULE A-1
NEXPOINT HOSPITALITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

ELECTION NOTICE

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

Pursuant to the Plan, I hereby elect to receive ____% of my Trustee Fees otherwise payable in cash, as applicable, in the form of Deferred Units in lieu of cash.

I confirm that:

a) I have received and reviewed a copy of the terms of the Plan and agreed to be bound by them.

b) I recognize that when Deferred Units credited pursuant to this election are redeemed in accordance with the terms of the Plan, income tax and other withholdings as required will arise at that time. Upon redemption of the Deferred Units, the REIT will make all appropriate withholdings as required by law at that time.

c) The value of Deferred Units is based on the value of the Units of the REIT and therefore is not guaranteed.

The foregoing is only a brief outline of certain key provisions of the Plan. For more complete information, reference should be made to the Plan's text.

Date: ______________________________ ______________________________
(Name of Participant)

____
(Signature of Participant)

SCHEDULE A-2
NEXPOINT HOSPITALITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

ELECTION TO TERMINATE RECEIPT OF ELECTED DEFERRED UNITS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

Notwithstanding my previous election in the form of Schedule A-1 to the Plan, I hereby revoke my previous election, such that no portion of the Trustee Fees otherwise payable in cash, as applicable, accrued after the date hereof shall be paid in Deferred Units in accordance with the terms of the Plan.[1]

I understand that the Deferred Units already granted under the Plan will remain outstanding and shall be redeemable only in accordance with the Plan.

I confirm that I have received and reviewed a copy of the terms of the Plan and agree to be bound by them.

Date: ______________________________ ______________________________
(Name of Participant)

____
(Signature of Participant)

Note: An election to terminate receipt of Elected DUs can only be made by a Participant once in a calendar year.

[1] To be modified for U.S. taxpayers such that the election only applies to future fees earned starting with the next calendar year.

SCHEDULE B

NEXPOINT HOSPITLAITY TRUST
DEFERRED UNIT PLAN (THE "PLAN")

REDEMPTION NOTICE FOR CANADIAN RESIDENTS

All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

I hereby advise NexPoint Hospitality Trust (the "**REIT**") that I wish to redeem __________ of the Deferred Units credited to my account under the Plan in accordance with the terms of the Plan in the form of **[_______ Units of the REIT and $_____ in cash]**.

Date: ________________________________ ______________________________________
(Name of Participant)

____
(Signature of Participant)

Note: If the redemption notice is signed by a beneficiary or legal representative, documents providing the authority of such signature should accompany this notice.

APPENDIX "C"
RESOLUTION REGARDING APPROVAL AND RATIFICATION OF PRIOR DSU GRANT

BE IT RESOLVED THAT:

1. The conditional issuance of 1,295,668 Deferred Units to the independent Trustees on September 11, 2023 on the terms and conditions set out in the Deferred Unit Plan, are ratified, confirmed and approved.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX "D"
RESOLUTION REGARDING APPROVAL OF AMENDMENTS TO COVID LOANS

BE IT RESOLVED THAT:

1. The Amendments to the COVID Loans, as more particularly described in the REIT's Information Circular dated September 11, 2023, are hereby approved and authorized.

2. Any one or more trustees or officers of the REIT are hereby authorized and directed to execute, deliver, register and file in the name and on behalf of the REIT, any certificates, instruments, agreements, notices, affidavits, supporting material and other documents, and to obtain any required consents, approvals and to do any other acts and things as in the opinion of such person(s) may be necessary or desirable to give full effect to the above resolutions, to facilitate all matters relating to those resolution and to allow the execution and delivery of any and all such other agreements, documents and instruments and the performance or causing the performance of any and all such other acts and things to be conclusive evidence of such determination.

APPENDIX "E"
BOARD CHARTER

NEXPOINT HOSPITALITY TRUST

CHARTER OF THE BOARD OF TRUSTEES
(the "Charter")

ADOPTED MAY 28, 2019

1. Purpose

The purpose of this Charter is to set out the mandate and responsibilities of the board of trustees (the "**Board**") of NexPoint Hospitality Trust (the "**REIT**"). By approving this Charter, the Board confirms its responsibility for the stewardship of the REIT and its affairs. This stewardship function includes responsibility for the matters set out in this Charter. The responsibilities of the Board described herein are pursuant to, and subject to, the provisions of applicable statutes and the Declaration of Trust of the REIT and do not impose any additional responsibilities or liabilities on the trustees at law or otherwise.

2. Composition

The Board shall be constituted with a majority of individuals who qualify as "independent" as defined in National Instrument 58-101 – *Disclosure of Corporate Governance Practices* ("**NI 58-101**"), provided, however, that if at any time a majority of the trustees are not independent because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any trustee who was an independent trustee within the meaning of NI 58-101, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining trustees shall appoint a sufficient number of trustees who qualify as "independent" to comply with this requirement.

Pursuant to NI 58-101, an independent trustee is one who is free from any direct or indirect relationship which could, in the view of the Board, be reasonably expected to interfere with a trustee's independent judgment.

In the event the chair of the Board (the "**Chair**") is not independent, the independent trustees will select one of the independent trustees to be appointed as the lead trustee of the Board for such term as the independent trustees may determine (the "**Lead Trustee**"). If the REIT has a non-executive Chair who is independent, then the role of the Lead Trustee will be filled by the non-executive Chair. The Lead Trustee or non-executive Chair will chair regular meetings of the independent trustees and assume other responsibilities that the independent trustees as a whole have designated.

3. Responsibilities of the Board of Trustees

The Board is responsible for the stewardship and oversight of the REIT and in that regard shall be specifically responsible for:

(a) participating in the development of and approving a strategic plan for the REIT;

(b) supervising the activities and managing the investments and affairs of the REIT;

(c) approving major decisions regarding the REIT;

(d) defining the roles and responsibilities of management;

(e) reviewing and approving the business and investment objectives to be met by management;

(f) assessing the performance of and overseeing management;

(g) issuing securities of the REIT for such consideration as the Board may deem appropriate, subject to applicable law;

(h) reviewing the REIT's debt strategy;

(i) identifying and managing risk exposure;

(j) ensuring the integrity and adequacy of the REIT's internal controls and management information systems;

(k) succession planning;

(l) establishing committees of the Board, where required or prudent, and defining their mandate;

(m) establishing and maintaining procedures and policies to ascertain trustee independence;

(n) maintaining records and providing reports to unitholders;

(o) ensuring effective and adequate communication with unitholders, other stakeholders and the public;

(p) determining the amount and timing of distributions to unitholders; and

(q) acting for, voting on behalf of and representing the REIT as a holder of interests in NHT Intermediary, LLC and, indirectly, interests in NHT Holdings, LLC and the Class A Units of NHT Operating Partnership, LLC.

It is recognized that every trustee in exercising powers and discharging duties must act honestly and in good faith with a view to the best interest of the REIT. Trustees must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In this regard, they will comply with their duties of honesty, loyalty, care, diligence, skill and prudence.

In addition, trustees are expected to carry out their duties in accordance with policies and regulations adopted by the Board from time to time, the current Trustees' Regulations being annexed as Schedule A to the REIT's Declaration of Trust.

It is expected that management will co-operate in all ways to facilitate compliance by the Board with its legal duties by causing the REIT and its subsidiaries to take such actions as may be

necessary in that regard and by promptly reporting any data or information to the Board that may affect such compliance.

4. Expectations of Trustees

The Board has developed a number of specific expectations of trustees to promote the discharge by the trustees of their responsibilities and to promote the proper conduct of the Board.

(a) ***Commitment and Attendance***. All trustees are expected to maintain a high attendance record at meetings of the Board and the committees of which they are members. Attendance by telephone or video conference may be used to facilitate a trustee's attendance.

(b) ***Preparation for Meetings***. All trustees are expected to review the materials circulated in advance of meetings of the Board and its committees and should arrive prepared to discuss the issues presented. Trustees are encouraged to contact the Chair of the Board (the "**Chair**"), the Chief Executive Officer and any other appropriate executive officer(s) of the REIT to ask questions and discuss agenda items prior to meetings.

(c) ***Participation in Meetings***. Each trustee is expected to be sufficiently knowledgeable of the business of the REIT, including its financial statements, and the risks it faces, to ensure active and effective, and candid and forthright participation in the deliberations of the Board and of each committee on which he or she serves.

(d) ***Loyalty and Ethics***. In their roles as trustees, all members of the Board owe a duty of loyalty to the REIT. This duty of loyalty mandates that the best interests of the REIT take precedence over any other interest possessed by a trustee. Trustees are expected to conduct themselves in accordance with the REIT's Code of Business Conduct and Ethics.

(e) ***Other Board Memberships and Significant Activities***. The REIT values the experience trustees bring from other boards on which they serve and other activities in which they participate, but recognizes that those boards and activities also may present demands on a trustee's time and availability and may present conflicts or legal issues, including independence issues. Each member of the Board should, when considering membership on another board or committee, make every effort to ensure that such membership will not impair the member's time and availability for his or her commitment to the REIT. Trustees should advise the Chair, the Lead Trustee and the Chief Executive Officer before accepting membership on other public company boards or any audit committee or other significant committee assignment on any other board, or establishing other significant relationships with businesses, institutions, governmental units or regulatory entities, particularly those that may result in significant time commitments or a change in the member's relationship to the REIT.

(f) ***Personal Conduct***. Trustees are expected to: (i) exhibit high standards of personal integrity, honesty and loyalty to the REIT; (ii) project a positive image of

the REIT to news media, the financial community, governments and their agencies, unitholders and employees; (iii) be willing to contribute extra efforts, from time to time, as may be necessary including, among other things, being willing to serve on committees of the Board; and (iv) disclose any potential conflict of interest that may arise with the affairs or business of the REIT and, generally, avoid entering into situations where such conflicts could arise or could reasonably be perceived to arise.

(g) ***Confidentiality***. The proceedings and deliberations of the Board and its committees are confidential. Each member of the Board will maintain the confidentiality of information received in connection with his or her service as a trustee.

5. Meetings

The Board will meet not less than four times per year: three meetings to review quarterly results and one meeting prior to the issuance of the annual financial results of the REIT. The Board shall meet periodically without management present to ensure that the Board functions independently of management. At each Board meeting, unless otherwise determined by the Board, an in-camera meeting of independent trustees will take place, which session will be chaired by the Chair of the Board or the Lead Trustee in the event that the Chair is non-independent. In discharging its mandate, the Board and any committee of the Board will have the authority to retain and receive advice from outside financial, legal or other advisors (at the cost of the REIT) as the Board or any such committee determines to be necessary to permit it to carry out its duties.

The Board appreciates having certain members of senior management attend each Board meeting to provide information and opinion to assist the trustees in their deliberations. Management attendees who are not Board members will be excused for any agenda items which are reserved for discussion among trustees only.

6. Board Meeting Agendas and Information

The Chair, in consultation with management, will develop the agenda for each Board meeting. Agendas will be distributed to the trustees before each meeting, and all trustees shall be free to suggest additions to the agenda in advance of the meeting.

Whenever practicable, information and reports pertaining to Board meeting agenda items will be circulated to the trustees in advance of the meeting. Reports may be presented during the meeting by members of the Board, management and/or staff, or by invited outside advisors. It is recognized that under some circumstances, due to the confidential nature of matters to be discussed at a meeting, it will not be prudent or appropriate to distribute written materials in advance.

7. Measures for Receiving Unitholder Feedback

All publicly disseminated materials of the REIT shall provide for a mechanism for feedback of unitholders.

8. Telephone Board Meetings

A trustee may participate in a meeting of the trustees or in a committee meeting by means of telephone, electronic or such other communications facilities as permit all persons participating in the meeting to communicate with each other and a trustee participating in such a meeting by such means is deemed to be present at the meeting.

While it is the intent of the Board to follow an agreed meeting schedule as closely as possible, it is felt that, from time to time, with respect to time sensitive matters telephone board meetings may be required to be called in order for trustees to be in a position to better fulfill their legal obligations. Alternatively, management may request the trustees to approve certain matters by unanimous written consent.

9. Expectations of and Access to Management

Management shall be required to report to the Board at the request of the Board on the performance of the REIT, new and proposed initiatives, the REIT's business and investments, management concerns and any other matter the Board or its Chair or the Lead Trustee may deem appropriate. In addition, the Board expects management to promptly report to the Chair any significant developments, changes, transactions or proposals respecting the REIT or its subsidiaries. All members of the Board should be free to contact management at any time to discuss any aspect of the REIT's business. Trustees should use their judgement to ensure that any such contact is not disruptive to the operations of the REIT. The Board expects that there will be frequent opportunities for members of the Board to meet with management in meetings of the Board and committees, or in other formal or informal settings.

10. Access to Outside Advisors

The Board may, in its sole discretion, retain and obtain the advice and assistance of such advisors as it deems necessary to fulfil its duties and responsibilities under this Charter. The Board may set the compensation and oversee the work of such advisors to be paid by the REIT.

11. Communications Policy

The Board shall approve the content of the REIT's major communications to unitholders and the investing public including any Annual Report, Management Information Circular, Annual Information Form and any prospectuses which may be issued. The Audit Committee shall review and recommend to the Board the approval of the quarterly and annual financial statements (including the Management Discussion & Analysis) and press releases relating to financial matters. The Board also has responsibility for monitoring all of the REIT's external communications. However, the Board believes that it is generally the function of management to speak for the REIT in its communications with the investment community, the media, customers, suppliers, employees, governments and the general public. The Board will appoint the Lead Trustee, or another independent, non-executive trustee, to be available to unitholders with concerns should communications with management fail to resolve the issue or such contact is inappropriate.

The Board shall have responsibility for reviewing the REIT's policies and practices with respect to disclosure of financial and other information including insider reporting and trading. The

Board shall approve and monitor the disclosure policies designed to assist the REIT in meeting its objective of providing timely, consistent and credible dissemination of information, consistent with disclosure requirements under applicable securities law. The Board shall review the REIT's policies relating to communication and disclosure on an annual basis.

12. Internal Control and Management Information Systems

The Board has responsibility for the integrity of the REIT's internal control and management information systems. All material matters relating to the REIT and its business require the prior approval of the Board, subject to the Board's ability to delegate such matters to, among others, the REIT's Audit Committee, Compensation, Governance and Nominating Committee and management. Management is authorized to act, without Board approval, on all ordinary course matters relating to the REIT's business subject to any management authority guidelines adopted by the Board.

The Audit Committee has responsibility for ensuring internal controls are appropriately designed, implemented and monitored and for ensuring that management's financial reporting is complete and accurate, even though management may be charged with developing and implementing the necessary procedures.

13. Delegation of Powers

The trustees may establish one or more committees and may delegate to such committees any of the powers of the Board. The trustees may also delegate powers to manage the business and affairs of the REIT to such of the officers of the REIT as they, in their sole and absolute discretion, may deem necessary or desirable to appoint, and define the scope of and manner in which such powers will be exercised by such persons as they may deem appropriate.

The Board retains responsibility for oversight of any matters delegated to any trustee(s) or any committee of the Board, to management or to other persons.

14. Board Effectiveness

The Board shall review and, if determined appropriate, approve the recommendations of the applicable committee of the Board, if any, concerning formal position descriptions for the Chair of the Board and for each committee of the Board, the Lead Trustee and for the Chief Executive Officer, provided that in approving a position description for the Chief Executive Officer, the Board shall consider the input of the Chief Executive Officer and shall develop and approve corporate goals and objectives that the Chief Executive Officer is responsible for meeting (which may include goals and objectives relevant to the Chief Executive Officer's compensation, as recommended by the applicable committee of the Board, if any).

The Board shall review and, if determined appropriate, adopt a process recommended by the applicable committee of the Board, if any, for reviewing the performance and effectiveness of the Board as a whole, the committees of the Board and the contributions of individual trustees on an annual basis.

15. Education and Training

The Board will provide newly elected trustees with an orientation program to educate them on the REIT, their roles and responsibilities on the Board or Committees, as well as the REIT's internal controls, financial reporting and accounting practices. In addition, trustees will, from time to time, as required, receive: (a) training to increase their skills and abilities, as it relates to their duties and their responsibilities on the Board; and (b) continuing education about the REIT to maintain a current understanding of the REIT's business, including its operations, internal controls, financial reporting and accounting practices.

16. No Rights Created

This Charter is a broad policy statement and is intended to be part of the Board's flexible governance framework. While this Charter should comply with all applicable law and the REIT's constating documents, this Charter does not create any legally binding obligations on the Board, any Committee, any trustee or the REIT.

APPENDIX "F"
AUDIT COMMITTEE CHARTER

NEXPOINT HOSPITALITY TRUST

CHARTER OF THE AUDIT COMMITTEE
(the "Charter")

ADOPTED MAY 28, 2019 AND AMENDED APRIL 28, 2020

1. General

A. Purpose

The Audit Committee (the "**Committee**") is a committee of the board of trustees (the "**Board**") of NexPoint Hospitality Trust (the "**REIT**"). The members of the Committee and the chair of the Committee (the "**Chair**") are appointed by the Board on an annual basis (or until their successors are duly appointed) for the purpose of overseeing the REIT's financial controls and reporting and monitoring whether the REIT complies with financial covenants and legal and regulatory requirements governing financial disclosure matters and financial risk management.

2. Composition

(1) The Committee should be comprised of a minimum of three trustees, and a maximum of five trustees.

(2) The Committee must be constituted as required under National Instrument 52-110 — *Audit Committees*, as it may be amended or replaced from time to time ("**NI 52-110**").

(3) All members of the Committee must (except to the extent permitted by NI 52-110) be independent (as defined by NI 52-110), and free from any relationship that, in the view of the Board, could be reasonably expected to interfere with the exercise of his or her independent judgment as a member of the Committee.

(4) All members of the Committee must (except to the extent permitted by NI 52-110) be financially literate (which is defined as the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the REIT's financial statements).

(5) Any member of the Committee may be removed or replaced at any time by the Board and shall cease to be a member of the Committee on ceasing to be a trustee. The Board may fill vacancies on the Committee by election from among the Board. If and whenever a vacancy shall exist on the Committee, the remaining members may exercise all powers of the Committee so long as a quorum remains.

3. Limitations on Committee's Duties

In contributing to the Committee's discharge of its duties under this Charter, each member of the Committee shall be obliged only to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Nothing in this Charter is intended or may be construed as imposing on any member of the Committee a standard of care or diligence that is in any way more onerous or extensive than the standard to which any member of the Board may be otherwise subject.

Members of the Committee are entitled to rely, absent actual knowledge to the contrary, on (i) the integrity of the persons and organizations from whom they receive information, (ii) the accuracy and completeness of the information provided, (iii) representations made by management of the REIT ("**Management**") as to the non-audit services provided to the REIT by the external auditor, (iv) financial statements of the REIT represented to them by a member of Management or in a written report of the external auditors to present fairly the financial position of the REIT in accordance with applicable generally accepted accounting principles, and (v) any report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person.

4. Meetings

The Committee should meet not less than four times annually. The Committee should meet within 60 days following the end of the first three financial quarters of the REIT and shall meet within 120 days following the end of the fiscal year of the REIT. A quorum for the transaction of business at any meeting of the Committee shall be a majority of the members of the Committee or such greater number as the Committee shall by resolution determine. The Committee shall keep minutes of each meeting of the Committee. A copy of the minutes shall be provided to each member of the Committee.

Meetings of the Committee shall be held from time to time and at such place as any member of the Committee shall determine upon two day's prior notice to each of the other Committee members. The members of the Committee may waive the requirement for notice. In addition, each of the Chief Executive Officer, the Chief Financial Officer and the external auditor shall be entitled to request that the Chair call a meeting.

The Committee may ask members of Management and employees of the REIT (including, for greater certainty, its affiliates and subsidiaries) or others (including the external auditor) to attend meetings and provide such information as the Committee requests. Members of the Committee shall have full access to information of the REIT (including, for greater certainty, its affiliates, subsidiaries and their respective operations) and shall be permitted to discuss such information and any other matters relating to the results of operations and financial position of the REIT with Management, employees, the external auditor and others as they consider appropriate.

The Committee or its Chair should meet at least once per year with Management and the external auditor in separate sessions to discuss any matters that the Committee or either of these groups desires to discuss privately. In addition, the Committee or its Chair should

meet with Management quarterly in connection with the REIT's interim financial statements.

The Committee shall determine any desired agenda items.

5. Committee Activities

As part of its function in assisting the Board in fulfilling its oversight responsibilities (and without limiting the generality of the Committee's role), the Committee will have the power and authority to:

A. Financial Disclosure

(1) Review, approve and recommend for Board approval the REIT's interim financial statements, including any certification, report, opinion or review rendered by the external auditor and the related management's discussion & analysis and press release.

(2) Review, approve and recommend for Board approval the REIT's annual financial statements, including any certification, report, opinion or review rendered by the external auditor, the annual information form, and the related management's discussion & analysis and press release.

(3) Review and approve any other press releases that contain financial information and such other financial information of the REIT provided to the public or any governmental body as the Committee requires.

(4) Satisfy itself that adequate procedures have been put in place by Management for the review of the REIT's public disclosure of financial information extracted or derived from the REIT's financial statements and the related management's discussion & analysis.

(5) Review any litigation, claim or other contingency and any regulatory or accounting initiatives that could have a material effect upon the financial position or operating results of the REIT and the appropriateness of the disclosure thereof in the documents reviewed by the Committee.

(6) Receive periodically Management reports assessing the adequacy and effectiveness of the REIT's disclosure controls and procedures.

B. Internal Control

(1) Review Management's process to identify and manage the significant risks associated with the activities of the REIT.

(2) Review the effectiveness of the internal control systems for monitoring compliance with laws and regulations.

(3) Have the authority to communicate directly with the internal auditor if one is present.

(4) Receive periodical Management reports assessing the adequacy and effectiveness of the REIT's internal control systems.

(5) Assess the overall effectiveness of the internal control and risk management frameworks through discussions with Management and the external auditors and assess whether recommendations made by the external auditors have been implemented by Management.

C. Relationship with the External Auditor

(1) Recommend to the Board the selection of the external auditor and the fees and other compensation to be paid to the external auditor.

(2) Have the authority to communicate directly with the external auditor and arrange for the external auditor to be available to the Committee and the Board as needed.

(3) Advise the external auditor that it is required to report to the Committee, and not to Management.

(4) Monitor the relationship between Management and the external auditor, including reviewing any Management letters or other reports of the external auditor, discussing any material differences of opinion between Management and the external auditor and resolving disagreements between the external auditor and Management.

(5) If considered appropriate, establish separate systems of reporting to the Committee by each of management and the external auditor.

(6) Review and discuss on an annual basis with the external auditor all significant relationships they have with the REIT, Management or employees that might interfere with the independence of the external auditor.

(7) Pre-approve all non-audit services (or delegate such pre-approval, as the Committee may determine and as otherwise permitted by applicable securities laws) to be provided by the external auditor.

(8) Review the performance of the external auditor and recommend any discharge of the external auditor when the Committee determines that circumstances warrant.

(9) Periodically consult with the external auditor out of the presence of Management about (a) any significant risks or exposures facing the REIT, (b) internal controls and other steps that Management has taken to control such risks, and (c) the fullness and accuracy of the financial statements of the REIT, including the adequacy of internal controls to expose any payments, transactions or procedures that might be deemed illegal or otherwise improper.

(10) Review and approve any proposed hiring of current or former partners or employees of the current (and any former) external auditor of the REIT.

D. Audit Process

(1) Review the scope, plan and results of the external auditor's audit and reviews, including the auditor's engagement letter, the post-audit management letter, if any, and the form of the audit report. The Committee may authorize the external auditor to perform supplemental reviews, audits or other work as deemed desirable.

(2) Following completion of the annual audit and quarterly reviews, review separately with each of Management and the external auditor any significant changes to planned procedures, any difficulties encountered during the course of the audit and, if applicable, reviews, including any restrictions on the scope of work or access to required information and the cooperation that the external auditor received during the course of the audit and, if applicable, reviews.

(3) Review any significant disagreements among Management and the external auditor in connection with the preparation of the financial statements.

(4) Where there are significant unsettled issues between Management and the external auditor that do not affect the audited financial statements, the Committee shall seek to ensure that there is an agreed course of action leading to the resolution of such matters.

(5) Review with the external auditor and Management significant findings and the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented.

(6) Review the system in place to seek to ensure that the financial statements, management's discussion & analysis and other financial information disseminated to regulatory authorities and the public satisfy applicable requirements.

E. Financial Reporting Processes

(1) Review the integrity of the REIT's financial reporting processes, both internal and external, in consultation with the external auditor.

(2) Periodically consider the need for an internal audit function, if not present.

(3) Review all material balance sheet issues, material contingent obligations and material related party transactions.

(4) Review with Management and the external auditor the REIT's accounting policies and any changes that are proposed to be made thereto, including all critical accounting policies and practices used, any alternative treatments of financial information that have been discussed with Management, the ramification of their use and the external auditor's preferred treatment and any other material communications with Management with respect thereto. Review the disclosure and

impact of contingencies and the reasonableness of the provisions, reserves and estimates that may have a material impact on financial reporting.

F. General

(1) Inform the Board of matters that may significantly impact on the financial condition or affairs of the business.

(2) Respond to requests by the Board with respect to the functions and activities that the Board requests the Committee to perform.

(3) Periodically review this Charter and, if the Committee deems appropriate, recommend to the Board changes to this Charter.

(4) Review the public disclosure regarding the Committee required from time to time by NI 52-110.

(5) The Committee may at its discretion retain independent counsel, accountants and other professionals to assist it in the conduct of its activities and to set and pay (as an expense of the REIT) the compensation for any such advisors.

(6) Review in advance, and approve, the hiring and appointment of the REIT's Chief Financial Officer and any other senior officers responsible for financial reporting.

(7) Perform any other activities as the Committee or the Board deems necessary or appropriate.

6. Complaint Procedures

(1) Anyone may submit a complaint regarding conduct by the REIT or its employees or agents (including its external auditor) reasonably believed to involve questionable accounting, internal accounting controls, auditing or other matters. The Chair will have the power and authority to oversee treatment of such complaints.

(2) Complaints are to be directed to the attention of the Chair.

(3) The Committee should endeavour to keep the identity of the complainant confidential.

(4) The Chair will have the power and authority to lead the review and investigation of a complaint. The Committee should retain a record of all complaints received. Corrective action may be taken when and as warranted.

TAB 13

NEXPOINT
HOSPITALITY TRUST

FOR IMMEDIATE RELEASE

NOT FOR DISSEMINATION TO U.S. NEWS WIRE SERVICES OR DISSEMINATION IN THE UNITED STATES

NexPoint Hospitality Trust Issues Clarifying and Supplemental Disclosure

DALLAS and TORONTO, October 19, 2023 -- NexPoint Hospitality Trust ("**NHT**" or the "**REIT**") (TSX-V: NHT.U) has received requests for (i) clarification regarding its previous disclosure relating to the approximate US$87 million of convertible loans provided by entities controlled or managed by James Dondero primarily during the COVID-19 pandemic (the "**Loans**"); and (ii) supplemental disclosure to its management information circular dated September 11, 2023 (the "**Circular**") regarding the process undertaken with the TSX Venture Exchange (the "**TSXV**") whereby the TSXV requested amendments to the Loans issued between June 2021 and September 2022 in the aggregate amount of US$56,165,000 (the "**COVID Loans**").

Clarification Regarding Previous Disclosure

As a result of the COVID-19 pandemic, the REIT experienced material decreases in revenues, results of operations and cash flows. The impact to the global economy caused by the response to the COVID-19 pandemic also negatively impacted the REIT's ability to obtain new financing. The Loans were advanced, in most cases, in critical moments to principally fund the REIT's ongoing operating expenses and to satisfy interest and principal payments due on third party debt. In certain situations, the proceeds from the Loans were used to fund acquisitions designed to improve the financial condition of the REIT. Without the Loans, the REIT would likely not have been able to continue its operations as a going concern.

Each of the Loans was unsecured, had a 20-year term and bore interest at rates ranging from 1.82% per year to 7.5% per year (which were market interest rates at the time of their issuance). Of those Loans, the COVID Loans bore interest at rates ranging from 2.25% per year to 7.5% per year. As of June 30, 2023, approximately US$83 million of the Loans remained outstanding. From the time of issuance to the present, the holder of the Loans has had the right to convert the principal and interest owing under the Loans into class B units (the "**Class B Units**") of NHT Operating Partnership, LLC (the "**OP**") on the basis of the market price of the REIT's trust units (the "**Units**") at the time of conversion.

Previous disclosure of the REIT stated that the Loans were, subject to approval of the TSXV, convertible at any time at the election of the REIT into Class B Units. The REIT wishes to clarify and correct this earlier disclosure. The Loans are, and have always been, only convertible into Class B Units at the option of their respective holder. However, if any of the Loans are converted by their respective holders into Class B Units and the holder then elects to redeem those Class B Units, the REIT may elect to satisfy the redemption by issuing Units to the holder. Any issuance of Units or repayment of the Loans in Units would be subject to the approval of the TSXV.

NEXPOINT
HOSPITALITY TRUST

Supplemental Disclosure to Circular

As disclosed in the Circular, the COVID Loans were filed with the TSXV at various points during 2021 and 2022, as loan submissions pursuant to TSXV Policy 5.1 – *Loans, Loan Bonuses, Finder's Fees and Commissions* ("**Policy 5.1**"). The REIT filed in this manner as the Loans were not, as described above, convertible by the holder into publicly traded Units (Units were only issuable at the election of the REIT, subject to TSXV approval) and therefore, based on the guidance in Policy 5.1, were subject to filing under Policy 5.1.[1] As a result of filing under Policy 5.1, since any issuance of Units on a redemption of Class B Units received by a holder of the COVID Loans was subject to TSXV approval, the REIT believed its position was consistent with the requirements and guidance of Policy 5.1. The REIT commenced filing on this basis in early 2021 and these filings were not questioned until December 2022, when the TSXV advised the REIT that it believed the COVID Loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – *Private Placements* ("**Policy 4.1**") rather than loans under Policy 5.1. While all the Loans were filed with the TSXV, the TSXV only raised this issue with respect to the COVID Loans; it did not raise it with respect to the other Loans. Following this notification, the REIT engaged with the TSXV and presented support for its filings under Policy 5.1, but ultimately the TSXV concluded that Policy 4.1 should apply. Due to this determination and in order to satisfy the requirements of Policy 4.1, the TSXV required the following amendments (the "**Amendments**") to the COVID Loans (which amendments would bring the COVID Loans into compliance with the terms expressly prescribed by Policy 4.1 for convertible securities): (i) either the conversion feature be removed or limited to five years from the date of issuance of each COVID Loan (which represents the maximum length of the conversion period); (ii) the conversion feature be limited to the principal amount of the COVID Loan (rather than the principal amount plus interest); and (iii) the conversion price be fixed at a price equal to the market price of the REIT's Units on the TSXV at the time of the issuance of such COVID Loan.

There was no negotiation with the TSXV regarding the substance of the Amendments as the TSXV's position was simply that the COVID Loans had to be amended to comply with Policy 4.1. The REIT worked expeditiously to obtain consent to the Amendments from each of the lenders (the "**Lenders**") under each of the COVID Loans. With the Lenders' cooperation and desire to ensure the REIT's compliance with TSXV policies, the Lenders agreed to implement the Amendments. However, the REIT was not in a position to negotiate these amendments with the Lenders – it was seeking the cooperation of the Lenders to adjust the conversion provisions or remove them altogether to satisfy the TSXV policies. For one COVID Loan, the Lender agreed to remove the conversion right altogether. For the remaining COVID Loans, the Lenders opted to limit the conversion period to five years. The REIT did not enter into any other agreement, beyond the Amendments themselves, with the Lenders in connection with the Amendments. In that

[1] Policy 5.1 provides as follows: "…For the purposes of this Policy, the term "loan" will include any form of debt instrument issued by an Issuer that is not convertible into Listed Shares."

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circumstance, the board of trustees of the REIT (the "**Board**") determined that the concessions obtained from the Lenders were fair and reasonable.

The Board undertook a thorough review of the terms of the Amendments to the COVID Loans and concluded that the Amendments were in the best interests of the REIT. As described in the Circular, the Board: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units; and (iii) consulted with its legal advisors, to reach this conclusion. In considering the terms of the Amendments under (i) above, the REIT and the Board considered that the Amendments would provide a clear benefit to the REIT and unitholders (including minority unitholders) by (i) shortening the time period in which the conversion right can be exercised from 20 years to five years (or removing the conversion right altogether); (ii) fixing conversion prices for the COVID Loans at prices greater than the current market price; and (iii) reducing the amount convertible from principal and interest to only principal. As a result of the Amendments, the potential dilution of the REIT's unitholders would be materially reduced. Further, as failure to implement the Amendments would potentially result in the delisting of the Units, the Board determined that the Amendments were in the best interests of unitholders due to the likely adverse impact of delisting on the liquidity and value of the Units.

The REIT, Mr. Dondero, and the trustees and officers of the REIT, conducted reasonable inquiries pursuant to Section 8.1(2) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* to determine the units to be excluded from the minority approval vote on the Amendments.

About NexPoint Hospitality Trust

NexPoint Hospitality Trust is a publicly traded real estate investment trust, with its Units listed on the TSX Venture Exchange under the ticker NHT.U. NHT is principally focused on acquiring, owning and operating well-located hospitality properties in the United States that offer a high current yield and in many cases are underperforming assets with the potential to increase in value through investments in capital improvements, a market-based recovery, brand repositioning, revenue enhancements, operational improvements, expense inefficiencies, and exploiting excess land or underutilized space. NHT owns 9 branded properties sponsored by Marriott, Hilton, Hyatt, and Intercontinental Hotels Group, located across the U.S. NHT is externally advised by NexPoint Real Estate Advisors VI, L.P.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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EXHIBIT 23

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December 18, 2023

Mani Sanghera
Compliance & Disclosure - General Inquiries
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M5H 1S3

VIA EMAIL (complianceanddisclosure@tsxventure.com)

Dear Mr. Sanghera,

Re: NexPoint Hospitality Trust

I write further to my letter to you concerning NexPoint Hospitality Trust (**"NHT"**), sent on behalf of Highland Capital Management, L.P. (**"Highland"**) on October 27, 2023.

The responding email from the TSXV's Compliance Services, dated October 30, 2023, notified us that we would likely hear nothing further from the TSXV on this matter. However, on October 31, 2023, Stella Yu of the TSXV asked for Highland's consent to provide the letter to NHT and its counsel. I conveyed Highland's consent the following day.

I write to ask whether we can be of any additional assistance in this matter. I also write to inquire whether the TSXV is able to share with us any update concerning its response to our October 27, 2023 letter – and, in particular, whether the TSXV intends to require amendments to the convertible notes that are the subject of the letter, in order to bring them into compliance with TSXV Policy 4.1. As will be apparent from the overwhelming dilution that these non-compliant convertible notes have the potential to cause minority unitholders to suffer if unamended, this is a matter of significant importance to Highland's interests, and to those of NHT's other minority unitholders.

Sincerely,

POLLEY FAITH LLP

Jeffrey Haylock
JH/dc

EXHIBIT 24

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE: . Case No. 19-34054-11(SGJ)

HIGHLAND CAPITAL MANAGEMENT, L.P., . Earle Cabell Federal Building, 1100 Commerce Street, Dallas, TX 75242-1496

Debtor. . March 4, 2020, 1:31 p.m.

. . . .

TRANSCRIPT OF HEARING ON MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES"
BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Highland Capital Management:
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By: JEFF POMERANTZ, ESQ.
GREG DEMO, ESQ.
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Hayward & Associates PLLC
By: MELISSA HAYWARD, ESQ.
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Audio Operator: Michael F. Edmond

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	Rogge Dunn Group, PC By: BRIAN SHAW, ESQ. 500 N. Akard St., Suite 1900 Dallas, TX 75201
For Official Committee of Unsecured Creditors:	Sidley Austin LLP By: MATT CLEMENTE, ESQ. DENNIS TWOMEY, ESQ. One South Dearborn Chicago, IL 60603
	Sidley Austin LLP By: PENNY REID, ESQ. 2021 McKinney Avenue, Suite 2000 Dallas, TX 75201
For CalPERS:	Singer & Levick, P.C. By: MICHELLE SHRIRO, ESQ. 16200 Addison Road, Suite 140 Addison, TX 75001
For James Dondero:	Lynn, Pinker, Cox & Hurst, LLP By: MICHAEL LYNN, ESQ. JOHN BOND, ESQ. 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201
For Redeemer Committee:	Frost Brown Todd LLC By: MARK PLATT, ESQ. 100 Crescent Court, Suite 350 Dallas, TX 75201
For Issuers Group:	Jones Walker LLP By: AMY ANDERSON, ESQ. 811 Main Street, Suite 2900 Houston, TX 77002

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- - -

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1 THE COURT: -- set a motion of the debtor for entry
2 of an order authorizing but not directing the debtor to cause
3 distributions to certain related entities.
4 Let's get lawyer appearances in the courtroom.
5 MR. POMERANTZ: Good afternoon, Your Honor. Jeff
6 Pomerantz and Greg Demo, Pachulski Stang Ziehl & Jones, on
7 behalf of the debtors.
8 THE COURT: Thank you.
9 MS. HAYWARD: Good afternoon, Your Honor. Melissa
10 Hayward and Zachary Annable of Hayward & Associates on behalf
11 of the debtor.
12 THE COURT: Thank you.
13 MR. CLEMENTE: Good afternoon, Your Honor. Matthew
14 Clemente, Dennis Twomey, and Penny Reid from Sidley Austin on
15 behalf of the Official Committee of Unsecured Creditors.
16 THE COURT: Thank you.
17 MS. SHRIRO: Good afternoon, Your Honor. Michelle
18 Shriro on behalf of CalPERS. And I also have my co-counsel
19 Louis Cisz from Nixon Peabody, and he is -- he should be on the
20 line.
21 THE COURT: Okay. Thank you.
22 MR. LYNN: Good afternoon, Your Honor. Michel Lynn
23 and John Bonds for James Dundero.
24 THE COURT: Okay. Thank you.
25 MS. PATEL: Good afternoon, Your Honor. Rakhee

1 Patel, Winstead PC, on behalf of Acis Capital Management, LP,
2 and Acis Capital Management, GP, LLC. Also, I have my co-
3 counsel Mr. Brian Shaw of the Rogge Dunn Firm on behalf of the
4 same clients.
5 THE COURT: Thank you.
6 MR. PLATT: Good afternoon, Your Honor. Mark Platt
7 firm Frost Brown Todd on behalf of the Redeemer Committee of
8 the Highland Crusader Fund. And I believe Terry Mascherin is
9 on the phone, as well --
10 THE COURT: All right.
11 MR. PLATT: -- from Jenner & Block.
12 THE COURT: Thank you.
13 MS. ANDERSON: Good afternoon, Your Honor. Amy
14 Anderson with Jones Walker on behalf of the Issuers. I believe
15 Mr. James Bentley with Schulte Roth is also on the phone on
16 behalf of the same parties.
17 THE COURT: Okay. Thank you.
18 All right. We do have a large number of people on
19 the phone. I'm just going to go through the live lines and
20 take roll. Asif Attarwalla for UBS, are you there?
21 MR. ATTARWALLA: Here. Yes, Your Honor.
22 THE COURT: All right. James Bentley?
23 MR. BENTLEY: Yes, Your Honor. I'm here.
24 THE COURT: Okay. Also Jeff Bjork from Latham?
25 Yes/no?

1 (No response)

2 THE COURT: All right. Earnestiena Cheng for FTI?

3 MS. CHENG: Yes, Your Honor.

4 THE COURT: Okay, thank you. And Louis Cisz, I think

5 we heard he was CalPERS co-counsel. Are you there?

6 MR. CISZ: Yes, I am, Your Honor.

7 THE COURT: All right. Thank you. Kimberly Gianis

8 for Contrarian? Yes/no?

9 (No response)

10 THE COURT: All right. Terry Mascherin, I think we

11 heard he was there for the Redeemer Committee.

12 MR. MASCHERIN: Yes, Your Honor.

13 THE COURT: Okay. I'll just ask anyone else on the

14 phone who wishes to appear, go ahead at this time.

15 (No response)

16 THE COURT: All right. That may be it.

17 All right. Mr. Pomerantz, I see a 20-minute time

18 estimate on our calendar. I'm not sure where that came from,

19 but that --

20 MR. POMERANTZ: I think that's quite aggressive.

21 THE COURT: Okay.

22 MR. POMERANTZ: Good afternoon again, Your Honor.

23 Jeff Pomerantz, Pachulski Stang Ziehl & Jones. First, I want

24 to thank Your Honor for scheduling the hearing on shortened

25 time. I would also like to introduce once again the three

1 members of the independent board who have been appointed
2 pursuant to the settlement, Your Honor, that Your Honor
3 approved on January 9th. That's James Seery, John Dubel, and
4 Russell Nelms.
5 THE COURT: Okay. Hello.
6 MR. POMERANTZ: I thought it might be helpful, Your
7 Honor, to provide Your Honor with a brief background of each
8 board member, how they have been approaching their duties as
9 independent directors, and what the focus has been the first
10 two months of the case. And then I will go into the background
11 of this present motion.
12 THE COURT: Okay.
13 MR. POMERANTZ: James Seery will be the debtor's
14 witness at today's hearing, and he's a 30-year restructuring
15 lawyer with extensive experience with high-yield and distressed
16 investing both as a principal and manager which is precisely
17 the business in which the debtors operate. He is an attorney
18 licensed to practice in New York who has passed and held the
19 Series 7, 63, 79, SIE and Series 24 FINRA principal
20 designations.
21 From April 2012 to 2017, he was the president and
22 senior investing manager of RiverBirch Capital. And RiverBirch
23 is an SEC-registered investment advisor managing a $1.3 billion
24 global long short fund that focused on high yield loans, bonds,
25 CLOs, and distressed investments. Prior to that, Mr. Seery

1 spent ten years as a senior high yield manager at Lehman
2 Brothers, and he was the global head of Lehman Brothers fixed-
3 income loan business.
4 Accordingly, Mr. Seery brings to his role as an
5 independent director a unique combination of a legal
6 background, restructuring experience, and a deep knowledge of
7 the highly regulated business in which the debtor operates.
8 Mr. Dubel brings 35 years' practice in the
9 restructuring area. His experience includes turnaround
10 management, crisis management, operational restructurings, and
11 corporate acquisitions and divestitures. He's worked at both
12 sides of the table, both on the company side and other side.
13 And he brings a unique perspective to each situation, and he
14 spent the last ten years being an independent director for a
15 wide range of distressed companies including Purdue Pharma
16 which obviously is the newest in current Chapter 11, WMC
17 Mortgage, Wartaco (phonetic), FXI, and ResCap.
18 And as an independent board member, he's plated a
19 principle role in overseeing management, negotiating with
20 creditors, supervising and investigating resolution, either
21 consensually or through litigation of insider and affiliate
22 claims, and also spearheading reorganization efforts.
23 I'm sure Your Honor is familiar with Russell Nelms
24 but briefly he was a distinguished bankruptcy litigator with
25 Carrington Coleman for 20 years which followed a stint of six

1 years as a United States Army judge advocate, and also he sat
2 with the bankruptcy court here in Fort Worth from 2004 to 2018.
3 Your Honor, these individuals bring a complementary
4 skill set to the independent board that have made them uniquely
5 qualified to manage the debtor's restructuring efforts in this
6 case, that bring a combination of sophisticated asset
7 management experience, financial restructuring, a legal
8 insolvency background, and judicial experience. They've been
9 involved in many cases on all sides of the aisle, whether it's
10 been alleged wrongdoing or questionable conduct with people
11 they've ever had to supervise as a board member, advise as a
12 restructuring lawyer, work with as a financial advisor, or
13 administer their cases as a judge.
14 Mr. Seery and Dubel were selected by the Committee
15 not only because of their relevant expertise but because of
16 their commitment to independence and ability to stand up to
17 strong personalities that exist on all sides of this case. Mr.
18 Nelms, while originally identified by the debtor, was scheduled
19 by the Committee, and was ultimately chosen to be the third
20 board member by Mr. Seery and Dubel from a group of highly-
21 qualified candidates.
22 Your Honor, I provide this background to stress that
23 the independent board consists of individuals whose background
24 and experience speak to their independence, experience, and
25 strength, and who take their job seriously to do what they

1 believe is right for this debtor, and they're not bring
2 influenced by any party in this case, be that the debtor, Jim
3 Dondero, members of the management committee, members of the
4 debtor's management, or the creditors' committee. The
5 reputations of each of these gentlemen at are stake in a case
6 like this, and they take their attendance very seriously.
7 Upon taking over on January 9th, 2020, the board
8 quickly made a few observations about the current circumstances
9 that have guided their actions today. First, the board
10 understood that the debtor was where it was in part due to many
11 years of intense litigation arising out of sometimes aggressive
12 management decisions or failure to settle certain employee
13 disputes and that the litigation led to cost and diversion of
14 time and energy for what the debtor did best which was manage
15 assets.
16 The board concluded that for case to succeed, the
17 board would have to chance the culture from one of litigation
18 to reconciliation and consensus building. It doesn't mean that
19 the debtor will back down from defending itself from claims
20 that it doesn't believe are legitimate but rather the
21 litigation that the company under their watch would be involved
22 in would need to be carefully vetted by the independent board,
23 outside advisors, and the results of which would guide the
24 board's conduct.
25 The board's focus has and continues to be operating

1 the debtor's business in accordance with its obligations of
2 their debtor in possession in conformance with its statutory,
3 contractual, and fiduciary obligations as an investment
4 advisor. By scrupulously meeting its obligations as an
5 investment advisor, the debtor will continue to enhance the
6 asset management business and avoid the litigation that
7 contributed to this case.
8 Second, the board understood the relationship between
9 the debtor's largest creditors and senior management had
10 materially deteriorated and that there was severe lack of trust
11 that creditors had with respect to management. The board
12 initially determined, has determined to continue retaining the
13 services of senior management because it believes that their
14 historical background and deep knowledge of the debtor's assets
15 provide material value to the estate. However, the board's
16 decisions thus far have and will continue to be based upon
17 their independent review of the facts and circumstances and
18 based upon consultation with outside advisors as appropriate.
19 Third, the board believe that a lengthy stay in
20 Chapter 11 only would serve to erode asset value while at the
21 same time leading to extensive restructuring costs. The Court
22 and the board developed a timeline that will hopefully lead to
23 a confirmed plan at the end of the year.
24 Against this backdrop, the board is focused on the
25 following things the first two months of the case. Initially,

1 the board met with all department heads and other members of
2 senior management including Mr. Dondero and let them know that
3 the board was now in charge and that all business decisions
4 needed to be run by the board subject to the board delegating
5 authority as it deemed appropriate.
6 The board has had several calls with the committee
7 and its professionals to discuss among other things the board's
8 initial determination as to staffing levels and employee
9 compensation, time-sensitive transactions that needed the
10 committee's input under the Court's approved operating
11 protocols, and the proposed timeline for achieving
12 restructuring. There is an in-person meeting scheduled next
13 week in New York City between all the committee members and
14 their professionals and the debtor and their professionals.
15 Members of the board have also reached out to
16 individual committee members and have had or will have meetings
17 with them to understand their specific concerns with the debtor
18 and to importantly have a dialogue about the claims they have
19 against the debtor, as resolving the claims against the debtor
20 is a key part of achieving a consensual restructuring in this
21 case.
22 The debtor's asset basis is also extremely complex,
23 and the board has worked hard to get a grasp on how best to
24 maximize their value. The board has analyzed the debtor's
25 liquidity needs and worked with the debtor's chief

1 restructuring officer to develop a 13-week cash flow and
2 otherwise address how to enhance liquidity. The board has also
3 conducted a thorough review of the debtor's employee basis,
4 including performance reviews and address ongoing staffing and
5 compensation in a manner that the board believes will sustain
6 the debtor's business operations and maximize value.
7 Related to the motion before the Court, the board has
8 evaluated the status of certain funds which were in the process
9 of being wound down at the commencement of the case and has
10 supervised their wind-down in a manner consistent with the
11 debtors' fiduciary, statutory, contractual liabilities. The
12 board has also commissioned outside counsel to provide an
13 independent analysis of the significant litigation claims that
14 are facing the debtor. And as I mentioned, the board
15 anticipates engaging with these creditors to seek a resolution.
16 The board is acutely aware that resolving
17 consensually claims of creditors and claims the estate has
18 against third parties is the only way to restructure this
19 debtor efficiently and economically. I'll now turn Your Honor
20 to the background with respect to the motion, explain the
21 relief requested, and address the two objections that are
22 before the Court.
23 Your Honor will hear testimony from Mr. Seery that
24 the debtor is the asset manager of two hedge funds, Dynamic and
25 ARF, that are in liquidation because of redemption requests

1 from large non-affiliated investors that render the funds
2 economically not viable. The term of the third fund, which is
3 a private equity fund, Restoration Capital expired, and the
4 governing board comprised of large institutional pension funds
5 has refused to grant further extensions.
6 Mr. Seery will testify that while these wind-downs
7 were already in process and fully disclosed to the Court prior
8 to the installation of the independent board, the board
9 evaluated the decision to wind down the funds independently of
10 the debtor's decision and decided that the prudent exercise of
11 the debtor's business judgment was to continue with the wind-
12 down. Neither the committee nor Acis challenge the board's
13 selection to continue with the wind-down.
14 You will hear testimony from Mr. Seery that a
15 priority of the independent board was to make sure that the
16 debtor operated in accordance with applicable law to ensure
17 that the debtor fills its obligations to investors and doesn't
18 act or fail to act in a manner which could expose the debtor to
19 liability. After all, as I mentioned, Your Honor, a material
20 reason why the debtor is before the Court is because of
21 litigation claims that have plagued it over the last several
22 years.
23 Mr. Seery will testify that in evaluating the
24 debtor's duties and obligations as an asset manager of these
25 three funds, the board consulted with bankruptcy counsel with

1 respect to the applicability of the operated protocols and
2 domestic and Cayman counsel specializing in advising funds with
3 respect to their obligations under the transactional documents,
4 the Advisors Act, and general fiduciary duty obligations.
5 Tim Silva, a partner of WilmerHale, the debtor's
6 outside firm that provides fund advice, is present in the
7 courtroom and will be available to answer any questions the
8 Court or the parties have. Dennis Olarou, a partner with Carey
9 Olsen, is on the phone. He is the debtor's Cayman counsel and
10 also available.
11 Importantly, Mr. Seery will testify that the
12 independent board made the decisions that led to the filing of
13 this motion based upon their own expertise and the advise of
14 outside counsel and did not rely on the advice of the debtor's
15 employees or any of the related parties.
16 He will further testify that based upon the input of
17 outside counsel, the independent board concluded, one, that the
18 operating documents governing the funds did not permit the
19 debtor to unilaterally withhold distributions from some
20 investors and not others; that, two, the debtor risked
21 breaching its fiduciary duty to investors under principles of
22 common law if it withheld distributions on its own; and that,
23 three, the debtor risked liability under the Advisors Act if it
24 essentially attempted to use its position as an investment
25 manager to gain leverage against investors in connection with

1 an unrelated matter, to wit, potential claims that the estate
2 may have.
3 The motion describes in detail the nature and extent
4 of the debtor's obligations, and I think the substance of that
5 is not challenged by either the Committee or Acis. I didn't
6 read their objections to challenge that the debtor has these
7 obligations and seeks to fulfill them.
8 Based upon the foregoing and to make sure that the
9 debtor didn't expose itself to liability, Mr. Seery will
10 testify that the board decided that it was obligated to
11 exercise its authority as asset manager to distribute the funds
12 to all investors. After consultation with the bankruptcy
13 counsel, Mr. Seery will testify that the independent board
14 decided to provide the Committee with notice prior to making
15 such distributions as were required by the operating protocols
16 approved as part of the settlement.
17 The Committee objected to the distributions which led
18 to the filing of this motion. The objections relate to
19 distributions to be made as follows. Mr. Seery will testify
20 that Dynamic proposes to distribute $35 million of investor
21 funds that are held by Dynamic of which CLO Holdco stands to
22 receive $872,000 and Mr. Okada stands to receive $4,176,000.
23 With respect to ARF, Mr. Seery will testify that they
24 propose to distribute $22 million of investor funds held by
25 ARF. HoldCo stands to receive $1.5 million. And with respect

1 to Restoration Capital Partners, it proposes to distribute
2 $123,250,000 of which 2.1 million will be received by ACM
3 Services and, importantly, the debtor will receive 18 and a
4 half million dollars, the balance of approximately 121 million
5 would be distributed to non -- or 103 million would be
6 distributed to non-related parties, including CalPERS which
7 filed the statement with the Court.
8 The Committee and Acis argue that the Court should
9 prohibit the debtor from making distributions to related
10 parties, notwithstanding the debtor has contractual, fiduciary,
11 statutory obligations to do so as an asset manager. It is
12 important for the Court to understand that the money to be paid
13 to these related parties is not the debtor's money, it's not
14 property of the estate. It's actually funds that are the
15 investors' funds that were invested in these various funds.
16 Essentially, the Committee argues and Acis argues
17 that because the debtor may assert claims against some of all
18 of these related parties at some time in the future, the Court
19 should prohibit the debtor from authorizing the distribution of
20 non-debtor estate funds. Essentially as we said in our papers,
21 the objectors are asking this Court to issue a pre-judgment
22 write of attachment adjoining these distributions without the
23 filing of any complaint which would assert causes of action,
24 without the need to satisfy applicable standards for a pre-
25 judgment writ either under Federal Rule of Civil Procedure 64

1 estate law, and without appropriate notice to the parties and
2 an opportunity to object.
3 The objectors want to use the debtor's position as an
4 asset manager to stop distribution of funds in which the debtor
5 has no interest to gain a potential litigation advantage
6 against these related parties. The debtor just submits that is
7 not appropriate. The Committee and Acis spent a lot of time in
8 their papers talking about the allegations and in some estate
9 case findings against the debtor's prior management relating to
10 the operation of the debtor's business, some of which have
11 matured into claims against the estate.
12 However, the fact that the debtor's actions taken by
13 prior management led to claims against the debtor is not
14 legally relevant as to whether the debtor should be permitted
15 to make these distributions of non-estate funds. Allegations
16 of prior wrongdoing would not be sufficient in the context of a
17 pre-judgment attachment, and it should not form the basis for
18 essentially the injunctive relief the Committee and Acis urge
19 to the Court.
20 The Committee also argues that because the
21 Committee's currently investigating claims against the released
22 parties and other insiders that the distribution should be held
23 up essentially indefinitely until the Committee completes its
24 investigation. Whether or not the estate has claims against
25 the related parties and insiders is unknown at this point

1 except for the notes which I will address in a moment.
2 Also, whether or not there are claims and how the
3 related parties acquired their investment in the funds is also
4 unknown at this time. Since January 9th, the Committee has had
5 standing to investigate and prosecute these claims and the
6 debtor is cooperating with the Committee in its investigation.
7 If legitimate claims exist, they should most certainly be
8 prosecuted, and the independent board will cooperate with the
9 Committee in its efforts.
10 However, at this point other than with respect to the
11 notes, there is no admissible evidence that any claims exist,
12 and no claims have been clearly articulated other than some
13 vague allegations of fraudulent conveyance, breach of fiduciary
14 duty, the garden variety of claims you would expect to be
15 asserted in a case like this. Again, no bankruptcy court, no
16 non-bankruptcy court would be authorized to enjoin payments on
17 the basis of these vague and unasserted claims, and the Court
18 shouldn't accept the invitation to do so wither.
19 The Committee also points to certain demand notes
20 executed by Jim Dondero, Mark Okada, and ACM Services in favor
21 of the debtor as a basis for withholding the distributions.
22 The debtor has made a demand on Mr. Okada to pay back the note,
23 and he has asserted that he may have potential offsets and the
24 nature of potential service obligations and expense
25 reimbursements allegedly owed to. At some point in time, we

1 suspect those issues will be resolved either consensually or
2 there will be litigation to recover the demand.
3 ACM Services which is owned 75 percent by Mr. Dondero
4 and 25 percent by Mr. Okada, executed several notes in favor of
5 the debtor of which 850,000 are demand notes. The total amount
6 is approximately seven and a half million. The remaining notes
7 are current and have been paid down over the years.
8 The debtor has not made demand on ACM Services for
9 payment of the notes, nor have they made demand on Mr. Dondero
10 for payment of the notes he issued in favor of the debtor. Mr.
11 Seery will testify that the reason for that is that, as I
12 indicated before, the board recognizes that in order for there
13 to be a consensual restructuring in this case, it's going to
14 involve not only resolution with the creditors and their claims
15 but also resolution with Mr. Dondero or potential claims the
16 estate has.
17 The independent board at this early stage in the case
18 does not believe that commencement of an adversary proceeding
19 against Mr. Dondero at this time is in their best interest. If
20 this case turns into a litigation case, and as Your Honor
21 experienced previously, then such litigation will be commenced.
22 However, until the board has the opportunity to try to forge a
23 consensual resolution, aggressive action is premature. The
24 last thing, Your Honor, CLO Holdco is not a party to any demand
25 notes.

1 THE COURT: Let me stop you.

2 MR. POMERANTZ: Sure.

3 THE COURT: You mentioned dollars on the notes. The

4 note receivable from Okada I think is 1.3 million.

5 MR. POMERANTZ: With credentials, yes.

6 THE COURT: And then you mentioned roughly seven and

7 a half million of notes receivable from HCM Services.

8 MR. POMERANTZ: Of which 950 are demand notes. The

9 rest are currently before me in accordance with the terms.

10 THE COURT: Okay. You didn't mention a dollar amount

11 on the note receivable from Dondero. My notes show 9.3

12 million.

13 MR. POMERANTZ: Yeah, and so I think that's around

14 that --

15 THE COURT: Is that a demand note or notes?

16 MR. POMERANTZ: That is a demand note and then the

17 related party notes, yes --

18 THE COURT: Okay.

19 MR. POMERANTZ: -- Your Honor. And, again, we're now

20 the board knows, fully aware. The board could have commenced a

21 lawsuit. Honestly, Your Honor, the Committee could have

22 commenced a lawsuit in the last two months. I suspect the

23 Committee also would like to see a consensual restructuring.

24 And I think parties are taking the view of, again,

25 this can be a litigation case which would be like a lot of

1 money for all the professionals, not really do all that well
2 for the creditors. Or the parties could cooperatively work
3 towards a restructuring to see based upon the leverage, based
4 upon the claims everyone has that it makes more sense. And the
5 board's determination, again, made on its own coming into this
6 case in the last two months is that proceeding aggressively now
7 just does not make sense.
8 Even though it has not commenced any litigation
9 against the related parties nor presented any evidence of any
10 claims against the related parties, the Committee asks this
11 Court to use its equitable powers under Section 105 to enjoin
12 the distribution again of non-estate funds to the related
13 parties. Your Honor, bankruptcy court -- bankruptcy
14 practitioners in certain cases love to use 105, assert 105. My
15 experience has been when you assert 105 and that's all you
16 assert 105, it really means you don't have much authority and I
17 think that's the case here.
18 The courts have held that 105 is not -- grant the
19 court authority to be a roving commission to do equity because
20 it has to be tethered to something in the Bankruptcy Code.
21 Here the proper way for the Committee to obtain the relief they
22 sought was to file a complaint and seek pre-judgment remedy,
23 either an attachment under Rule 64 or an attachment under
24 applicable provisions of Texas law or other applicable law, or
25 an injunction under FRCP 65.

1 The debtor would not stand in the way if the
2 Committee decided to do that. That's what the debtor bargained
3 for. They gave the Committee the authority to do that. The
4 Committee has not yet done that. And the Court should just not
5 allow the debtor -- the Committee to use the debtor's position
6 as fiduciary to its investors as leverage. That's what's
7 really happening. The only reason we're here is because the
8 debtor is the asset manager of these other funds, and the
9 Committee and Acis want the debtor to use that leverage and
10 somehow to gain an advantage.
11 Your Honor, we would submit that the fiduciary duty
12 of the estate is to act in accordance with its obligations, and
13 that's the primary fiduciary duty and that the creditors are
14 best served if the company complies with its obligations and
15 doesn't expose the estate to any liability.
16 Lastly, Your Honor, I want to address the Committee
17 and Acis's allegations regarding the circumstances surrounding
18 the sale of the MGM shares, the proceeds of which the debtors
19 intend to use to distribute as part of the RCP fund. Whether
20 or not Mr. Dondero's authorized to make that trade, it's really
21 irrelevant to the issues before the Court. The independent
22 board first learned about the trade only a few weeks ago, and
23 the independent board -- and, again, this happened back in
24 November, two months before the independent board took over.
25 They promptly investigated the circumstances around the trade,

1 engaged counsel to advise whether it was binding and,
2 importantly, evaluated whether the trade was a sound exercise
3 in the debtor's business judgment at that time.
4 The board concluded that the trade was binding and
5 that it in fact was a good trade as of November 2019 and
6 disclosed that information to the Committee and engaged the
7 Committee in a dialogue to discuss the options that the debtor
8 had with respect to that trade. The Committee, while I
9 understand was not unanimous, ultimately agreed with the
10 independent board that it was in the debtor's best interest to
11 consummate that trade. While we understand that the Committee
12 and Acis may want to investigate the circumstances surrounding
13 that trade to determine whether the estate has any colorable
14 claims that could be asserted, that doesn't provide a basis for
15 enjoying the distribution of the funds.
16 Moreover, the allegation in Acis papers that Mr.
17 Dondero used his position on the board of MGM to facilitate the
18 trade so that ACM Services could receive $2.1 million of 123
19 and $250,000 sale, it just lacks and factual support. And, in
20 fact, Mr. Dondero has steadfastly encouraged the investment
21 board not to sell the MGM shares because he believes they will
22 continue to appreciate and the estate and its creditors would
23 be benefitted thereby.
24 The reason that the RCP shares were sold is as I
25 mentioned before, the RCP, the term of that private equity fund

1 expired. No more extensions were given, and the debtor as a
2 fiduciary and as an asset manager needed to liquidate the
3 assets in that estate which included the shares. But, again,
4 if there are claims surrounding how that happened, we
5 understand there's concern that the creditors have about the
6 circumstances, they can investigate them and the independent
7 board will surely cooperate with such investigation.
8 In conclusion, Your Honor, this independent board was
9 installed because of its independence and sophistication in
10 managing a business as complex as the debtor's. As you will
11 hear in the testimony, the independent board has been
12 thoughtful and thorough in its approach to the issues raised by
13 this motion and is trying to manage the debtor in a responsible
14 way to maximize value and prevent the estate from incurring any
15 liability. The independent board understands and shares the
16 Committee's and Acis's decision to hold other parties
17 accountable for any liability they have against the debtor
18 arising out of conduct that occurred pre- or post-bankruptcy.
19 But trying to use the debtor's role as an independent asset
20 manager and fiduciary duty to investors is inappropriate and
21 create risks for the estate.
22 For these reasons, Your Honor, the debtor
23 respectfully requests that the Court approve the motion and
24 overrule the objections.
25 THE COURT: All right, thank you. Other opening

1 statements, Mr. Clemente?
2 MR. CLEMENTE: Yes, Your Honor. You actually touched
3 on a question that I had. I assume I have more fulsome
4 comments that I had anticipated making after testimony, but so
5 I would reserve the opportunity to do that. It was quite a
6 lengthy opening there, so I didn't know whether there was going
7 to be the opportunity for that after testimony, but --
8 THE COURT: Certainly.
9 MR. CLEMENTE: -- I certainly want to reserve that.
10 Thank you, Your Honor.
11 So I do have some opening remarks prepared, but I'm
12 going to react a little bit to what I just heard. I and the
13 Committee do not dispute the credentials of the board. We
14 obviously were involved in choosing them. I heard a lot about
15 the duty to, quote/unquote, investors. I don't think I heard a
16 word about the duty to the creditors and to the estate. And I
17 think it's important when thinking about the investors that Mr.
18 Pomerantz keeps referring to, the Committee is not talking
19 about the legitimate third party investors, the CalPERS. The
20 Committee is talking about the very people that were in charge
21 of this debtor while breaches of fiduciary duty were rampant
22 and their related entities that resulted in the filing of this
23 bankruptcy case.
24 And I find it a little bit rich, Your Honor, that
25 their debtor is using the duty to investors to include third

1 parties to try and come in here and passionately argue that
2 distribution should be made at this time to these insider
3 parties without a word at all about why it may actually be in
4 the creditors' best interest or this estate's best interest to
5 not make those distributions at this time. So those were a
6 couple of comments that struck me as I was listening to what
7 Mr. Pomerantz said.
8 But let me be clear, Your Honor, as Your Honor is
9 aware the debtor is in bankruptcy because of the documented and
10 egregious breaches of fiduciary duties and contractual
11 obligations to its creditors and its propensity for fraudulent
12 and litigious conduct as documented. Mr. Dondero and until
13 recently Mr. Okada dominated all aspects of the debtor and
14 controlled all of its decision-making, including the decision-
15 making that led various tribunals, including this Court, to
16 conclude that the debtor had breached its fiduciary duty,
17 engaged in fraudulent conduct, and employed persons who are not
18 credible and not truthful.
19 Against this backdrop, Your Honor, the debtor wants
20 to make distributions to investors, again, the investors we're
21 talking about here are Mr. Okada, and entities owned and/or
22 controlled by Mr. Dondero and Mr. Okada without regard
23 apparently because I didn't hear anything about that to the
24 interest of creditors under the rubric of a fiduciary duty that
25 is supposedly owed to those insider parties, the same insider

1 parties, Your Honor, who were found to have breached the duties
2 to the creditors of this estate or to the investors which then
3 resulted in them becoming creditors of this estate and led to
4 the bankruptcy.
5 Your Honor, I think the irony is fairly thick, and I
6 don't think the Court should allow the distributions at this
7 time. These insider parties, and I'm glad Mr. Pomerantz
8 mentioned it to you because their papers did not mention the
9 notes that were owed, they owe the debtor millions of dollars.
10 The numbers that Your Honor read are just the direct notes
11 among those parties. They do not include the notes that are
12 owed by, for example, affiliated entities of Mr. Dondero. So
13 those numbers are even larger than what Mr. Pomerantz suggested
14 to Your Honor.
15 Second, as the debtors do finally disclose in their
16 papers, the insider parties receive certain of the insider
17 interests from the debtor pursuant to transactions that were
18 only recently disclosed to the Committee and not have been
19 examined by the Committee. So in many of the circumstances,
20 the very interests that are giving rise to the basis for these
21 distributions once belonged to the debtor.
22 Third, obviously, the insider parties are the focus
23 of the Committee's ongoing investigation of the estate causes
24 of action, and that's entirely appropriate given the long
25 history and the findings made by this Court and others

1 regarding the behavior of this debtor prior to the bankruptcy.
2 Your Honor, instead of allowing the distributions to
3 be made, the Court should direct that the distributions that
4 the debtor seeks to make to the insider parties to be placed
5 into a segregated interest-bearing account pending the
6 resolution of potential claims against the insider parties
7 including the collection of notes owed by the insider parties
8 and the investigation into the validity of the insider
9 interests.
10 If the insider parties have an issue with this,
11 obviously, they can come before Your Honor, perhaps they'll
12 come before Your Honor today, and explain to you why what is
13 being proposed is unfair to them or why despite the
14 circumstances surrounding this case, the rampant breaches of
15 fiduciary duty, the questionable transactions, and the
16 existence of the notes they owe the debtor they should receive
17 those distributions now. And we can do that after a fulsome
18 discovery of those parties, a fulsome record, full opportunity
19 to brief.
20 I believe, the Committee believes this is a very
21 sensible proposal, and it would seem to serve all interests.
22 The interests of the estate would be protected. Let's talk
23 about those. Obviously, we're more likely to recover on the
24 notes and any potential claims, including claims that the
25 insider interests were inappropriately obtained.

1 Mr. Pomerantz referred to the word "leverage."
2 Again, it's the estate, the estate should be thinking about how
3 it can actually collect on its claims and notes. So the word
4 "leverage" I don't think is appropriate here. It just seems
5 sensible. The interest of the insider parties would also be
6 protected. The money will be placed in a segregated account,
7 and the status quo would be preserved. And legitimate third
8 party investors, we are all fully in support of the legitimate
9 third party investors receiving their distributions. We've
10 never had an issue with that, Your Honor.
11 Mr. Pomerantz referred to the authority, Section 105.
12 I do believe the Court has ample authority under Section 105 of
13 the Bankruptcy Code to order the relief requested by the
14 Committee. Obviously, Section 105 is broad and, as we'll
15 discuss further later, it's been interpreted by this Court and
16 other courts to apply very broadly and in circumstances similar
17 to this.
18 Additionally, Your Honor, although I do not believe
19 105 needs to be tethered, I believe is the word that was used,
20 to other sections of the Code. I do believe that other
21 sections of the Code are implicated as the relief the Committee
22 requests impacts property of the estate which includes the
23 notes and potential claims against the insider parties as well
24 as the rights and obligations of the debtor under the various
25 contracts that Mr. Pomerantz referred to.

1 So, we have 105. If we need to tether it to
2 something, we can tether it to 541 and we can tether it to 363.
3 What we're asking the Court to do impacts property of the
4 estate, impacts the rights and obligations of the debtor.
5 Finally, Your Honor, there was a long discussion or
6 somewhat of a discussion about the fact that the Committee has
7 not sought a preliminary injunction or has not filed claims
8 against the insider parties. First, again, I believe Section
9 105 gives the Court the authority that it needs to provide the
10 relief. Second, the Court has the flexibility should it choose
11 to construe or find it necessary to construe our objection as a
12 request for a preliminary injunction and the request satisfies
13 that standard.
14 Third, Your Honor, this has been an expedited process
15 initiated by the debtor. If this Court believes that other or
16 further proceedings or processes are necessary or appropriate,
17 the Court should allow the parties the time for that. We
18 agreed to an expedited motion practice under the protocols.
19 That's a fact. The protocols cover a variety of circumstances
20 designed with the exigencies of the debtor's business in mind,
21 not designed with trying to speed distributions to Dondero,
22 Okada, and the insider parties. There simply is no exigencies
23 surrounding that, and the Committee should not be prejudiced if
24 this Court believes a further or other procedural vehicle is
25 necessary.

1 And a moment, Your Honor, on the investigation, as
2 Your Honor is aware the insider parties have dominated the
3 debtor for years. Only recently January 9th the Committee has
4 gotten the ability to investigate. And to date, we've been
5 doing that. I do dispute what Mr. Pomerantz said about the
6 debtor's cooperation. I believe that they've used words to
7 that effect but we've not gotten the documents that we need.
8 This is a complicated enterprise as Your Honor is aware. It's
9 unrealistic to think that we would be in a position to bring
10 claims against insider parties at this particular time in the
11 case. And we cannot be prejudiced by saying we should have
12 completed our investigation and had brought claims every time
13 the debtor thinks it should make a distribution to Mr. Dondero
14 or one of its related entities.
15 And so, Your Honor, to sum up, we think that the most
16 logical solution here and frankly the one that I assume the
17 debtor would have agreed with me on would be to come to this
18 Court, allow the distributions to be made to all the third
19 party investors, to withhold the distributions to the related
20 parties while the investigation occurs, while the notes are
21 settled, and while the Committee determines and the Court may
22 perhaps ultimately determine whether the interest that gave
23 rise to those distributions were in fact appropriately with
24 those parties.
25 Instead, we're here talking about duties owed to,

1 quote/unquote, the investors without considering what it is
2 that's owed to these creditors and to this estate. And with
3 that, Your Honor, we would ask that the motion be denied or
4 however you'd look at it but that the relief we noticed in our
5 paper be ordered by Your Honor.
6 THE COURT: Let me follow up and make sure I
7 understand a couple of things. You've said a couple of times
8 that it's just the distributions that would go to related
9 investors, Mark Okada, CLO Holdco, HCM Services. And I got the
10 impression from your pleadings as well as your oral statements
11 that the Committee is not challenging in any way the decision
12 to wind down these three funds, if you will. You know, my
13 reading of the pleadings was November 2019, you know, less than
14 a month after the bankruptcy was filed or about a month after
15 the bankruptcy was filed, you know, there were significant
16 redemptions. In the face of significant redemptions, the
17 debtor decided it was appropriate to wind these down.
18 Is that going to be the subject of evidence and
19 testimony today? Is the Committee at all concerned about how
20 that all played out, whether it was legitimate unaffiliated
21 investors seeking redemption or if it was by chance insider
22 investors?
23 MR. CLEMENTE: No, Your Honor. The Committee is not
24 challenging the wind-down as I believe you're referring to. We
25 are not doing that, Your Honor.

1 THE COURT: Okay. And this may be one instance where
2 it's kind of hard for me to separate what happened in the
3 related case of Acis versus this where we had all of a sudden
4 we don't want Acis to, you know, manage these in that case CLOs
5 anymore until redemptions were happening.
6 MR. CLEMENTE: I understand, Your Honor.
7 THE COURT: And the business judgment of that --
8 well, it's complicated, right.
9 MR. CLEMENTE: I completely understand.
10 THE COURT: It was, in the end of the day, depriving
11 Acis debtor of management fees. Same thing is happening here,
12 right? Highland is being deprived of management fees by the
13 wind-down of these three funds, but you're not challenging the
14 business judgment of the --
15 MR. CLEMENTE: That is correct, Your Honor.
16 THE COURT: -- whole process of the redemptions
17 period?
18 MR. CLEMENTE: That is correct, Your Honor.
19 THE COURT: Okay.
20 MR. CLEMENTE: There is a pot of funds sitting in
21 those funds, and there is a pot of funds sitting in RCP --
22 THE COURT: It was a legitimate non-affiliated
23 entity's --
24 MR. CLEMENTE: We're not challenging it, Your Honor.
25 THE COURT: Okay.

1 MR. CLEMENTE: What we are challenging obviously is
2 now the distribution of those funds to the related entities.
3 That's where we take issue with it at this particular moment in
4 time.
5 THE COURT: Okay.
6 All right. Who else wishes to make an opening
7 statement? I know Acis had a joinder or a slightly different
8 objection, I think.
9 MS. PATEL: Yes, Your Honor. Good afternoon.
10 Again, Rakhee Patel on behalf of Acis. And I'll address Your
11 Honor's question first. Acis has concerns about the wind-down
12 of these funds. I'll just clear with respect to it. And Your
13 Honor referenced, you know, perhaps we need to separate what
14 happened in the Acis case and whether that's happening here or
15 not.
16 Your Honor, I'm not sure from Acis's perspective that
17 we don't object to the wind-down of these funds. We just
18 frankly don't have enough information to kind of take a
19 position with respect to that whether these funds should be
20 wound down. But the fact of the matter is is in the lead-in
21 into this motion -- and this is sort of the source and subject
22 of Acis's additional objection and not just plain vanilla
23 joinder and with the Committee -- is is that the transactions
24 happened. The sale of the stock has happened. So whether it's
25 in connection with the wind-down of the funds or whether it's

1 just a sale, it's happened now.

2 So I'm not sure that we can unring that bell, but

3 Acis's whole point and as we sort of set out in our joinder and

4 our separate comment or objection was, Your Honor, the light of

5 day needs to be cast on this transaction as a whole and we need

6 to be talking about it that the transaction needs to be

7 discussed here in open court. And, frankly, the entire

8 creditor body needs to have and the Court needs to have

9 transparency with respect to that.

10 So to that point, Your Honor, the debtor filed the

11 motion to approve the distributions of the proceeds from the

12 sale in accordance with the procedures approved as part of the

13 broader settlement motion that Your Honor heard in January.

14 Now the debtor incredibly takes the position that this Court

15 and the creditors are effectively powerless to stop these

16 distributions. And here's the problems with that position.

17 First, from a technical legal perspective, the debtor

18 ignores the language of Section 363. Frankly, it's easy to

19 have a strong initial knee-jerk reaction that Section 363

20 doesn't apply here because there's no sale of property to the

21 estate. The MGM stock was held down in a different entity.

22 Your Honor, frankly, I did it myself. But when you analyze the

23 language of Section 363, it also prescribes the use of property

24 of the estate outside of the ordinary course of business. And

25 here, the use of property of the estate is the debtor's

1 valuable management rights of the various entities, so Dynamic,
2 AROF or AROF or NRCP.
3 And let's just assume for argument's sake that the
4 debtor's statement is correct and enforceable and there's no
5 problem with it that the funds are in liquidation. No one can
6 rationally argue that that liquidation of a fund or a manager's
7 actions in liquidating said fund are ordinary course. So there
8 is sort of the Section 363 hook for lack of a better term.
9 Second, from an equity perspective, it is wholly
10 inequitable for the debtor in an attempt to derail the Court
11 and the creditors from inserting a Chapter 11 trustee -- and
12 recall, Your Honor, that this case was filed on October 16th of
13 2019 where the debtor filed to seek protection from the
14 imminent within minutes if not hours of entry of $189 million
15 judgment against the debtor. And it's really frankly, and as
16 Mr. Pomerantz acknowledged, the product of failed -- numerous
17 other failed litigation strategies. Acis, UBS, Pat Daugherty,
18 quickly all -- and all of those the pieces of litigation
19 quickly coming home to roost.
20 Acis was clear right out of the gate, Your Honor, at
21 the first day hearings held on October the 18th, 2019 that it
22 would seek the appointment of a trustee. And in an attempt to
23 sort of take itself out of a trustee potentially being
24 appointed or, you know, as to forestall that happening, the
25 debtor filed an ordinary course protocol motion. And this is

1 in October of 2019. And as a part of that ordinary course
2 protocol motion, the proposal was that Mr. Sharp, the CRO of
3 the debtor, be appointed the CRO of the debtor and that he
4 would be the gatekeeper, he would be in charge of all related
5 party transactions, and he would oversee all of those
6 transactions.
7 And, Your Honor, indeed Mr. Sharp testified that he
8 was the gatekeeper. He was the guy in charge, and that was on
9 I want to say like November 20th of 2019. And commensurately,
10 Mr. Waterhouse, the CFO for Highland Capital Management, also
11 testified and Mr. Waterhouse was the first day declarant for
12 Highland as well. He testified that everyone understood that
13 Mr. Sharp was to be the gatekeeper. And, indeed, Mr. Sharp
14 would -- they had training at Highland Capital Management to
15 the effect that all employees knew if you've got a related
16 party transaction, it's got to go through Brad Sharp.
17 So in an attempt to sort of derail Acis from getting
18 a trustee appointed, they affirmatively sought out these
19 protocols and ultimately agreed to protocols that look similar,
20 not exactly but similar to those proposed ordinary course
21 protocols. And the protocols that ultimately were approved
22 required court approval. And now we've got them coming back
23 and saying, ha ha, just kidding, no one can do anything about
24 it anyway and we have to make these distributions because we've
25 got a fiduciary duty to do it.

1 On that note, the debtor who should be fully
2 transparent during this process while it seeks the benefit of
3 bankruptcy including the automatic stay, argues in its reply
4 brief filed this morning at Footnote 9 that the underlying sale
5 transaction in excess of $123.25 million is sacrosanct and
6 irrelevant because the Committee blessed it. Acis objected,
7 Your Honor. When that transaction was presented to the
8 Committee, Acis objected.
9 First, it would have its cake and eat it, too. It
10 can't take advantage of the protocols it likes while at the
11 same time stiff-arming those that are inconvenient to it. It
12 can't say the transaction's good because the Committee blessed
13 it, but the Committee didn't bless the distributions to the
14 insiders and, oh well, you can't do anything about that anyway.
15 Second, the broader transaction is violative of at a
16 minimum traditional notions of transparency in bankruptcy and
17 likely 363 along what the debtor's fiduciary duties to its
18 creditors. As Mr. Clemente pointed out, the debtor has dueling
19 fiduciary duties, and we didn't hear nearly a word with respect
20 to the debtor's fiduciary duties to its creditors. And, Your
21 Honor, we're not looking to generally micromanage what this
22 debtor is doing, but this transaction is fundamentally flawed
23 and at a minimum has red flags all over it.
24 As we now know from the CalPERS objection, Mr.
25 Dondero entered into a transaction with Highland Capital

1 Management buying CalPERS' interest and likely others'
2 interests at June 30 prices or by giving over a set number of
3 MGM shares to CalPERS. That's the agreement that's attached to
4 the CalPERS objection. The agreement was always a win-win for
5 Highland Capital Management because it could either make money
6 on the arbitrage of the stock -- it bought it at a particular
7 price, and if it's ordered at a different price, you got to
8 keep the differential -- or give over the stock if the stock be
9 valued and priced. Win-win.
10 He then immediately the very next day fraudulently
11 transferred that agreement from Highland Capital Management to
12 Highland Capital Management Services, an entity in which he is
13 the 75-percent owner and Mr. Okada is the 25-percent owner.
14 That is 15 days before filing this Chapter 11 bankruptcy case.
15 The only purported consideration for the transfer, and I think
16 this is Exhibit B, to the CalPERS objection, was an indemnity
17 by Highland Capital Management Services. That's the only
18 consideration that was transferred as a part of that
19 transaction, Your Honor.
20 Then when the stock price rises in November, he seeks
21 committee approval for a transaction that still benefits
22 Highland Capital Management Services. Despite not having a
23 Committee response, he enters into a rogue unauthorized trade
24 of MGM stock on whose board he serves on and is thus privy to
25 information, violative of the very protocols that the debtor

1 was pressing so strenuously to avoid the appointment of a
2 trustee. Indeed, Brad Sharp testified the day before the rogue
3 trade that this exact type of transaction had to go through
4 him. And Mr. Waterhouse's testimony came right after that to
5 indicate that everybody at the debtor knew that Mr. Sharp had
6 to approve it.
7 Ultimately, the Committee rejected that transaction
8 in November, but the trade was already done. If Mr. Dondero
9 had his way, Highland Capital Management Services would have
10 benefitted from the transaction. Frankly, every one of these
11 transactions needs the light of day shed upon them here in
12 court to determine what is in the best interest of creditors.
13 The debtor's attempt to cloak itself in the Committee's non-
14 objection, and I want to be clear on this, it was a non-
15 objection. I think reference was made that the Committee
16 agreed to the sale of the MGM stock. That's not what happened.
17 The Committee just did not object to the transaction which can
18 likely best be characterized frankly as everyone plugging their
19 nose while simultaneously telling this Court it can't do
20 anything about the proceeds is the exact reason why the Court
21 should be inquiring into the transaction in the first place.
22 And not so incidentally, that stock that Mr. Dondero
23 traded without authority in November is trading approximately
24 20 percent higher today, around the low 90s.
25 THE COURT: All right. Thank you.

1 Thank you. All right.

2 Do we have any other opening statements? I'm

3 probably going to have to take a break before we do evidence

4 and hear my 2:30 matter, which I don't think is going to take

5 very long, at all.

6 All right. Judge Lynn.

7 MR. LYNN: Your Honor, thank you.

8 We're not opposed to the motion, and we understand

9 the concerns expressed both by the debtor, the debtor's

10 independent board, which feels that it's compelled to make the

11 distribution to insiders. And while we don't necessarily agree

12 with them, we understand the Creditors Committee's concerns as

13 well.

14 We'd like to suggest the following should the Court

15 determine that the motion should be denied. And that is that

16 instead of the debtor retaining the funds, that the debtor

17 distribute the funds into the registry of the Court. That way,

18 they lose control over the funds and they can say that they've

19 distributed them in accordance with their agreements and

20 applicable law.

21 The funds would remain there until either a recipient

22 or prospective recipient posts a bond or other suitable

23 collateral or the Creditors Committee agrees to the

24 distribution to the insider or there is a Court entered for

25 another reason after a showing made before Your Honor. The

1 debtor and the Creditors Committee would, of course, retain all
2 rights to seek the funds they would have had, which rights they
3 would have had immediately before the distribution to the
4 registry, plus any rights that would be gained by reason of the
5 distribution itself.
6 The debtor thus distributes, the Creditors Committee
7 retains its rights, the Court retains control, and this can all
8 be done, we believe, by a Court order and we hope this may give
9 the Court a suitable alternative.
10 THE COURT: Okay. Let me make sure I understand.
11 You said, if the Court is inclined to deny the motion. Are you
12 offering, I guess Mr. Dondero's proposal that -- I mean, these
13 aren't disbursements that would all go to him, they would --
14 some would go to Okada, and -- who's not objected or appeared.
15 But -- let me cut to the chase.
16 Are you trying to avoid a hearing and evidence
17 altogether by saying, you know, these related entities agree
18 their distributions will go into the registry of the Court
19 right now?
20 MR. LYNN: Mr. Dondero supports this position. We do
21 not speak for Mr. Okada.
22 THE COURT: Right.
23 MR. LYNN: I understand that more than one of the
24 entities -- and Your Honor must forgive me. We're relatively
25 new to this case.

1 THE COURT: Yeah. One is Holdco, and that is
2 technically a DAF, a charitable entity that --
3 MR. LYNN: Yes. I believe that's so, and I
4 understand there may have been communications between the
5 independent board and the trustee of a DAF, but I was not a
6 party to those communications. I'm just trying to give the
7 Court an alternative -- Mr. Dondero is doing so -- that might
8 be acceptable to the debtor and at the same time would
9 accomplish what the Creditors Committee wants, which is to
10 retain control of the funds.
11 I must say, Your Honor, that having been there
12 myself, I have a great deal more confidence in the registry of
13 the Court protecting funds than I do in just about anyone else.
14 THE COURT: All right. Well, that would certainly
15 seem to give the Committee everything it's asking for, and --
16 MR. POMERANTZ: Your Honor, if I may interrupt.
17 I understand from members of the debtor's independent
18 board who have spoken to Grant Scott, who is the principal in
19 charge of CLO Holdco, that CLO Holdco would also support the
20 proposal that has just been made by Judge Lynn. We do not have
21 the agreement of Mr. Okada to support that proposal.
22 THE COURT: Okay. Although, he has not weighed in
23 with any sort of -- well, I don't know. How do we feel about
24 Mr. Okada's interest here? I mean, he's obviously been given
25 notice of all of that, and --

1 MR. POMERANTZ: Well, actually we asked him --
2 THE COURT: Okay.
3 MR. POMERANTZ: -- when we heard last night that this
4 might be a possibility. He has rejected that. And in light of
5 his rejection of that proposal, we as the debtor feel we need
6 to proceed with the motion. I would think it substantially
7 narrows the issues that are going to be in evidence, all the
8 stuff we've heard about MGM Trade, which may at some point in
9 time be something that people don't testify from the podium and
10 that actually the subject of real evidence. But with respect
11 to Mr. Okada, we will have to go forward with the motion.
12 MR. LYNN: Yeah, so let me express that at this
13 point, Mr. Dondero is of course not supporting the Acis
14 suggestion that a trustee should be appointed. We did not
15 understand that this hearing would address that issue.
16 THE COURT: Yeah. I'm not sure. That's what they
17 were suggesting today. I think they were just saying at one
18 point, they adamantly wanted a trustee, and these protocols
19 alleviated their concerns and caused them to back off. And
20 now, they're upset that, you know, the debtor is resisting the
21 protocols in a way. So -- all right.
22 Mr. Clemente, what say you? I --
23 MR. CLEMENTE: Your Honor, I --
24 MR. LYNN: Thank you, Your Honor.
25 THE COURT: Thank you.

1 MR. CLEMENTE: -- I think you can tell from our
2 papers, this is effectively what we asked for.
3 THE COURT: Right.
4 MR. CLEMENTE: I don't even know why it took us to
5 get to this point for that. It seemed so obvious to me. But
6 when it was articulated by the former Judge here, it -- I think
7 it just held more -- maybe it made more sense.
8 As far as Mr. Okada's concerned, I think Your Honor
9 could clearly deposit the funds in the registry of the Court,
10 and he's free to come in. I think that's what Counsel for
11 Mr. Dondero was actually suggesting. So I'm not sure that
12 anything is required further with respect to Mr. Okada, unless
13 he has a representative here that would like to raise something
14 with Your Honor. So, to me, on behalf of the Committee, I
15 think that accomplishes what the Committee was trying to do
16 with its objection.
17 THE COURT: All right.
18 Anyone else wish to be heard? Ms. Shriro, I know
19 that you filed something for CalPERS, but obviously, your
20 client is an unaffiliated investor in the private equity fund,
21 RCP. You just want to get paid.
22 MS. SHRIRO: That's correct. We just want to get
23 paid, and I would defer to my co-counsel on the phone. If he
24 has any comments, this would be the time to raise them.
25 THE COURT: All right.

1 Co-Counsel on the phone, I think it's Mr. Cisz. Is
2 that correct?
3 MS. SHRIRO: Yes.
4 THE COURT: Okay. Anything you want to say about
5 what's (indiscernible)?
6 MR. CISZ: That's correct, Your Honor. This is Louis
7 Cisz on behalf of CalPERS, and Ms. Shriro is correct. So long
8 as CalPERS receives its distribution relative to the sale of
9 the MGM stock, CalPERS otherwise doesn't take a position with
10 respect to the motion.
11 THE COURT: Okay. Thank you.
12 All right. Well, turning to the literal terms of the
13 motion, the relief the motion sought was simply an order
14 authorizing distribution of the cash from these wind-downs of
15 the three funds to insider investors. And so we have the
16 Committee objection, we have the Acis objection, we have
17 Dondero's counsel here appearing. I think I can, given this
18 request for relief and the opposition of the Committee, as well
19 as one of the Committee members, Acis, and due to these
20 representations of Dondero's counsel and the board, I can order
21 that the money that would otherwise go to insider investors --
22 I think it's roughly about 8.6 million -- will, instead of
23 going to the insider investors, will go into the registry of
24 the Court with reservation of everyone's rights later to file
25 motions requesting that it be disbursed to them. So everyone

1 understands, this is just kind of a holding place for the funds
2 right now.
3 MR. POMERANTZ: Your Honor, we do not have
4 Mr. Okada's representation and the debtor is not modifying its
5 motion. The debtor would like to proceed with respect to
6 Mr. Okada. We asked him, he did not want to agree to the same
7 things that would be in consideration by CLO Holdco, and for
8 the reasons we've identified in the motion and I've expressed
9 to Your Honor, we feel we have the obligation, we have the duty
10 to proceed, and we would request the opportunity to put on
11 evidence so you can hear from Mr. Seery and ultimately make a
12 determination whether the Committee and Acis have laid out a
13 legitimate basis for use of 105. I'll reserve my comments and
14 their comments until the end.
15 But we would want to proceed in that limited matter
16 because we don't have all agreements of the parties and the
17 same reasons stand for why we filed the motion to proceed with
18 the distribution for Mr. Okada.
19 THE COURT: Okay. Well, I guess I misinterpreted
20 everything that I thought was going on out there. Mr. Okada, I
21 guess, you said is owed 4.176 million from the Dynamic Hedge
22 Fund, and then -- I don't know if that was the total amount
23 from the three funds, but you feel like you have a fiduciary
24 duty to pursue that disbursement.
25 MR. POMERANTZ: Absolutely, Your Honor.

1 THE COURT: All right.
2 MR. POMERANTZ: And again, you know, we could get
3 this into argument. Mr. Okada is in a much different position
4 than some of the other insiders. We understand the comments
5 about Mr. --
6 THE COURT: Well, I remember some of the dynamics
7 here, but let me tell you what I'm going to feel the need to
8 get into if we hear evidence. And what we'll do is we're going
9 to take a short break in a minute. Let me ask the Barker
10 people who I think are in the back.
11 (Off record discussion 2:34:51 to 2:35:01)
12 THE COURT: Okay. So we'll take a 10-minute break in
13 a minute.
14 But again, one reason I was sort of delighted to get
15 the suggestion of Judge Lynn is I see this evidentiary hearing
16 as being a little more involved than looking at contractual
17 obligations and whatnot, and you know, the fact that these are
18 non-property of the estate funds that we're talking about. I
19 have fundamental questions having read the pleadings about the
20 decision to wind-down these funds that was made in November
21 2019, days after Highland filed bankruptcy.
22 Who made the decision? Was it insider investors
23 seeking redemption? Or was it, you know, did we have large
24 unaffiliated investors exercising redemptions, and so
25 therefore, it was reasonable business judgment, you know, we

1 need to wind down?

2 I know the issues are a little bit different with the

3 two hedge funds versus the RCP fund that had the term. And I

4 understand, I read the pleadings, how the term expired in April

5 2018, it was extended for one year, and then the advisory board

6 didn't consent to an additional extension.

7 Again, maybe the new board has thoroughly scrubbed

8 this and you're going to tell me that in evidence. And maybe

9 the Committee has thoroughly scrubbed this, and you're going to

10 tell me that with evidence. But I -- I'll want to hear that.

11 I'll want to hear that this was all legitimate, independent,

12 non-affiliated investors pressing for the wind-down of these

13 funds, and we didn't have what I refer to as the Acis situation

14 where -- well --

15 MR. POMERANTZ: Your Honor, Mr. Seery is prepared to

16 testify to each of those. And as I mentioned, the board did

17 thoroughly consider it and you will -- Your Honor will hear

18 evidence that led Mr. Seery and the board to conclude that each

19 of these were appropriate. But we intended to get into that in

20 the evidence.

21 THE COURT: Okay.

22 (Proceedings recessed from 2:37 p.m. to 3:01 p.m.)

23 THE COURT: All right. We're going back on the

24 record in Highland. Mr. Pomerantz, are you ready to call your

25 witness?

1 MR. CLEMENTE: Your Honor, if I might before.
2 THE COURT: Mr. Clemente?
3 MR. CLEMENTE: Matt Clemente on behalf of the
4 Committee, again.
5 I would just like to revisit the colloquy we had
6 before we broke.
7 THE COURT: Okay.
8 MR. CLEMENTE: I'm still confused as to why Your
9 Honor just can't enter or so order that the debtor has
10 satisfied its duty upon depositing the money into the Court
11 registry. And we don't need to have any of this this
12 afternoon. I see it as similar to the Foley hearing where Your
13 Honor expressed some frustration. It's kind of maybe not the
14 best use of time. I'm not sure what exactly we're trying to
15 accomplish here.
16 If the debtor's concerned about its duty to a
17 constituent who is not present in Court today, I think Your
18 Honor can deal with that by entering an order that says, you
19 know, based on the pleadings and the record so far, the debtor
20 has satisfied its duty and placed the money in the Court
21 registry.
22 And if Mr. Okada has an issue with that, he can come
23 back before Your Honor. I'm just not quite sure what the point
24 is here, Your Honor.
25 THE COURT: All right. Well, let's turn back to

1 Mr. Pomerantz, and let's talk about what my, I guess, unrefuted
2 evidence is. I have -- Mr. Okada would be due for the Dynamic
3 Hedge Fund, 4.176 million is what I read in the pleadings where
4 you told me.
5 And then, I don't know that I have written down what
6 he would be owed from either the Argentina Fund or the RCP
7 Fund. Anything?
8 MR. POMERANTZ: Zero.
9 THE COURT: Zero. So we're talking about the 4.176
10 from termination of the Dynamic Fund.
11 MR. POMERANTZ: Right.
12 THE COURT: Meanwhile, we know there is a $1.3
13 million demand note --
14 MR. POMERANTZ: Correct.
15 THE COURT: -- owing to Highland from Okada. And I
16 feel like I heard that there was more, but that's the only --
17 MR. POMERANTZ: That is the only note from Mr. Okada.
18 Your Honor, I think part of it is I stood up and gave
19 a lengthy presentation, and I told Your Honor what the
20 testimony would show. Now there's been a lot of issues in this
21 case about what the board's doing, what it's not doing. Part
22 of our reason for being here today and part of my presentation
23 was to get Your Honor comfortable with how the board is
24 handling its duties. I didn't want you to hear that just from
25 me. I wanted you to hear that from Mr. Seery.

1 There also have been allegations by Acis and concerns
2 Your Honor has raised as to what went into the wind-down of
3 these funds, given Your Honor's past experience with Acis. And
4 I'm sure Ms. Patel's past experience with Acis.
5 I think it's important to hear from Mr. Seery because
6 he has good explanations of why each of these funds are in
7 wind-down. And then, furthermore, look, Your Honor will decide
8 what Your Honor decides and whether the Committee and Acis have
9 met the showing under 105 to hold back the Okada funds. If
10 Your Honor decides that, of course we will abide by that
11 decision.
12 But we didn't want any implication that we were sort
13 of laying down for that issue. So I think it would be helpful
14 maybe to hear some testimony from Mr. Seery. If Your Honor
15 then concludes that funds shouldn't be disbursed, Your Honor
16 will conclude that funds shouldn't be disbursed. I don't think
17 this has to be very lengthy. I think we've -- we've narrowed
18 the issues, given that we don't have an issue with respect to
19 RCP anymore. We don't have the issue with HCM Services
20 receiving money on account of a trade that Acis is very
21 critical about. Again, those issues at an appropriate time can
22 be raised in appropriate form, and Your Honor will have a full
23 evidentiary hearing, as opposed to a tail wagging the dog on
24 this motion when it's not even relevant anymore.
25 So what I would propose is that we allow Mr. Seery to

1 take the stand. We allow him to address Your Honor's concerns.
2 We allow him to testify to the things that I said he would
3 testify to so it gives Your Honor some comfort, and hopefully
4 the other parties comfort, exactly how Mr. Seery and the other
5 board members are performing their duties.
6 THE COURT: Okay. Can we all agree to some
7 reasonable time limitations here? I'm thinking we're done in
8 an hour. Maximum 30 minute direct of debtor, or redirect, and
9 maximum 30 minute cross of all objectors. Can we do that
10 today?
11 MR. POMERANTZ: I think we can do that, Your Honor.
12 THE COURT: Okay. Then that's --
13 MR. CLEMENTE: My only question, Your Honor -- Matt
14 Clemente on behalf of the Committee -- is what are we still
15 talking about here? Are we just talking about the distribution
16 to Mr. Okada? And the other distributions are off the table as
17 suggested by -- or as agreed to at least on behalf of
18 Mr. Dondero? I don't even know what we're talking about.
19 MR. POMERANTZ: That is correct, Your Honor. It's
20 only the distributions to Mr. Okada.
21 THE COURT: Although, I think he wanted the Court to
22 get some testimony from Mr. Seery about sort of the business
23 judgment of the three wind-downs, but I don't think that's
24 going to --
25 MR. POMERANTZ: That shouldn't take a long time.

1 THE COURT: -- be a probe today of MGM stock sales.
2 MR. POMERANTZ: No, it won't be at all, Your Honor.
3 And again, look, we understand Your Honor has had experience
4 with Acis, and we understand the concerns, Your Honor, coming
5 in, seeing redemptions, and the questions you asked.
6 Again, it's important for the debtor to be able to
7 demonstrate to Your Honor that this board is doing its
8 appropriate things and hearing from Mr. Seery why he made these
9 decisions so Your Honor can get comfortable, not only in these
10 matters, but in other matters that brought before Your Honor in
11 the future that this board is doing exactly what they should be
12 doing acting as an independent fiduciary.
13 That's why I think some of our testimony, but we're
14 happy to live within the time frame that Your Honor has given
15 us.
16 THE COURT: Okay. All right. Thank you.
17 MS. PATEL: Your Honor, I just wanted to follow along
18 with one of the comments that I made during my opening
19 statement and hopefully, it will help further narrow the issues
20 and keep us within the time limits, is is that when -- in
21 responding to Your Honor's question about the wind-down of
22 these funds, and I said Acis had concerns, I want to say we've
23 got concerns with respect to the Argentina and the Dynamic
24 fund. We frankly just don't understand or have that much
25 information with which to really evaluate the transaction, so

1 we're a little hamstrung today for purposes of cross-
2 examination because that's not something that necessarily Acis
3 has inquired into.
4 But separate and apart from that, just again so
5 everyone's clear, with respect to the wind-down of RCP, Acis
6 does not take issue with respect to the genesis of the wind-
7 down. So the decision to wind it down is a find from Acis's
8 perspective that should probably have been wound down. Now,
9 the methodology of how it's being wound-down, that's fair game.
10 THE COURT: I don't know what that meant --
11 MS. PATEL: Okay.
12 (Laughter)
13 THE COURT: -- the methodology of how it's being
14 wound-down.
15 MS. PATEL: Okay. Let me --
16 THE COURT: Very quickly because, you know --
17 MS. PATEL: Yes. Your Honor, what I meant by that
18 was, in terms of the decision to wind-down RCP, that makes
19 sense to Acis because it is a fund that should have been wound-
20 down. How it is going about being wound-down, that is open for
21 dispute, and one of those things being here this MGM stock
22 sale, etcetera.
23 THE COURT: We'll hear from Mr. Seery. I thought
24 there was a pile of cash at this point, but maybe I misread the
25 pleadings.

1 Okay.
2 MR. POMERANTZ: Your Honor, let's remember what this
3 motion is. This motion wasn't a referendum on wind-down, it
4 was the ability to make a distribution.
5 THE COURT: Right.
6 MR. POMERANTZ: Mr. Dondero's counsel, who is
7 speaking on behalf of ACM Services, said they're prepared to
8 hold those distributions in the registry of the Court. The
9 issues regarding what Ms. Patel testified from the podium, at
10 some point, they may very well be the subject of a hearing in
11 the Court. We're happy to continue responding to the Committee
12 and Ms. Patel's comments and questions about how, but it's just
13 not relevant here.
14 And, Your Honor, there is no way if Ms. Patel is
15 going to go down that road that we will ever be here only an
16 hour. That is a much longer discussion.
17 THE COURT: And let me just clarify where I was
18 coming from.
19 I thought if we were evaluating whether insiders
20 should get $8.6 million of distributions, the bona fides of the
21 decision to go into wind-down mode needed to be explored a
22 little bit and see if some of these insiders were improperly
23 exercising control in that.
24 So I agree with what you're saying. Now, that we're
25 just talking about deferring to another day all but maybe

1 Mr. Okada's disbursement, we don't need to hear great detail
2 about the whole decision-making process for the wind-down of
3 these three. A little bit of background would be useful,
4 but --
5 MR. POMERANTZ: Absolutely, Your Honor, and we
6 will --
7 THE COURT: -- it doesn't need to be, you know --
8 MR. POMERANTZ: -- tailor our testimony to the issues
9 that Your Honor was concerned about and the comments that I
10 made, and we will keep within the time limit that Your Honor
11 wants us to keep it to.
12 THE COURT: All right. Very good.
13 Mr. Seery?
14 MR. SEERY: Yes, Your Honor.
15 THE COURT: There you are. If you could approach the
16 witness stand. I know I've been introduced to you before. I'm
17 not sure if you've taken the witness stand yet.
18 MR. SEERY: I have not.
19 THE COURT: I don't think you have.
20 Please raise your right hand.
21 JAMES P. SEERY, JR., DEBTOR'S WITNESS, SWORN
22 THE COURT: All right. Please be seated.
23 MS. HAYWARD: Your Honor, may I approach with an
24 exhibit binder?
25 THE COURT: You may.

1 MS. HAYWARD: Or two?

2 THE COURT: Okay. One for the Court.

3 Thank you.

4 MS. HAYWARD: May I approach the witness?

5 THE COURT: You may.

6 DIRECT EXAMINATION

7 BY MR. HAYWARD:

8 Q Well, good afternoon, Mr. Seery. Since this is your first

9 time testifying, would you introduce yourself to the Court and

10 give her just a little bit of background?

11 A I'll go pretty quickly because of the time constraints.

12 James P. Seery, Jr., for the record. I am an independent

13 director for Highland Capital. I've been in the asset

14 management restructuring business for about 32 years.

15 I started as a restructuring lawyer handling

16 everything from real estate to debtor's side to financial

17 transactions. From there, I moved into asset management and

18 distressed investing.

19 From there, I moved into managing a large global loan

20 portfolio for a big investment bank. That included teams of

21 people who both underwrote, distributed, held, managed,

22 restructured, and traded both loans, indicated loan assets,

23 primarily, but also high end bonds, distressed assets, as well

24 as CLO assets.

25 After that, I went into a hedge fund. We had a

1 billion, three long-short credit fund. I was the senior
2 investment partner and president of that firm. We did similar
3 types of investments, high yield, high yield loans, distressed
4 loans, CLO assets, and some other structured products, long-
5 shorts. So we were domestic primarily, but we also had a
6 global investment view and an office in London.
7 Subsequent to that, I was a co-head of a credit
8 business for an investment bank. And then, in the last six
9 months, I've decided to do this job.
10 Q So of the three board members, you're kind of the stock
11 guy. Would that be a fair --
12 A I think -- stock isn't really my stock and trade, but I do
13 know my way a little bit around the stock market. But it's
14 primarily been credit products, but I do -- I am familiar with
15 equities and equity trade.
16 Q Okay. So since coming onto the board, give the Court a
17 day in the life, if you don't mind, and maybe starting with the
18 day that the board took over on January 9th.
19 A I think, as Your Honor will recall, when we left and we
20 talked about what the role would be and what the compensation
21 would be, I think your comment was, Your Honor, that it -- we
22 wouldn't be 50,000 feet. Well, we -- we're actually fully on
23 the ground. We're not even five feet above. We don't keep
24 track of our hours like lawyers, but probably logged about 190
25 hours in January starting on the 9th, and then about 150 hours,

1 160 hours in February. And I know my fellow board members are
2 similar time commitments.
3 We're involved day-to-day in each of the decisions
4 that the debtor makes from assets management decisions,
5 understanding how the funds are being managed and what the ways
6 that they could either be walled off if they're in liquidation,
7 or if what the proper way to treat them on a day-to-day basis
8 is, evaluating assets that the debtor owns directly or through
9 funds, be thinking about ways to monetize those assets;
10 employee issues, what they're doing, who they're reporting to,
11 how they're -- how they're performing, how they're being paid;
12 claims issues.
13 This case got started, as we all know, by three major
14 litigations, and they're not all easy to understand. They've
15 got the redeemer arbitration, which I think is fairly
16 straightforward in terms of liability and amount. There's a
17 number of offsets that are complicated.
18 We've got the UVS litigation that is a lot more
19 complicated because it's not against the debtor. The judgment
20 is against two offshore funds that are, in essence, shells, and
21 there's a very complex history around the 10-year litigation
22 that that is.
23 Then we have the Acis litigation, which comes out of
24 the Acis bankruptcy, but is an unliquidated claim. So
25 understanding those thinking about what the pros and cons of

1 those claims are, how we would manage them down the road, how
2 we would go forward. Thinking about how to resolve them has
3 been a key part of what we're doing on a day-to-day basis.
4 Q So has the board done an independent analysis of all these
5 various litigation claims?
6 A Not yet. So we've -- we've done a preliminary analysis,
7 and then we've gone further. So with respect -- we haven't sat
8 down with -- frankly with Redeemer, yet, although one of the
9 board members has had a call with them separately. But we have
10 sat down with the Acis creditors, and we've done some
11 significant analysis around that. And we have sat down with
12 UBS claimants, and we've done significant analysis around that.
13 All three of those require a ton more work, and not
14 because it's not easy to figure out what the numbers are. It's
15 really difficult to figure out what the liability is, how it
16 rolls up to the debtor, and then how to satisfy it, and so
17 we're trying to get our hands around that. But that is a
18 critical component of resolving this case.
19 Q When the board took over, did -- what types of things did
20 you do immediately upon taking over control of this debtor?
21 Did you meet with people at the facility?
22 A Oh, sure. So the first thing we did, actually, is have
23 lunch with the Committee and with Acis, and we wanted to get
24 their perspective because they were here and it was easier to
25 do that than to run back to the debtor and try to -- try to

1 then set up another meeting.
2 And so we wanted to get their perspective. They'd
3 been living with the debtor from the litigations and through
4 the time in Delaware and the litigation in this case. So we
5 got a feel for them of what their desires were, how they
6 thought the case would work out or potentially resolve, and
7 also, how they thought about our role.
8 One of the things we stressed at that time, and I
9 stressed when I was interviewed for the role, is that -- I know
10 my fellow directors feel the same way, but I'm a pretty
11 independent person, and I wasn't going to be certainly the
12 management of Highlands guy, nor would I be the guy of the
13 Committee. So we're going to -- I'm going to work
14 independently make decisions with the fellow board members in
15 what I think is the best way.
16 I'm going to try to exercise my duty in both care and
17 loyalty to the estate, but then if the estate has duties, I'm
18 going to make sure we exercise those. And I feel very strongly
19 about that because this is just one -- a decent sized matter,
20 but one small piece of a career, and I'm not going to
21 compromise myself to satisfy either people on the management
22 side or people on the Committee side.
23 Q Yeah. Well, and I want to talk a little bit about the
24 duties since you mentioned them, because we heard I think the
25 Committee say that we -- the debtor has not mentioned the

1 fiduciary duties to the estate in the opening statement. Do
2 you think that by presenting this motion the debtor -- does
3 this motion contemplate protecting the fiduciary duties that
4 the debtor owes to the estate?
5 A To me, it absolutely does. But to be fair, I think that
6 the rhetorical flair and opening remarks and missing the duties
7 to the estate, we're very conscious as a board of our duties to
8 the estate. We're also very conscious of our duties as an
9 asset manager. And what is in the pleadings is absolutely the
10 case, it's been -- it's my experience, my understanding of the
11 law, and it's being confirmed by both Cayman counsel, and by
12 fund counsel in the U.S. separate from bankruptcy counsel.
13 We owe a duty under the Advisor's Act to the funds
14 and to the investors in those funds. That duty actually
15 supercedes the benefit to the estate, but it doesn't undercut
16 it because by vindicating the duty to the funds, you actually
17 vindicate the duty to the estate. If you create liability at
18 the funds, it will roll to the estate. So by exercising your
19 duty correctly, you do in fact, vindicate the duty of the
20 estate.
21 And what's important in the Advisor's Act, and it's
22 an interesting part of U.S. law. At least my understanding,
23 it's been confirmed by outside counsel, is if the manager,
24 which would be Highland, has an interest, it's actually
25 required to subordinate that interest to the interest of the

1 investors in the funds it managed. And it makes sense.

2 If you have funds invested in a fund with an outside

3 investor, you want to make sure that that investor is not --

4 that manager is not using your funds to aggrandize itself as

5 opposed to looking out for your best interest. And so, I think

6 by vindicating our obligations with respect to the funds, we

7 actually enhance our obligations with respect to the estate.

8 Q Let's talk a little bit about the funds now. So

9 originally, the motion pertained to three different funds.

10 Could you just briefly explain to the Court the status of those

11 funds and how they got there?

12 A Yeah. I'll try to go quickly, and if I skip something or

13 I go too quickly, Your Honor, please let me know.

14 The Highland Dynamic Fund, which is the primary one

15 we're talking about now, I think you'll see at the end of Tab 1

16 how it's set up right before Tab 2. And I haven't looked at

17 these exhibits in a long time, so I apologize. I didn't know I

18 was getting this. But it's really straightforward.

19 These funds are set up, and this is a pretty typical

20 structure. It's a limited partnership structure. It's got a

21 master feeder structure. And what does that mean? The master

22 is the main fund. That's the King Exemptive Limited

23 Partnership at the bottom.

24 It's fed by two feeders, a domestic feeder and an

25 offshore feeder. Why is it done that way? Purely tax.

1 Offshore investors, non-taxables in the U.S. who are worried
2 about ECI or UVTI, or unrelated business income, we want to
3 make sure that there's no withholding or any tax ramifications
4 with respect to the distributions they get off the fund. Since
5 it's a pass-through entity, both of those investors, either
6 domestic or foreign, are non-taxables in the U.S., will have
7 their own tax treatment when it gets up to them. So they don't
8 want anything withheld.
9 When you look at the left side of the page, Dynamic
10 domestic feeder, the other investors is where you'd include
11 Mark Okada. This fund was founded originally under a different
12 name. I believe it was called the Highland Loan Fund. It
13 might have been CLO Loan Fund, I apologize. And then that was
14 in 2013.
15 Mark Okada put $2 million cash into the fund at that
16 time. Why did he put it in? This fund was designed to own CLO
17 assets and loan assets. Okada was the founder of that part of
18 the business and the driver of that business. It was pretty
19 essential that he put some money in.
20 However, in '13, they did get third-party investors,
21 but this fund never got real scale. I think it was only a bit
22 over $100 million. Not insignificant, but not a big fund. And
23 they went out looking for loan funds, loan opportunities, and
24 CLO paper. So the CLO papers, the debt of the CLOs, generally
25 (indiscernible) type paper that was higher yielding unless

1 there was some interesting opportunity in the -- in the higher
2 rated tranches.
3 In 2018, the fund got restructured, and they -- I'm
4 pretty sure that's when the name change occurred. Okada put
5 another two and a half million dollars of cash in. So he
6 didn't get this as free-carry or anything. This was actually
7 cash that he deposited in the fund.
8 In 2019, Okada in the spring of 2019, determined that
9 he was leaving Highland. And his separation was finally
10 completed in September of 2019. So he is no longer an employee
11 of the debtor. He has no influence, say, discussion, he's not
12 involved in anything. He hasn't been since we've been there.
13 The investor, I think it was late summer, either
14 understood that or the fund hadn't performed that well.
15 Frankly, it was undersized anyway. Realdania, a third-party, I
16 believe they're European, issued a redemption notice. This was
17 a hedge fund style fund. So we've got three different funds
18 here, two of them are hedge fund, and we explained a little bit
19 in the papers, but the real dynamic, no pun intended,
20 difference between the two is that Dynamic and Argentina are
21 hedge funds which provide liquidity to the investor.
22 What does that mean? Monthly, quarterly, semi-
23 annually, they can look for redemptions. The fund manager
24 sales assets because the assets are supposed to be a little bit
25 more liquid, makes distributions per the redemptions.

1 If the redemptions are too big and the sales will
2 somehow disadvantage the remaining investors, either gates come
3 down or you put the fund into liquidation. Realdania had made
4 a, I believe it's a $65 million -- it was initially a smaller
5 one, then there was a $65 million redemption, and it -- this is
6 prepetition. The debtor determined we've got to wind this fund
7 up because we can't basically more than halve it and then
8 continue to try to function. It would have been far too
9 undersized.
10 So the debtor then went about selling the assets,
11 creating a pool of cash, and then this motion is to liquidate
12 it and pay the investors, including Okada. When it's done,
13 assuming they made the full distributions, about 80-something
14 percent of the assets will have been distributed. There's a
15 few small assets that are left. They're not particularly
16 liquid, but they're small and I'm relatively certain we can
17 unload those at decent prices, create cash for the investors,
18 make the final distribution, so it would be a hold cash to
19 wind-down and then dissolve the various little limited
20 partnerships.
21 Argentina is similar. The basically different
22 premise of why that fund existed, the original theory was post
23 the Argentina crisis with the election of Macri in '15. Late
24 '15, Argentina started going through a number of changes in its
25 economy and the thought was that Argentina would start to grow

1 and really be able to realize the potential of its people and
2 its resources. That didn't work out that well, and then at the
3 end of, I think it was '18, Macri was voted out and the former
4 Kirchner, effectively, government is going to back. Argentina
5 economy has slid into basically -- certainly recession over
6 multiple quarters, but even some would say depression.
7 Very difficult time. This was not a unique fund for
8 Highland. There were a lot of these Argentina-type opportunity
9 funds, and that -- that performance has not been particularly
10 good. The decision there was made to wind-down a third-party
11 investor who made a 15 percent withdrawal, and that a number of
12 other funds that I forget the percentage, but they're managed
13 by UBS, third parties made a -- indicated that they were going
14 to have full redemptions, as well, so that fund was put into
15 liquidation.
16 Importantly, I think something that was mentioned
17 before, there's no benefit to keeping these funds around. They
18 don't make any fees.
19 Q Why is that?
20 A And once they've gone into liquidation, they're not paying
21 any fees. Similarly, RCP -- now, RCP is a different style of
22 fund, and I think Your Honor, you mentioned it in the papers,
23 you saw that it was a 10-year old fund. That term was
24 extended. It was originally a 2008 fund. It was done as a
25 distressed for control. Very different opportunity,

1 (indiscernible), at the time, they probably didn't see the
2 global financial crisis, but saw it as distressed and the
3 opportunity to do distressed for control positions had to be
4 long term. So that fund had no liquidity provisions for
5 investors. Typical PE-style fund.
6 The -- when it got to the end of its life, the 10-
7 year life, Highland didn't have the ability to extend the term.
8 A steering committee of third-party institutional investors
9 with no Highland influence whatsoever, Ontario Teachers,
10 CalPERS, some of the biggest, most sophisticated investors in
11 the world in both debt, equity, and distress were driving that.
12 There was also a couple of other funds that are third parties
13 on that steering group. And they still exist. They gave a
14 one-year extension. Highland had no ability to do anything
15 about that.
16 In exchange for the extension, Highland waived fees.
17 So there are no fees being paid on the RCP Fund. There was a
18 series of one-month extensions that went -- was finished in
19 November of 2019. And with this distribution, there's still a
20 lot of assets in RCP that have to be managed, about 175
21 million. And so we're going to -- after we make the
22 distribution -- we've had a few calls and I've been on them,
23 with the steering group.
24 We've told them we're coming to Court to make the
25 distribution. We were confident that we would be able to -- to

1 be able to make a distribution to them subject to the Court's
2 order, that we make that distribution and somewhere in the next
3 two weeks we're going to have a steering group meeting to talk
4 about the other assets and how we monetize them.
5 They are different types of assets. Some have more
6 liquidity than others, so we're going to need to come up with a
7 plan. It's 85 percent, roughly, third parties. Highland
8 Capital Management, the debtor, actually has a roughly 15
9 percent interest in HCM Services, has as a couple percentage,
10 because I think there would have been about 2 percent of the
11 distribution.
12 So it's vast -- the vast majority of the owners of
13 the fund are outsiders, and we're going to need to come up with
14 a structured plan to get them their cash because they've been
15 invested for 12 years in this fund.
16 Q Do you agree, having had the chance to come in and look
17 over all these things, that these funds should be wound-down?
18 A Oh, absolutely. So I think it's easiest to say,
19 Dynamic -- Okada was the driver. It never got to where it
20 wanted. The biggest investor wanted out. It's not big enough
21 to support itself. Even if one were to look today, and say, it
22 should have, frankly, owning CLO paper when this fund was
23 started until today, there should have been good appreciation
24 in it, and it just didn't -- I don't know the reasons it
25 didn't, but it didn't perform the way it should have, and it

1 didn't attract the investors it should have. Perhaps that had
2 something to do with it, you know, the way the other cases or
3 litigations were going on and the public nature of them.
4 And frankly, coming out of the global financial
5 crises, Highland had had a tough time of it, so it wasn't as if
6 it was the easiest thing to raise funds. Argentina, there's
7 absolutely no question that the purpose and structure of that
8 fund and what it set out to do doesn't work, just doesn't work.
9 So it makes no sense to keep that going, and that's why the
10 investors -- third-party investors sought redemptions.
11 The insider interests, while not immaterial, are
12 pretty small. Okada's interest is about 12 percent in the
13 fund, and he's not driving it. Like I said, he's not even at
14 the debtor. These two -- but to be fair -- both the decisions
15 to wind-down Dynamic and Argentina were made before the board
16 was involved and before the petition was filed, and they really
17 related to the withdrawals from third parties.
18 Q So why are we here today? Do you -- do these funds wind-
19 down in the ordinary course of their business?
20 A Well, it -- they all have life. So I'd say in the case of
21 RCP, it's pretty clearly in the ordinary course because it
22 reached the end of its life. And the investors were very clear
23 that they wanted to be cashed out. So the difficult part is
24 that it -- because of its structure and in the way it was
25 originally set up as a PE-style fund, it has illiquid, a number

1 of illiquid assets.

2 And the challenge in any of the PE funds is to time

3 your exit, and the timing on this hasn't been opportune because

4 the opportunity to sale has not been as good as one might hope

5 and the investors are just at the point where they want to get

6 cashed out as we've heard today from CalPERS. But we've seen

7 it in the documents and our discussions -- and my discussions

8 directly with them.

9 The other funds, once they've reached this -- it's an

10 ordinary course thing for funds. When funds either they're --

11 they've reached their life or investors redeem and they get to

12 this state where they really can't support themselves, it's a

13 very ordinary thing for managers to wind-down funds.

14 Q And as part of the winding down of the funds, is it also

15 ordinary then to make distributions once the funds have become

16 liquid?

17 A Well, I mean one of the questions you started to ask, or

18 maybe did ask, and I didn't answer, was why are we here?

19 Our view as an independent board, my view as an

20 independent board member, is we have an obligation to all

21 investors. It would be really easy if the documents or the law

22 said all investors, other than ones who might have been related

23 somehow to the asset manager. It just doesn't say that. And

24 as we talked about, this is -- these are not funds from

25 Highland. If they were funds from Highland, again, it would be

1 really easy.

2 As I described for Highland Dynamic, I don't need to

3 hold and carry water for Mark Okada. But I do need to carry my

4 own fiduciary duties and make sure that I exercise them well.

5 The gentleman put $2 million in -- this is April 2013, put 2

6 million -- 2.5 million in cash in 2018, and the fund is being

7 wound down. It's not the debtor's money. If it was the

8 debtor's money, it would be really easy to say, you know,

9 Mr. Okada, I'm not going to give you the money because we may

10 have claims against you, and a different discussion would

11 ensue.

12 Q Well, I want to walk through that just a little bit. You

13 say it's not the debtor's money. Where is the money?

14 A This money sits in funds or in bank accounts. Its assets

15 are denominated and they're held in trust. And the cash that's

16 in accounts, they're denominated in the name of the fund. The

17 asset manager, Highland, has the ability to access the accounts

18 and use the funds in accordance with the fund documents. It

19 does not have the ability to access the accounts and use the

20 funds however it see fit.

21 Q So it's like an authorized signer?

22 A It's certainly an authorized signer in terms of what its

23 ability to do in terms of accessing the funds. Typically,

24 that's done through the trustee. But it can manage the funds.

25 It couldn't take the funds and make an unrelated investment.

1 It couldn't take the funds and use it for its own purposes and
2 pay them back later. It's just simply not permitted.
3 Q Well, taking that to the next level. If the Court did not
4 allow these distributions to be made, would the distributions
5 then go to the debtor?
6 A No.
7 Q Where would they go?
8 A There's really no provision for it. There are certain
9 provisions in the underlying documents that would enable the
10 manager to withhold funds. If there was a change in law that
11 didn't permit a distribution. If there was some other reason
12 that it became unfeasible to make the distribution. If you
13 couldn't find the investor, and sometimes that happens. There
14 are provisions of how you deal with those funds. But they
15 never would go to the manager.
16 Q So what is the -- why is the primary reason then that
17 we're here today asking this Court for permission to distribute
18 these funds?
19 A It's pretty straightforward. We have a fiduciary duty and
20 we've confirmed that with outside counsel, both Cayman and
21 domestic fund counsel, to make distributions and treat all
22 investors in the funds pro rata. And we're here to make sure
23 we vindicate our duties, not exercising our fiduciary duties,
24 doing things that were not permitted. One, we don't think
25 that's right or appropriate. Two, that's not going to help

1 resolve this case that probably contributes to some of the
2 things that led to this case. So we're not real interested as
3 an independent board in doing things that are close to the
4 edge, along the margin, try to use our positions to leverage
5 investors.
6 Q Are you familiar with the protocols?
7 A I am.
8 Q Okay. But for the protocols, do you believe that the
9 debtor would need to obtain the Court's permission in order to
10 makes these distributions on behalf of these funds?
11 A I don't think so, no.
12 Q So then, why are we asking the Court's permission?
13 A Well, the protocols require it, and I think the Committee,
14 you know, with due respect and I mean that truly, would like us
15 to withhold the funds, and that provides certain leverage
16 potentially over insiders. I think when I look at the
17 protocols, I think the main function of the protocols is to
18 assure that there isn't undue influence by insiders over the
19 actions of the company, and that insiders are not somehow
20 benefitting themselves by virtue of their control over the
21 company.
22 The independent board has control over the company.
23 We're not naive and think we have control over every single
24 persons every single second of every day, but we do have
25 control over what happens with the accounts, how payments are

1 made, when we wind something down, when an asset is sold, how
2 the proceeds will be used. That's the board. That's not
3 anybody in management. The decision around these distributions
4 was made by the board independently. We did consult with the
5 CCO, and that was important to make sure we got all the facts
6 with respect to these funds.
7 We then sought outside counsel to inform our
8 decision, both Cayman and domestic. We didn't have any
9 influence whatsoever and we didn't speak to Mr. Dondero nor
10 Mr. Okada other than to tell Mr. Okada that we were coming to
11 court and then to ask him if he would defer his distribution.
12 And we know his response.
13 Q I want to ask you just a couple -- I know I'm almost at my
14 30 minutes here, so I just want to ask you a few quick
15 questions because one of the issues that came up were these
16 demand notes. I understand that Mr. Okada does have a demand
17 note.
18 A He does. We've --
19 Q And has the board --
20 A And we've sent a demand.
21 Q Okay. And what was -- what is the status of that demand
22 note?
23 A He acknowledges that he signed it and he said that he's
24 owed certain things from the company. He's asked how we work
25 those through because he was severed -- or severed himself in

1 September, and he has -- they reached a severance agreement
2 according to Mr. Okada. I haven't personally investigated it
3 yet, but we will get to it quickly. And he has some expenses
4 that are owed, but I don't think those are material.
5 I'm quite confident. He said his severance was
6 agreement not money, but terms, was very standard. We'll take
7 a look at that and make sure there's agreement on that.
8 I think it would be covered by the protocol, but it's
9 probably a transaction, so we'd have to talk to the Committee
10 about it, but we'll work -- I'm confident that we can work our
11 way through a standard severance agreement very quickly and
12 resolve that issue and collect on the note.
13 Q Now, to be clear, the demand note is payable to whom?
14 A The demand note is payable to the debtor.
15 Q Okay.
16 A It was actually a note that was -- he didn't receive cash
17 for the note. It's basically a tax -- rather than gross-up
18 salary sometime in the past, for whatever reason they decided
19 not to gross it up to cover taxes.
20 Because of the structure of the limited partnership,
21 they could have had taxable income without matching cash, and
22 so they issued notes back to Highland to cover certain of those
23 obligations rather than actually making a distribution.
24 Q To you knowledge, does Mr. Okada owe any money to the
25 fund?

1 A No. Not a -- my knowledge is that he does not. So I am
2 knowledgeable of it, and he does not owe any money to the fund.
3 Q Okay. Quickly, I just want to talk a little bit about
4 Mr. Dondero. One of I think the points that was made at the
5 very beginning of opening statements was that Mr. Dondero is
6 still around. Why is that?
7 A He's around because he has incredible knowledge about the
8 investments. He is a portfolio manager for the fund. He does
9 work with respect to non-Highland unrelated funds, some of
10 which Highland employees do work under shared services
11 arrangement and we get paid for them. But Mr. Dondero is
12 around for those reasons and his knowledge about a number of
13 the investments in which we're involved.
14 Q Does the Debtor -- or does the board have the power to
15 terminate Mr. Dondero if it decides to?
16 A Yeah, he’s -- we could, he’s unpaid so there’s no cost to
17 his involvement. His expertise around certain investments,
18 particularly the equity funds as well as some of the larger
19 investments, including the PE investments, is really important.
20 Q And with respect to the Dondero notes, what are the status
21 of those demand notes?
22 A We’ve done an investigation of the notes and I wouldn’t
23 say it’s as exhaustive as -- it’s in similar stages as our
24 examination of other assets. We’ve looked at Dondero’s notes,
25 we made a decision to send a demand letter to Okada because

1 he's no longer a part of the company and there's no real
2 benefit that we saw strategically to not making that demand.
3 It's a small amount of money relative to the size of the case,
4 it's real money, but it's a small amount of money relative to
5 the size of the case. We should clean that up and move on from
6 Mr. Okada.
7 With respect to the Dondero notes on Dondero entity
8 notes, we want to think about those strategically. They're a
9 sizable amount of money, not just the ones that are demand, but
10 also there's a number of the notes that ate notes with
11 maturities and they're actually current, they're all current,
12 but how can we use those cash, can we collect those, and I
13 think that's more strategic in terms of how we resolve this
14 case.
15 I agree with Mr. Pomerantz's statement that I think
16 it evolves into a pure litigation case and we really hope it
17 doesn't. That then -- those can just be sued on and the demand
18 notes are pretty clear as to how they work and even include
19 cost of collection. So they're pretty straightforward notes.
20 Q But so for now the board --
21 A Well, we thought about it, we don't think it makes sense
22 to make that demand at this time. There's -- our initial --
23 we're not -- we haven't come up with what the plan is for this
24 case, but we have ideas. We do think they involve Mr. Dondero
25 and they involved contributions from Mr. Dondero whether in the

1 form of notes, whether in the form of cash, whether in the form
2 of other assets. We haven't discussed those with him, but we
3 do think that's ultimately, at least preliminarily, where we're
4 going to end up somewhere. So strategically we think that
5 that'll make sense to include in that sort of a resolution.
6 Q Okay. And --
7 THE COURT: You have one minute.
8 MS. HAYWARD: Yes, thank you, Your Honor.
9 BY MS. HAYWARD:
10 Q Last question I'm going to ask you, are you aware of any
11 legal basis to withhold these funds now from Mr. -- from these
12 investors and these related parties?
13 A I'm not aware of any, but as the Court has contemplating,
14 as the Committee has said, perhaps now that Section 105, you
15 know, grants that sort of authority, but that'll be up to the
16 Judge.
17 MS. HAYWARD: Your Honor, a housekeeping matter. I
18 move for the admission of Exhibits 1 through 12. I don't think
19 any of them are controversial. But I will let --
20 THE COURT: You want me to look through
21 MS. HAYWARD: Your Honor, they are --
22 THE COURT: -- all of these.
23 (Laughter.)
24 MS. HAYWARD: Your Honor, just for the record, they
25 are Number -- Exhibit 1 is the chart showing the structure of

1 the Dynamic Income Fund.

2 THE COURT: Right. We looked at that.

3 MS. HAYWARD: Exhibit 2 is the partnership agreement,

4 so I know they're large documents, but they're not numerous

5 documents. Exhibit 3 is just the chart of the Latin America

6 Argentina Fund. Four, the partnership agreement for that fund.

7 Five, the chart (indiscernible) Third Fund. Six would be the

8 agreement, the limited partnership agreement for that fund.

9 Seven, Your Honor, is Your Honor's order on the ordinary course

10 governance procedures.

11 THE COURT: Okay.

12 MS. HAYWARD: Eight is the final term sheet. Nine is

13 the notice of amended operating protocols that was filed last

14 week.

15 THE COURT: All right. And then CVs of our board

16 members.

17 MS. HAYWARD: And then the CVs for the board members.

18 THE COURT: Any objections to these?

19 MS. REID: No objection, Your Honor.

20 THE COURT: Okay. They're admitted.

21 MS. HAYWARD: Okay.

22 THE COURT: All right. Any cross-examination?

23 MS. REID: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. REID: Good afternoon, Your Honor. Penny Reid on

1 behalf of the Creditors Committee.

2 CROSS-EXAMINATION

3 BY MS. REID:

4 Q Good afternoon, Mr. Seery.

5 A Good afternoon.

6 Q You are aware, Mr. Seery, aren't you, of the Acis

7 bankruptcy?

8 A I'm aware of it, yes.

9 Q Okay. And you're aware that prior to that bankruptcy Mr.

10 Terry obtained an arbitration award in October of 2017.

11 Correct?

12 A I'm aware of that, yes.

13 Q And, Mr. Seery, are you aware that four days after that

14 arbitration award assets started being transferred away from

15 Acis, stripping it of its value at that time?

16 A I've read the judge's decision in the Acis case but I'm

17 not aware of any of the underlying facts, other than from

18 reading that case.

19 Q So you aren't aware of all the assets that went out of

20 Acis the day after an arbitration award was entered.

21 A No, I haven't looked at any of those.

22 Q Okay. And you're not aware that the day after a final

23 judgment was entered more assets were stripped from Acis. Is

24 that correct?

25 A Other than reading the Judge's decision I'm not aware of

1 any of the specific assets, no.

2 Q Are you aware that two days after that, or entry of the

3 final judgment was ordered, Acis' entire risk retention

4 structure was transferred away from it and into the ownership

5 of Highland CLO Holdings?

6 A I'm aware of some of the facts relating to the Acis case

7 from the decision and I'm aware of some of the facts from the

8 Acis case because of my discussions with Ms. Patel and Mr.

9 Terry. I'm not aware of the specific transfers to which you're

10 referring without having -- looking at them.

11 Q Okay. So you're not aware that some of the assets that

12 were stripped from Acis went to one of the entities you're

13 wanting to send money to today. Is that right?

14 MS. HAYWARD: Objection. Your Honor, I'm not sure

15 how this is relevant to the Debtor's distribution motion --

16 MS. REID: Well, it's relevant to the distributions

17 that you're trying to give to the same entity.

18 MS. HAYWARD: Your Honor, I think right now Mr.

19 Okada --

20 THE WITNESS: What I --

21 THE COURT: Just a minute.

22 THE WITNESS: Sorry.

23 THE COURT: We have an objection. Let me hear the

24 objection.

25 MS. HAYWARD: Your Honor, I think at this point Mr.

1 Okada is the only one getting a distribution at issue in this
2 case as of now in light of the representation that was made by
3 Judge Lynn.
4 THE COURT: All right. Well, what is your response
5 to the relevance objection? She's saying that this line of
6 inquiry has kind of been taken off the table since -- I'm not
7 sure which entity, I think you're talking about the Holdco, CLO
8 Holdco. Right?
9 MS. HAYWARD: Yes, Your Honor.
10 THE COURT: Since now the disbursement that would
11 have gone to it is being put off the table and would go into
12 the registry of the Court. So what is your response?
13 MS. REID: Well, Your Honor, and I can take it off,
14 but currently it's my understanding that Mr. Okada is a 25
15 percent owner in Holdco. But I can move on to the next
16 question.
17 BY MS. REID:
18 Q Which is, are you aware that Mr. Okada right after the
19 final judgment was entered transferred their entire interest to
20 Nutra Limited?
21 A Who transferred to whom?
22 Q Right after the final judgment --
23 A Right.
24 Q -- that Mr. Terry obtained, Mr. Okada transferred their
25 entire limited partner interest in Acis, LP to Nutra.

1 A So I apologize. A couple of things. One is it goes to
2 what you said, I don't believe Mr. Okada has any interest in
3 sale of Holdco, but you're saying Mr. Okada and their in your
4 question, and so it doesn't make sense. He's an individual.
5 So I just don't know what you're asking me. You said Mr. Okada
6 transferred their interest. Who's their?
7 Q Are you aware that Acis -- that you're aware that after
8 the entry of the Acis judgment that Mr. Okada's limited
9 partners interest in Acis was transferred to Nutra?
10 MS. HAYWARD: Again, Your Honor, I lodge the same
11 objection to relevance.
12 THE COURT: All right. Again, what is your response
13 to the relevance objection?
14 MS. REID: I think it's very relevant because I mean
15 he has been saying that they have a fiduciary duty to
16 investors. Mr. Okada is not your normal independent investor.
17 It's a related party that has engaged in prior improper acts in
18 this court which you're aware, aren't you -- well.
19 THE COURT: Yeah, I'll overrule the objection and
20 allow a little latitude.
21 THE WITNESS: So I think what you're referring to is
22 the position in Nutra and I'm aware of some of those issues.
23 Mr. Okada apparently owns 25 percent of Nutra, Mr. Dondero owns
24 75 percent of it. The control in Nutra is actually vested in
25 Highland Capital Management through a control agreement. So

1 I'm not -- I'm aware that they made a transfer and that Nutra
2 owns that interest now, and I'm aware that that split is 75-25,
3 I assume because of that split just like ATM Services, Mr.
4 Okada doesn't have any say in how it's run. And the control in
5 that entity anyway is vested in Highland, the Debtor.
6 BY MS. REID:
7 Q So you're aware there were improper transfers made at --
8 during -- before the Acis bankruptcy. Is that correct?
9 A I'm aware --
10 Q You're not aware?
11 A I'm aware of the decision and I'm aware of the transfers.
12 The designation of it then as improper, I'm not sure that I can
13 say one way or the other because I've looked at the transfers
14 and I can't tell you whether that transfer was improper. So if
15 you're asking me if I'm aware that that transfer occurred, I
16 think I said I was. I don't think it's fair for you to color
17 that the transfer was improper. If somebody --
18 Q Are you aware of the Court's decision --
19 A I am --
20 Q -- that they were improper?
21 A -- I don't recall the Court's decision with respect to
22 that transfer. There were a lot of transfers, a number of
23 which the Judge ruled were improper.
24 Q Okay. So you are aware that there were improper transfers
25 made from Acis that the Judge found were improper. Correct?

1 A Yes, I am.
2 Q Okay. And you're aware that Mr. Okada was the Chief
3 Investment Officer at the time those transfers were made.
4 Correct?
5 A Of which entity?
6 Q Of Highland, of the Debtor.
7 A I believe he was -- I believe he was a co-CIO of the
8 Debtor at that time, but I'm not positive.
9 Q So you don't know.
10 A I'm not sure, no.
11 Q Okay. Do you know he was -- he was the Debtor's -- so you
12 do not know one way or the other.
13 A I am aware that at some time he was the CIO and then the
14 co-CIO. I don't know the specific time that he was the sole
15 CIO. I just don't know.
16 Q Do you know if he was involved with the Debtor at the time
17 these improper transfers were made?
18 A He definitely worked for the Debtor at that time.
19 Q Okay. You -- the reply that was filed today by the --
20 this morning by the Debtor states that the making of these
21 distribution to Mr. Dondero and Mr. Okada is essential to
22 rebuilding the Debtor's reputation in the marketplace. Is that
23 correct?
24 A I believe that's what it says, yes. I assume you're
25 reading it?

1 Q I am.

2 A Okay.

3 Q Aren't you -- is the marketplace not well aware of

4 Highland's history including the Acis and the Redeemer

5 Committee litigation?

6 A I believe the market is aware of the Acis and Redeemer

7 litigations.

8 Q Okay. And is the marketplace well aware of the extensive

9 wrongdoing that Mr. Okada and Mr. Dondero engaged in as found

10 by this Court and the other tribunals?

11 A I don't know how the marketplace -- I know that they're

12 aware of the decisions, I can't tell you whether the

13 marketplace as a large general matter knows the specifics. I

14 don't know.

15 Q Have any non-insider investors expressed concern to you

16 over the possibility of Mr. Okada not receiving the

17 distribution?

18 A No, I don't believe so. I think -- just to make sure I

19 answered your question, have the non-insiders raised issues

20 about Mr. Okada --

21 Q Not getting distribution.

22 A No, there won't --

23 Q No one is really concerned about that except Mr. Okada.

24 Correct?

25 A I think each investor is concerned about their own

1 distributions, so like with respect to RCP I don't CalPERS
2 referred at all to the distributions to Ontario, they probably
3 don't care, they care about their own distributions.
4 Q And the only one we're talking about right now is the one
5 to Mr. Okada. Correct?
6 A That's correct. I hope so. Right? Meaning I'm under the
7 impression that the Committee doesn't object to the investment,
8 to the release of funds and the distribution to third-party
9 investors.
10 Q Mr. Seery, you testified that one of the reasons you're
11 seeking to distribute these funds is because the Debtor has
12 fiduciary duties to investors. Correct?
13 A Yes.
14 Q Okay. But these funds aren't being distributed to just
15 regular investors. Correct? They're being distributed to
16 insiders.
17 A Again, unfortunately these are things one has to be
18 precise with. The question is insider under some securities
19 law, or insider under the Bankruptcy Code? So --
20 A Insider under the protocols.
21 Q I believe the term there, again, we should be precise, is
22 related party. So he's a related party under the protocols.
23 As far as I know there's no separation under the Investment
24 Advisors Act, under the Cayman law, under Delaware law, or
25 under the contracts with respect to persons who might have

1 worked for the investment manager who made an investment in the
2 fund.
3 Q Are you aware that the Debtor also has duties to the
4 Creditors Committee?
5 A I don't believe the Debtor has any duties to the Creditors
6 Committee.
7 Q To the estate?
8 A I believe the Debtor has significant and overriding
9 duties, but that's what we're here for, to the estate.
10 Q To the estate. And were very conscious of those duties.
11 Correct?
12 A I am indeed.
13 Q That's what you testified. Right?
14 A Yes.
15 Q Okay. So can you explain to me what -- how you consider
16 the estate's considerations in deciding to distribute these,
17 what was your consideration of the estates, how does this
18 benefit the estate?
19 A This benefits the estate because we have an obligation to
20 the funds and to the investors in the funds to perform
21 according to the terms of the funds. Unfortunately there is no
22 provision in the fund documents or in the law that allows us to
23 treat the investors in the funds in a disparate way. And we
24 believe, after consulting with outside counsel, domestic and
25 Cayman, considering federal law under the Advisors Act, as well

1 as Delaware law, that the only way to make distributions, other
2 than if there was a law change, was pro rata to all of the
3 investors.
4 So in order to vindicate our obligations to the
5 outside investors, we also have to pay the inside investors.
6 In addition, if we don't pay the inside investors, there's no
7 basis not to do that. Now there may ultimately be no liability
8 because it will be hard to bring a case. But it seems to me
9 that incurring potentially liability is not in the best
10 interest of the estate. Holding up a distribution from non-
11 estate property doesn't seem to do anything to help the estate.
12 In fact, it puts it at risk.
13 And so we did the work and that's how we determined,
14 exercising what I think is our duty of care, which is really
15 researching this, and we spent a lot of time and a lot of money
16 making sure we got this right. And our duty of loyalty. Is
17 there some good reason that the fund could hold up the
18 distribution. Until we have a claim is there a valid to attack
19 these distributions.
20 By the way, there were $8 million out of 180 million.
21 Now if there had been 180 -- if there had been 172 out of 180,
22 maybe we would come in here and say, We should something a
23 little bit different because we're really letting the small
24 outside investors dictate us and force us to make distributions
25 to related parties that the Committee has some concern about.

1 But while $8 million is real money, and I don't deny
2 that, again, it's not huge in this case. And it seemed to us,
3 after doing the work, that we were putting the estate at risk
4 by no exercising our fiduciary duties. Moreover, we each have
5 reputations, and they're important to us, and they don't
6 override our fiduciary duties. We're not going to do things to
7 aggrandize ourselves, to help our reputation versus the estate.
8 But running this Debtor correctly seems to us, looking at the
9 history, was the right thing to do.
10 Q Has anyone, Mr. Seery, threatened to bring a fiduciary
11 duty claim against you if you don't pay these funds?
12 A No.
13 Q Has any -- has Mr. Okada said he's going to bring a claim
14 against you if you don't distribute these funds?
15 A No, and nor did I consult him about it. We just told him
16 what we were doing. We're not -- I'm not inviting someone to
17 sue us. That I think would be, you know, grossly wrong for us.
18 Q Now we've touched a little bit on this, Mr. Okada owes the
19 Debtor 1.3 million. Correct? In the demand note?
20 A Approximately, yes.
21 Q All right. And you have made a demand on Mr. Okada.
22 Correct?
23 A That's correct.
24 Q And he hasn't paid it. Right?
25 A No, he has not.

1 Q And that's money into the estate. Correct?
2 A That will be, yes.
3 Q Now do you still think it's okay to just hand him off, you
4 know, $4 million and even though he's not paying the estate
5 that you have a duty to?
6 A There's no such thing in my life as just handing off $4
7 million. This is fund money --
8 Q Distributable.
9 A -- that will be distributed to the owners of the fund pro
10 rata. We're not handing off anything to Mr. Okada or anybody
11 else.
12 Q But Mr. Okada has not agreed to pay back his note.
13 Correct?
14 A He's not agreed to pay it back, no. Technically I would
15 say no.
16 Q Okay. And that's because of some severance agreement that
17 you're not aware of what the terms are. Is that right?
18 A I have not -- we have not -- I have not looked at the
19 terms, I don't believe many of my fellow directors yet have.
20 It's something that is on the burner for us to get to as soon
21 as this is over.
22 Q And are --
23 A He's pushing for it.
24 Q -- are you aware that the Committee has asked for that
25 severance agreement?

1 A I was not aware of that, no.
2 Q You're not aware of that.
3 A I haven't seen it.
4 Q And you don't know that it hasn't been produced to us. Is
5 that correct?
6 A I don't -- I have not seen it myself, I don't -- didn't
7 know that you'd asked for it, nor do I know that it hadn't been
8 produced.
9 Q Okay. And you haven't looked at it.
10 A I haven't seen it.
11 Q So you don't know if his failure to pay that money back is
12 valid or not. Is that correct?
13 A That's -- I don't -- he still owes the money whether he
14 has appropriate setoffs and whether a settlement agreement
15 would actually work as one. I don't -- haven't really analyzed
16 that and I don't know that our counsel has either. It may be
17 that he owes the money and we're holding a severance agreement,
18 but those aren't mutual obligations that are subject to setoff.
19 Q You don't know one way or the other whether he has a right
20 of setoff. Correct?
21 A I don't believe he -- other than perhaps expenses I
22 don't -- haven't heard any articulated monetary setoff against
23 the obligations he owes.
24 Q If the Court orders that his distribution be put into the
25 Court registry, do you still think you've breached your duty to

1 the estate somehow by that?
2 A I think if the Court orders it, I don't think we would be
3 subject to a breach of liability. I think that we're here
4 vindicating our responsibilities and our duties to investors.
5 If there's an interceding court order, we will follow it.
6 Q Thank you.
7 MS. HAYWARD: I have no further questions.
8 THE COURT: All right. I think that was about 17
9 minutes. Any other examination? Okay. You'll have 13
10 minutes.
11 MS. PATEL: Just a few questions, Your Honor.
12 CROSS-EXAMINATION
13 BY MS. PATEL:
14 Q Good afternoon, Mr. Seery.
15 A Good afternoon.
16 Q Mr. Seery, I think your testimony was that the fund, let's
17 use RCP -- or I'm sorry, that's the wrong one --
18 A Dynamic?
19 Q I think it was the Dynamic --
20 A Dynamic.
21 Q -- Income Fund is the one that Mr. Okada has an
22 investment in. Correct?
23 A That's correct.
24 Q Okay. And the fund has duties to Mr. Okada including
25 fiduciary duties as an investor. Right?

1 A That's correct.

2 Q Okay. Does Mr. Okada have duties to the fund?

3 A I don't believe he does, no.

4 Q Okay. Did he ever?

5 A I believe he did.

6 Q Okay. That was during his tenure at Highland Capital

7 Management. Right?

8 A I think as an officer of Highland Capital Management, the

9 investment manager, he would have had duties to the fund, yes.

10 Q Okay. And have you investigated whether he's breached any

11 of his duties to the fund?

12 A We have looked, we have not seen anything. We know that

13 the redemptions came in without any objection. We have not

14 spoken to the individual investors.

15 Q Okay. So would it be fair to say then that you haven't

16 concluded your investigation of whether Mr. Okada has breached

17 any of his duties to the fund itself?

18 A I don't think that would be fair. I think what would be

19 fair to say is we've taken a look, we see no evidence

20 whatsoever that there were any breaches by Mr. Okada of his

21 duty to that fund, so there would be no reason to undertake an

22 investigation that we had yet to complete.

23 Q Okay. And who undertook that investigation, was it just

24 the board or did you have others involved?

25 A It was the board.

1 Q Okay. No one else?

2 A The investigation with respect to the -- we got data from
3 other people but I'm the one who looked at whether there were
4 any claims related to the redemptions, any objections to any of
5 the other distributions, any objections to the fees, and we
6 found none.

7 Q Okay. So no outside counsel advised you with respect to
8 whether Mr. Okada had potentially breached any duties to the
9 fund?

10 A No, again, it's not something that we would have looked at
11 with no evidence whatsoever that there was any sort of
12 complaint or breach.

13 Q Okay. All right. Mr. Seery, with respect to the, I'll
14 call it the agreement because I'm assuming that it is an
15 agreement, that Mr. Dondero's counsel announced on the record
16 regarding putting the funds that would otherwise be payable to
17 Mr. Dondero into the registry of the Court. Do you have an
18 understanding whether that agreement also extends to Highland
19 Capital Management Services?

20 A Yeah, just to be clear because, again, we should be
21 precise, Mr. Dondero was not going to receive any money. The
22 CLO Holdco, which is owned by the charitable DAF has
23 investments in the Argentina Fund and the Dynamic Fund. It was
24 going to receive money. Highland Capital Services has around a
25 2 percent interest in RCP, it was going to receive money.

1 I understand that Mr. Dondero, through his counsel,
2 directed that the distribution to Highland Capital Services
3 would not be made. Mr. Okada owns 25 percent of that, he was
4 not consulted. I know that because I spoke to Mr. Okada. The
5 distribution with respect to the CLO Holdco has been similarly
6 treated, but that was done by Grant Scott talking to Mr. Nelms
7 (phonetic) for the charitable DAF that controls the CLO Holdco.
8 Q Okay. So, again, to be clear, Mr. Okada has not consented
9 to the agreement that was announced on the record with respect
10 to any distributions to Highland Capital Management Services.
11 Correct?
12 A He has not, but since he doesn't control it and Mr.
13 Dondero does, the agreement is binding.
14 Q Okay. And how do you know that Mr. Dondero controls
15 Highland Capital Management Services?
16 A Mr. Okada told me.
17 Q Okay. All right. Mr. Seery, with respect to Mr. Okada, I
18 believe your testimony was he separated from Highland Capital
19 Management in September of 2019. Correct?
20 A I believe I testified that he originally began his
21 separation in the spring, I don't know exactly when it was, and
22 I believe his official resignation was some time around
23 September.
24 Q Okay. Would September 30 of 2019 sound about right?
25 A It -- approximately, I don't know the date.

1 Q Okay. So it was towards the end of September though.
2 Correct?
3 A I don't -- I don't know whether it was September 1,
4 September 15 or September 30, I just don't know the answer.
5 Q Okay. And at the time Mr. Okada separated from Highland
6 or any time before then, did Mr. Okada have a non-compete
7 agreement?
8 A I have not looked at Mr. Okada's contract.
9 Q Okay.
10 A So I don't know.
11 Q All right. Does -- did Mr. Okada have something called a
12 non-solicit --
13 A I don't know.
14 Q -- where he wouldn't solicit clients for example of
15 Highland Capital Management?
16 A I don't know.
17 Q Okay. Did Mr. Okada have what's called a non-recruit
18 where he wouldn't come in and try and recruit employees of
19 Highland Capital Management?
20 A Again, because I haven't looked at his contract, if he had
21 one, I don't know that he did, and because I haven't looked at
22 it, and I testified that I haven't seen this severance
23 agreement he's talking about, I don't have any understanding of
24 the terms of Mr. Okada's employment with Highland Capital
25 Management.

1 Q Okay. So you just haven't looked at any of those things.
2 A That's correct.
3 Q All right. Are you aware -- well, did you have an
4 opportunity to look at -- I believe there was a press release
5 that was somewhere around September 2019 where Mr. Okada said
6 he was actually retiring from Highland Capital Management?
7 A I would have no reason to have looked at such a thing in
8 September.
9 Q Okay. All right. So you haven't seen that. Let me ask
10 you another question, are you aware that Mr. Okada has a new
11 business by the name of Sycamore Tree Capital?
12 A I'm aware that he intends to start a new fund, I have no
13 idea what the name is and I'd have no idea what development --
14 stage of development it's in.
15 Q Okay. Are you aware if any Highland employees have been
16 engaged by Sycamore Tree Capital
17 A I'm aware that at least one maybe, I'd have no idea
18 whether that employee, ex-employee now, is involved or not.
19 Q And isn't that employee Troy Parker?
20 A That's correct, yes.
21 Q Okay. What did Troy Parker do for Highland Capital
22 Management?
23 A Most recently he ran the PE book.
24 Q Okay.
25 MS. PATEL: No further questions, Your Honor.

1 THE COURT: All right. We have seven minutes. Do
2 you have questions, Judge Lynn? We have a little bit of time?
3 JUDGE LYNN: No, but I just want to make clear Mr.
4 Dondero's suggestion for resolving the motion was not a
5 dickered agreement, it was a suggestion that we would hope
6 would make life easier for the parties and the Court.
7 THE COURT: Okay. Thank you. Thank you.
8 I had one or two questions. Is there going to be
9 redirect? Well, no, you used all your time, you don't get
10 redirect.
11 (Laughter.)
12
13 MS. HAYWARD: And, Your Honor, I don't have redirect.
14 THE COURT: Oh, very good.
15 EXAMINATION
16 BY THE COURT:
17 Q Let me ask you, sir, I want to revisit Dynamic, that's the
18 one I hear most about obviously since that's the one that Mr.
19 Okada --
20 A Yes.
21 Q -- has the distribution rights from. You know, I was
22 fixated before I came out here a little on the time line.
23 Right? So the pleadings said Dynamic, the termination date was
24 November 15, 2019.
25 A Correct, Your Honor.

1 Q About 30 days after the Highland bankruptcy was filed.
2 What I heard your testimony to be was that pre-petition the
3 largest third-party investor -- I wrote it down phonetically --
4 A Realdania.
5 Q -- Realdania --
6 A I'm not sure if there's someone in the courtroom who know
7 them.
8 Q Sounds like a Spanish company maybe.
9 A I believe they're a European company, it's an investor I'm
10 not familiar with, Your Honor, but I have seen the redemption
11 notices.
12 Q Okay. They issued a $65 million --
13 A I believe it was in the neighborhood of 65 million, yes.
14 Q And it was pre-petition? You wouldn't know?
15 A It was pre-petition, I think it was around 40 percent of
16 the fund.
17 Q Okay. I mean do you remember when? Was I t --
18 A I believe it was in the spring and it followed a -- spring
19 or early summer and it followed a separate redemption from a
20 different investor.
21 Q Okay. So there was another third-party investor, even
22 before Realdania that --
23 A That's my recollection, yes, Your Honor.
24 Q -- that was unaffiliated with Highland.
25 A That's correct.

1 Q Okay. So it's your business judgment that once these two
2 biggies issued their redemptions, it just wasn't worthwhile to
3 keep this fund going anymore.
4 A That's correct, Your Honor. And as I said, Mr. Okada was
5 a driver to that fund and he had left. He did not actually
6 redeem, but he was being compulsory redeemed as the fund went
7 into liquidation. So all of the investors, redeemed and non,
8 will be treated the same.
9 Q All right. So I guess one thing I'm getting at is timing
10 of Mr. Okada leaving versus timing of these third-party
11 redemptions happening.
12 A Right. I could --
13 Q Is there any --
14 A I see no connection whatsoever. And, again, his piece of
15 the fund was about -- I believe it was round 12 percent of the
16 fund.
17 Q Yeah, his --
18 A And it's a material amount of money I suppose to most
19 folks, including myself, but it's not -- it wasn't a driver
20 whatsoever that we could see, and he did not redeem. So the
21 third-party redeemed, Okada was leaving having been the driver
22 of the fund, it was an undersized fund anyway, there was no
23 real valid reason to keep a small fund trying to do this around
24 after Mr. Okada left.
25 Q Okay. I'm just wondering whether I should or not, you

1 know, the timing of this. So this is -- starts spring of 2019,
2 but then a month post-petition let's terminate this thing. I
3 mean who actually makes that decision?
4 A Well, the decision to continue forward is made by the
5 board. Before that it would have been made by the managers of
6 the funds or the compliance group. So I have not looked into
7 specifically who said, Let's terminate it. To be perfectly
8 frank, I don't know --
9 Q But it would --
10 A -- the specifics.
11 Q -- the manager, Highland?
12 A It's Highland who determines to terminate it. Ultimately,
13 if all the investors issued redemption notices, then the fund
14 would have to liquidate --
15 Q Right.
16 A -- on its own. So Highland --
17 Q Right.
18 A -- wouldn't have any say about it. But to put it into
19 liquidation, I believe it was Highland that did it. Some of
20 the funds, it could be foreign directors, but that's not what
21 happened.
22 Q Uh-huh. Okay. So there are third-party non-affiliated
23 investors still in it, there's 35 million that would go out the
24 door and --
25 A It's about -- there's a couple of assets that still have

1 to be liquidated. Approximately 85 percent of the distribution
2 is to third-party un-affiliated investors. And then we --
3 we'll have -- we'll retain some cash to make sure that we can
4 manage the liquidation of the fund and the dissolution of the
5 entities. But we still have to get rid of a small amount of
6 assets that are pretty liquid.
7 Q Okay. Now I heard you also say that Highland isn't owning
8 any fees anymore on these refunds. Did I not hear you say
9 that?
10 A Yeah, certainly -- so I think on ours I think. On Dynamic
11 and on AROF, the Argentina Recovery Opportunity Fund, once they
12 were put into liquidation they don't earn any fees anymore.
13 The --
14 Q Okay. Let me -- okay, so when did that stop, when were
15 they "put into liquidation" so the management fees stop?
16 A I believe that Dynamic would have been in the fall, I
17 don't know the exact date, and Argentina --
18 Q Well --
19 A -- was before that.
20 Q -- the Court termination date used in the pleadings was
21 November 20, 2019.
22 A Yeah, but I don't recall the exact date, Your Honor. We
23 can certainly figure that out, I just don't recall off the top
24 of my head. When the fee cutoff date -- the fee cutoff date
25 for RCP was I believe in April of 2018 when the one-year

1 extension was given. That was the trade for the extension.

2 Q Okay. But you don't know for sure when the management fee

3 cutoff was --

4 A No.

5 Q -- on either Argentina or Dynamic.

6 A No, that's correct, Your Honor.

7 Q I mean would it have been in November 2019 you think?

8 A I think it was before that, but I don't -- I believe so

9 but I don't know for sure.

10 Q Okay.

11 A If I'm wrong, I'll figure that out and correct it to you.

12 Q Okay. All right. Thank you. You're --

13 A Thank you.

14 Q -- excused.

15 A Thank you.

16 THE COURT: Does anyone in the room know the answer

17 to that?

18 MS. HAYWARD: Your Honor, we can figure it out very

19 quickly I think.

20 THE COURT: Really? Okay.

21 (Pause in the proceedings.)

22 THE COURT: Actually I had one more question for Mr.

23 Seery.

24 THE WITNESS: Yes.

25 BY THE COURT:

1 Q Do we have any other Highland managed funds out there that
2 are imminently going to be going into wind-down mode? Is that
3 easy to answer?
4 A We have a number of CLO funds that are what we call 1.0
5 CLOs. They're old and they're effectively winding down. And a
6 number of those we don't get fees off of, but they had --
7 because they own very illiquid assets, we have to realize on
8 those assets. May of those have cross-ownership to funds that
9 we do get fees on. We need --
10 Q Let me back you up. Why didn't Highland get fees on
11 those?
12 A Because sometimes in the CLO structure it depends on what
13 kind of asset gets treated under the net asset value, so for
14 example if it's equity, it may not count, even if it has a
15 value, you don't get paid a fee on it. So if you had a loan
16 that converted to equity, some of those CLOs you may not get a
17 fee on because you don't own any loans anymore. So, but most
18 of those assets, if a CLO owned equity for example in a PE
19 company, we would have other funds that owned additional equity
20 in that same PE company.
21 We do have other assets where they aren't necessarily
22 wind-down, but there will be distributions to entities that may
23 or may not be related parties under the protocols, and we are
24 in the process, and the Committee's aware of it, selling
25 certain assets, and hopefully those sales will go the way we

1 want them to. They're valuable assets so we feel we have a
2 good opportunity to realize good value for the estate. There
3 would be requirements on certain of them to pay off debt from
4 certain entities before we can distribute money back up to
5 Highland Capital.
6 Q All right. Thank you.
7 A Thank you.
8 THE COURT: You're excused.
9 All right. Anything else today?
10 MR. POMERANTZ: Do you want to hear closings, or have
11 you heard enough, Your Honor?
12 THE COURT: I mean if you have a quick one or two
13 minute closing, I'll hear that, to recap anything. Did you
14 have that quick answer that Ms. Hayward --
15 MR. POMERANTZ: We are --
16 THE COURT: -- was confident about?
17 MR. POMERANTZ: We are trying to find it.
18 THE COURT: Okay.
19 MR. POMERANTZ: We have a couple of emails out,
20 hopefully by, we get a couple of answers.
21 THE COURT: Okay. Okay.
22 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR
23 MR. POMERANTZ: Your Honor, I just wanted the
24 highlight the fiduciary duty as you -- I know it was a subject
25 of discussion with Mr. Seery, cross-examination. Again, as you

1 heard, and as the only evidence before Your Honor is, Mr.
2 Seery, who as Your Honor knows is a restructuring lawyer,
3 practice in it. He's fully aware of what the fiduciary duty
4 requires.
5 And first and foremost, I think it may even be 28 USC
6 959, the Debtor has to operate in accordance with applicable
7 law. Every debtor before Your Honor has to act in accordance
8 with applicable law, and if the debtor is not acting in
9 accordance with applicable law, then they are creating
10 liability. As Mr. Seery testified, that is exactly what that
11 the Debtor is doing. And this concept of dueling fiduciary
12 duties or the board taking certain actions that just happened
13 to benefit insiders as indicating that they are not looking out
14 for the estate is just not accurate. That's not how the law
15 works and I think Mr. Seery said it correctly, that the Debtor
16 fulfills its fiduciary duty to the estate by operating in
17 accordance with applicable law.
18 With respect to 105, Your Honor, the cases cited by
19 the Committee don't support granting injunctive relief forward
20 of attachment without going through the necessary process.
21 They do cite the DeLorean case which at first blush sounds like
22 a court authorized the holding of money, but if you read that
23 case carefully, it was done because there was a complaint and
24 because the Court ultimately determined that the evidence
25 before the Court established grounds for preliminary

1 injunction.

2 Mr. Clemente has asked Your Honor to hold that the

3 objection filed satisfies the standard. But the objection

4 isn't a legal document. The Committee has not put on any

5 evidence to support any claims that exist. The testimony from

6 Mr. Seery is that there's a claim under a note and that there

7 are defenses to the note. So Your Honor does not have the

8 sufficient evidentiary basis in order to meet the standards of

9 the injunction of which irreparable harm -- there's a whole

10 host of reasons.

11 So while we understand what the Committee wanted to

12 do. If they wanted to file an action, they could have. We

13 don't expect them to have completed their investigation on all

14 the types of claims they're looking at. But they've been aware

15 of this Okada note for a couple of months. It would not have

16 been difficult for them to file, as they have standing, a

17 lawsuit to recover any. They asked us to issue a demand note,

18 we did, and we got the answer.

19 So, Your Honor, I don't think there's a basis under

20 105, the way it's being used here and the lack of evidentiary

21 record to support it. And for those reasons, Your Honor, we

22 would ask that Your Honor support the motion and other than the

23 distributions that are being held in the registry, allow the

24 distribution to be made to Mr. Okada.

25 THE COURT: Okay.

1 MR. POMERANTZ: Thank you, Your Honor.
2 THE COURT: All right. Other quick closings?
3 MR. CLEMENTE: Your Honor, I'll be very quick.
4 CLOSING ARGUMENT ON BEHALF OF THE COMMITTEE
5 MR. CLEMENTE: There's obviously a lot more that I
6 could say, but I'll be respectful and be very quick.
7 First of all, Your Honor is the judge and you're the
8 one that determines what the law is and what the duties
9 ultimately are for this Debtor. Mr. Seery I think indicated in
10 his testimony that, for what it's worth, he does not believe
11 that there would be a viable claim for breach of fiduciary duty
12 if Your Honor ordered the distribution to Mr. Okada be put in
13 the Court registry.
14 I think the testimony was clear from Mr. Seery that
15 Mr. Okada, at all times relevant, when all the things that
16 happened that involved the Redeemer Committee, that involved
17 Acis, that involved UBS, Mr. Okada was at least co-Chief
18 Investment Officer and we all know he was co-founder of
19 Highland. I think Your Honor's questions, and perhaps
20 frustration with sort of trying to figure out some of the
21 answers, show how interrelated all of these things are and the
22 various capacities and roles that Mr. Okada had back at the
23 time when all these different transactions occurred.
24 I think the testimony we heard is that Mr. Seery did
25 a lot of work around why we should pay Mr. Okada, but almost no

1 work around why we shouldn't pay Mr. Okada. And so I go back
2 to what I said earlier, Your Honor, I think Mr. Okada is
3 perfectly capable of coming into this court and arguing that
4 once the monies that were put into this Court's registry should
5 be distributed to him, he can come in and do that.
6 But I think for purposes of today, Your Honor has
7 heard more than enough to come to the conclusion that the
8 appropriate remedy here is to place the money within the
9 registry of this Court. It satisfies the fiduciary duty of the
10 Debtor and it protects the interest of Mr. Okada, who is free
11 to come into this court and make whatever argument he so
12 chooses as to his entitlement to those funds.
13 Unless Your Honor has any questions of me, I'll sit
14 down.
15 THE COURT: Thank you.
16 MR. CLEMENTE: Thank you.
17 THE COURT: Anything else?
18 MR. POMERANTZ: Your Honor, in answer to you
19 question, November 11 was the date that the fees were no longer
20 payable to the Debtor in the Dynamic Fund.
21 THE COURT: November 11 post-petition.
22 MR. POMERANTZ: Correct.
23 THE COURT: I like being transparent and I -- and so
24 I sometimes share my thoughts hoping that it will help. But
25 I'm -- you all get why I'm fixated on this point? Maybe I'm

1 sharing my thoughts when I don't have to. But the time line
2 looks suspect, whether it should be or not, it looks maybe
3 problematic. Do you see what I'm saying?
4 We had this fund that I understand never got to real
5 scale and in spring 2019 we have a couple of big unrelated
6 third-parties -- third-party investors issue redemptions and
7 that makes it really not a very worthwhile fund, so maybe it
8 should go into wind-down mode. Nevertheless, Highland has been
9 continuing to get its management fee. I don't know how much
10 management fee, but it's been getting a management fee until it
11 files bankruptcy, and then, Oh, let's wind this sucker down.
12 Do you see what -- you know, I don't know. I mean
13 again, a hearing for another day. But this is the kind of
14 thing I get concerned about, and maybe kind of want to look
15 into the bona fides of the decision making process to wind
16 down, let's terminate this thing and make disbursements. And,
17 you know, did we have any fingerprints of this on insiders that
18 should make me troubled. I don't know. I mean if I'm going
19 out on a lark here, just stop me.
20 MR. POMERANTZ: Well, look, Your Honor, I certainly
21 understand why you're concerned. As you said at the first
22 hearing, you have stuff in your head that you can't forget, and
23 I understand. I wasn't around but I understand the history and
24 especially the history with certainly similar things that may
25 have happened in the Acis case.

1 The facts are that Realdania made its redemption
2 request on August 15, the fees that the -- August 15, but that
3 the liquidation was the time where the management fees stopped,
4 which incidentally were $12,000 a month based upon the level of
5 this spot.
6 THE COURT: Okay.
7 MR. POMERANTZ: So, Your Honor, I understand your
8 concerns, however, what I would say is, you have Mr. Seery here
9 answering your questions. You have Mr. Seery who said he's
10 conducted an thorough investigation. At some point, and I'm --
11 you know, obviously you brought up a couple of questions, at
12 some point the creditors -- Your Honor has to accept that if
13 the board has done a thorough analysis, and we're coming into
14 this hearing today, and before we filed the motion, as Mr.
15 Seery said, we crossed all our Ts and dotted all our Is.
16 We spent a lot of money collectively, the different
17 firms that are involved, because we wanted to make sure it's
18 the right thing. We understood that coming to Your Honor
19 asking to pay investors who are related parties, given the
20 context of this case and given the Committee's opposition, was
21 going to be a big challenge. We thought it was the right thing
22 to do, but we wanted to make sure Your Honor knows that the
23 board actually did a thorough investigation, again, spearheaded
24 by Mr. Seery, who is not just someone off the street, but as he
25 testified, this is what he's done over the last 10-15 years.

1 So I certainly understand Your Honor's concerns. Mr.
2 Seery I think has testified about the thorough investigation,
3 and that the 12,000 a month, that I think if he got back on the
4 stand, he would testify that would be a breach of duty to the
5 investors to continue on getting fees. There's an obligation
6 at some point, when the redemptions happened, to either pay the
7 redemptions, put the fund in liquidation, and that's what
8 happened.
9 And just because it wasn't done by the board, it was
10 done before, it was important, as I mentioned in my opening,
11 and as Mr. Seery testified, he looked at that carefully and
12 thoroughly. He didn't want to be embarrassed, we didn't want
13 to be embarrassed coming in and not having those answers. So,
14 Your Honor, this is a long way of saying I think at some point
15 the board is entitled to the deference of business judgment if
16 they can demonstrate that they've gone through the process
17 necessary to earn the deference to business judgment, which I
18 think Mr. Seery has done.
19 THE COURT: Okay. And while we're on the subject, I
20 mean 12,000 a month was the management fee to Highland from
21 Dynamic. What was the management fee from Argentina, do you
22 have that off the top of your head?
23 MR. SEERY: It would have been in the same -- these
24 are approximately --
25 THE COURT: The same range?

1 MR. SEERY: -- the same neighborhood.
2 THE COURT: Okay.
3 MR. SEERY: That the meetings would be based upon
4 fees.
5 THE COURT: Okay.
6 MR. SEERY: Or the redemptions (indiscernible)
7 variable asset now (indiscernible).
8 THE COURT: Okay.
9 MR. SEERY: (indiscernible).
10 THE COURT: Okay. All right. Just a minute while I
11 do some math.
12 (Pause in the proceedings.)
13 THE COURT: All right. I'm doing this math in my
14 head. There's a $7.4 million note receivable from HCM Services
15 of which Okada is the 25 percent owner of.
16 MR. POMERANTZ: Your Honor, 7.4 is not the demand
17 notes. Again, 985,000 is the demand notes. The rest of those
18 notes are performing and not in the fall.
19 THE COURT: Okay. All right. With regard to the
20 motion and the objection and the Committee there's been a lot
21 of argument about 105 and what it permits the Court to do and
22 what it doesn't as far as fashioning an equitable remedy here.
23 Here I mean it's clear that this Debtor has receivables owed by
24 these related parties, although they don't necessarily match up
25 perfectly with the amount of disbursements that are owed by

1 these funds and of course the funds are separate legal entities
2 than the Debtor. So I'm not glossing over that fact or
3 ignoring that fact.
4 But I do think the Court has broad equitable powers
5 to remedy -- to fashion remedies that preserve the status quo
6 and I think it is appropriate here to order that most of this
7 money, that most of the 8.6 million that would go to related
8 investors in these three funds, be put into the registry of the
9 court pending further motions, orders, adversary proceedings
10 anyone wants to file to make a claim to that money. I said
11 most of it.
12 I am going to order that with regard to the amount
13 that would be payable to Mr. Okada, the 4.176 million, we will
14 subtract from that the 1.3 million that represents the demand
15 note receivable that the Debtor has so that I'm essentially
16 doing an equitable offset at that point. So he can only be
17 paid -- he should only be paid from the Dynamic Fund whatever
18 4.176 million minus 1.3 million is, and the rest shall be put
19 into the registry of the court. And everybody's rights are
20 reserved on anything and everything with regarding to do tos
21 and do froms.
22 I reserve the right to supplement in more detail in a
23 written form of order to justify the Court's 105 action here.
24 But, Mr. Pomerantz, I'd ask you to upload a form of order on
25 this, please.

1 MR. POMERANTZ: We'll be happy to, Your Honor. We'll
2 circulate it to the Committee and Ms. Patel as well.
3 THE COURT: All right. Well, thank you all, and --
4 MR. CLEMENTE: Your Honor, but just to be clear
5 though, the other amounts, correct, to HCM Services and CLO
6 Holdco, would that be part of the order or what did Your Honor
7 have in mind with respect to that?
8 THE COURT: Well --
9 MR. CLEMENTE: Because I believe those are to be
10 deposited with the Court as well, yes.
11 THE COURT: -- all of -- everything gets deposited
12 in the registry of the court, except Mr. Okada will get
13 whatever the differential is of 4.176 minus 1.3. Okay?
14 MR. CLEMENTE: Thank you, Your Honor.
15 THE COURT: All right. Thank you.
16 COURT SECURITY OFFICER: All rise.
17 *****
18
19
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23
24
25

1 **C E R T I F I C A T I O N**

2 We, DIPTI PATEL, KAREN WATSON and TERRI STARKEY,

3 court approved transcriber, certify that the foregoing is a

4 correct transcript from the official electronic sound recording

5 of the proceedings in the above-entitled matter, and to the

6 best of my ability.

7

8 /s/ Dipti Patel

9 DIPTI PATEL

10

11 /s/ Karen Watson

12 KAREN WATSON

13

14 /s/ Terri Starkey

15 TERRI STARKEY

16 J&J COURT TRANSCRIBERS, INC. DATE: March 6, 2020

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EXHIBIT 25

Complaint of "unfairly prejudicial" conduct of company's affairs under ss349 and 350 of Companies (Guernsey) Law 2008. Review of principles. Relevant prejudice must be to Plaintiff's interests as a member of the company and not otherwise. Prejudice must also be "unfair". No such conduct in this case; application dismissed. Court could not, in any event, grant relief which overrode contractual rights of other members of the company not convened, or of third parties.

[2023]GRC061

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

BETWEEN:

CLO HOLDCO LIMITED

Applicant

-and-

HIGHLAND CLO FUNDING LIMITED

Respondent

Before: Her Honour Hazel Marshall KC Lieutenant Bailiff,
Ms Claire Le Pelley and Dr Simon Bodkin, Jurats

Hearing Dates: 24-26 and 30, 31 October 2023

Judgment handed down 1st December 2023

Counsel for the Applicant: Advocate A Horsbrugh-Porter
Counsel for the Respondent: Advocate M Dunster

<u>Cases and legislation referred to</u>:

Legislation:
Guernsey

Royal Court (Reform) (Guernsey) Law 2008.
Companies (Guernsey) Law 2008, ss 314, 349,350

England and Wales:

Companies Act 1949, s210
Companies Act 1980, s 75

Cases:

Guernsey

Prodefin Trading Ltd v Midland Resources Holding Ltd and others (Royal Court Judgment, 7/2017).
Carlyle Capital Corporation Ltd v Conway (2017) (Royal Court Judgment 38/2017)

United Kingdom

Warmington v Miller [1973] QB 877
Re Noble & Sons (Clothing) Ltd [1983] BCLC 273
Re J E Cade & Son Ltd [1992] BCLC 213
Re Saul D Harrison & Sons PLC [1994] BCC 475
Re BSB Holdings Ltd 1996 1 BCLC 155 ChD
O'Neill v Phillips [1999] 1 WLR 1092
Gamlestaden Fastigheter AB v Baltic Partners Ltd [2007] Bus L R 1521
Att. Gen for Belize v Belize Telecom Ltd [2009] UKPC 10
Re Neath Rugby ltd (No 2) [2007] EWHC 2999 (Ch)
Apex Global Management Limited v Fi Call Limited [2015] EWHC 3239 (Ch)
Shanda Games Ltd v Maso Capital Investments Ltd (Cayman Islands) [2020] UKPC 2*Re Hut Group Ltd* [2021] EWCA Civ 904
Re Compound Photonics Group Ltd [2022] EWCA Civ 1371

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J U D G M E N T

Introduction - this Action and the parties

1. The Applicant, CLO Holdco Ltd ("**CLOH**") is a limited company incorporated in the Cayman Islands and is the 49.015% minority shareholder in the Respondent, Highland CLO Funding Limited ("**HCLOF**"). CLOH brings this Application against the company, HCLOF, under ss 349 (1) (a) and 350 of the Companies (Guernsey) Law 2008 on the grounds that

   "the affairs of [HCLOF] are being or have been conducted in a manner that is unfairly prejudicial to the interests of the members generally or of some part of the members (including at least [itself])".

© Royal Court of Guernsey

2. The Application, dated 6th March 2023, states that it arises out of the management of HCLOF in a manner which has caused ongoing unfair prejudice to CLOH in its capacity as minority shareholder as set out in the supporting affidavit of CLOH's director, Mr Paul Murphy. It is alleged that this is "*mainly*" predicated upon HCLOF - acting, of course, through its own Directors, Mr Richard Boleat and Mr Richard Burwood, but primarily the former - having aligned HCLOF's interests with the wider commercial interests of the majority "HCM shareholders" (a term explained below) who own 50.612% of HCLOF's issued shares.

3. The Application itself does not elaborate further. The supporting affidavit of Mr Murphy gave the Applicant's perspective at the time as to the way in which the affairs of HCLOF had been managed, raising several points of complaint aimed, principally (in summary) at matters which it was said were inhibiting CLOH's right or opportunity, in the circumstances, to receive funds properly due to shareholder/investors, or alternatively to "exit" its relationship with HCLOF. It is not necessary to recite these complaints here, as the grounds of CLOH's Application, and the relief which it seeks, have changed and moved on as the case has developed.

4. The purpose of the Application is said to be to mitigate further harm being done to CLOH's interests, preferably by an order enabling CLOH to terminate its relationship with HCLOF on what CLOH submits are equitable terms. CLOH's preferred option is (or was) that it should surrender its shareholding to HCLOF in return for a distribution to it *in specie* of its proportionate share of HCLOF's underlying assets, these being certain financial instruments known as Collateralised Loan Obligations, or "**CLOs**". Initially in the Application, alternatives were also proposed as to actions which the court might order HCLOF to perform. However, these latter forms of relief have rather fallen away as the case has progressed, and in fact, the form of relief ultimately sought by CLOH, formulated during the hearing itself, was that the court should order HCLOF to buy back CLOH's shareholdings, in two stages, at a price equal to their pro-rata share of HCLOF's current NAV (or Net Asset Value).

5. HCLOF resists the Application. It denies that its business has been conducted in any way prejudicially to the interests of CLOH as a member of HCLOF, let alone unfairly prejudicially. It submits that the relations of the parties are purely commercial, and it relies on the documents governing those relations, in particular HCLOF's Articles of Association, and a Members' Agreement made between all the then shareholders and HCLOF itself in 2017. It asserts:

   i. that the manner in which HCLOF's business has been conducted, including in respect of the particular matters of complaint raised by CLOH at various times, has been entirely in accordance with the terms of those documents – and that is really an end of the matter; but in any event

   ii. that, upon examination, the substance of CLOH's complaints are that business decisions taken by HCLOF's Directors were "wrong" as a matter of business judgment, and in the absence of bad faith in and about those decisions – and CLOH does not allege bad faith – such decisions do not found a claim of "unfair prejudice",

   iii. that the alleged "prejudice" cited by CLOH is, in any event, not prejudice to its "interests as a *member*" of HCLOF (emphasis added), and

   iv. that the relief sought by CLOH is not relief which the court has jurisdiction to grant (again, in any event) because it would involve either

      (a) contravening provisions of Guernsey company law, specifically, s 314 of the Companies (Guernsey) Law 2008 ("**the Companies Law"),** or

(b) overriding contractual provisions of the Members' Agreement or HCLOF's Articles of Association, and neither of these courses is possible in the absence of the other members of HCLOF – and in particular the majority shareholder – who are not convened as parties to this action, and, indeed who cannot be so convened, for reasons which will emerge, or

(c) breaching the contractual rights of independent third parties.

About this judgment

6. This is a decision of the Court and this written judgment has been prepared in accordance with Section 16 (5) of the Royal Court (Reform) (Guernsey) Law 2008. Pursuant to Section 14 (2) of that Law, the Lt-Bailiff did not sum up to the Jurats in open court but instead retired with the Jurats.

7. The Lt-Bailiff reminded the Jurats of their respective roles, namely that the Lt-Bailiff is the sole judge of matters of law and procedure and the Jurats must follow her directions on such matters, but that Jurats are the sole judges of questions of fact.

8. The Lt-Bailiff directed the Jurats that in making their factual findings, they must take into account all the evidence presented to the court, written, oral and documentary, on behalf of both parties, but it was for them to decide what evidence they accepted and what they rejected, or what weight they gave to any evidence. They should take into account the arguments which they heard from both Advocates, but they were not bound to accept them. Insofar as the Lt-Bailiff might herself appear to express views on the facts when guiding their deliberations, they should ignore these and reach their own independent conclusions. As to this, the standard of proof which they should adopt as regards any finding of fact was the ordinary civil standard of proof, namely proof "on balance of probability", and that this meant simply that they must be satisfied that the particular fact in issue was more likely to be so, than not to be so.

9. In this case, and with due notice to the parties, the court sat with a complement of only two Jurats instead of three, owing to the illness of the third intended Jurat on the first day of the hearing. The consequence of this was that in the case of a disagreement on any finding of fact between the two Jurats who heard the case, the Lt-Bailiff would have a casting vote on that issue. However, the Jurats were the sole arbiters of fact in the first instance, the Lt-Bailiff's finding only being required if they disagreed. In the event, no disagreement arose between them.

10. Therefore, where this judgment sets out holdings of law and reasons therefor, they are the holdings and reasons of the Lt-Bailiff; where it sets out findings of fact and reasons therefor, they are the common findings and reasons of the Jurats. Where mixed findings of fact and law are concerned, they have been reached on the above principles, but are referred to as the findings of "the Court" for brevity.

The Facts

11. In order to understand the matters complained of it is first necessary to know something of the surrounding facts and of the history, which is very complex. CLOH argues that HCLOF has tried to overburden the case with unnecessary and confusing detail in order to bolster its case. However, even to assess that proposition requires an examination of the facts. In

fact, a reasonably full account of the history is necessary for its materiality to two questions. The first is an appreciation of the circumstances in which HCLOF's Board was making the decisions of which CLOH complains. The second is to enable a proper analysis of what are, or are not, CLOH's interests "as a member" of HCLOF, as opposed to in any other respect.

12. The following account is broadly matters which have been common ground, and it is derived from the parties' respective chronologies except where indicated. Otherwise, it can be taken to record the Jurats' findings.

13. In 1993, a very wealthy United States citizen, Mr James Dondero, founded Highland Capital Management LP ("**HCM**") as a limited partnership incorporated under the laws of Texas. Mr Dondero was its CEO, in fact until January 2020. Its General Partner appears to have been Strand Management Inc or Strand Advisors Inc, of which Mr Dondero was also Chief Executive. One of its limited partners was a Mr Joshua Terry, or trust interests of his. The business of HCM was or included the sponsoring of CLOs.

14. A CLO is a form of security and the term refers to a special purpose vehicle (or "**SPV**") used by a portfolio manager to purchase and hold a basket of corporate loans. The CLO sponsor purchases such loans from the banks which made them, typically to large companies, and bundles them into a basket of (say) 150 or 200, and then sells interests in that basket to shareholder/investors. The loans themselves are typically held, pursuant to an indenture, by a trustee who has custody of the portfolio investments and also manages the payment obligations of the CLO to its investors. Various tranches of debts and quasi-equity securities in the form of "Notes" are issued by the SPVs to subscribing investors and the subscription proceeds are used to purchase the loans initially. These may be traded, subsequently. The tranches have different credit ratings and differing rates of return, according to their priority for payment. They will typically be secured, except for the lowest rated tranche, which is "subordinated". The most senior interest (that which will be paid in first priority out of the payments being made into the basket by the debtors of the underlying loans) may be rated AAA in terms of credit rating, because payment is very secure, but it will receive a lower rate of return. Conversely, the inferior interests, the lowest being the "junior" interest, will be rated progressively lower (poorer) on the credit rating scale as their priority for payment reduces, but, will conversely receive a higher rate of return, because they are at greater risk of non-payment if there are defaults. In investments markets, risk and return are inversely correlated.

15. Mr Dondero was – and still is - also the ultimate founder and benefactor (or settlor) of the Charitable Donor Advisor Fund LLP ("**CDAF**"), a Cayman Islands limited partnership which manages and administers his charitable and philanthropic affairs, although he himself apparently has no direct formal involvement in its operation or ownership. CDAF is run by a corporate General Partner, with the limited partners comprising Mr Dondero's family trusts, and/or other charitable foundations. CLOH was incorporated at some time in the Cayman Islands and is 100% owned by CDAF.

16. In 2011, Mr Dondero founded Acis Capital Management LP ("**ACIS**") in the United States, as a limited partnership. It was founded as a subsidiary of HCM, to manage HCM's portfolio of CLOs. Mr Terry was a key employee or participator in ACIS, and is now its President and sole limited partner, as a result of events yet to be related. As previously mentioned, Mr Terry was then also effectively a limited partner in HCM.

2015

17. In March 2015, HCLOF was incorporated in Guernsey, - but then under the name Acis Loan Funding Limited - as a registered closed-ended collective investment scheme. CLOH was initially the 100% shareholder of the company. The directors of HCLOF were a Mr William

Scott and a Ms Heather Bestwick, but their functions have been described as "non-executive"; HCLOF used ACIS as its portfolio manager and, of course, ACIS earned fees for this.

18. HCLOF's investment objective was (obviously) to provide income returns and capital growth to its shareholders. It commenced business in August 2015 under a Portfolio Services Agreement with ACIS. Its investments were largely in CLOs, some being ACIS CLOs and others being Highland CLOs, issued by HCM. This amalgamation or duplication of functions between linked entities is not, the evidence suggests, unusual in the high finance world.

19. HCLOF's "investment period" was five years, expiring in April 2020. Whilst HCLOF would invest actively during this period, and pay returns (dividends) quarterly to its investors, in accordance with their rights as described in its Offering Memorandum, from the expiry of the investment period the business would be in "wind-down" mode. The value of CLOs, and thus of CLO Notes diminishes over time, as the underlying loans mature and are paid off, or terminate in default, or the senior and cheapest rate "Notes" are paid off and fall out of account, leaving only those with the highest rates of interest being paid out. Because of these factors, the costs and expenses of administration begin to take up a greater proportion of the underlying income, making them increasingly more uneconomic until they can even become a liability. Typically, therefore, the terms of a CLO will enable the holder of such an unprofitable structure to request to redeem it before the maturity of all the underlying loans. During the wind-down period, the investments of the investment scheme might therefore be realised or retained, according to investment advice and judgements then made, with returns continuing to be paid out in accordance with the terms of the investment. However, there would be a final cut-off date some years later (in fact, in this case it is November 2027) at which time any remaining assets held would simply be realised and the CLO fund would be wound up and its proceeds finally distributed to investors, again in accordance with their scheme rights.

2016

20. In 2016, Mr Dondero fell out with Mr Terry in a very major way. They parted ways, but clearly not amicably. ACIS continued to provide portfolio management services to HCLOF, with a replacement Portfolio Management Agreement being concluded in December 2016.

2017

21. On 20th October 2017, Mr Terry obtained an arbitration award of $8Mn against ACIS. On 27th October 2017 HCLOF changed its name from Acis Loan Funding Ltd to its present name of Highland Capital Loan Funding Limited.

22. On 15th November 2017, a particularly important suite of events occurred.

    (i) First, by a Subscription and Transfer Agreement, CLOH sold a 50.8% shareholding in HCLOF to new shareholders, including 0.63% to HCM, 49.98% to various linked companies known as the "HarbourVest" entities and also a very small percentage (0.073% in aggregate) to four individual investors (who have played no part in these proceedings.)

    - Advocate Horsbrugh-Porter, appearing for CLOH in this matter confirmed that this was a voluntary transaction by CLOH. It appears to have been associated with a round of further capital raising. However, it left CLOH as a minor, albeit significant, shareholder in HCLOF, holding a 49.015% interest in the company.

- An Offering Memorandum was issued in connection with this transfer and the further subscription for new shares in HCLOF which is next referred to below. HCLOF's investment objective continued as above, being (as stated in the Offering Memorandum) to provide shareholders with

  > "*stable and growing income returns, and to grow the capital value of the ... investment portfolio through opportunistic exposure to CLO Notes* [and other assets]."

(ii) HCLOF adopted new Articles of Association, and all shareholders subscribed for further shares.

(iii) HCLOF appointed Highland Capital Advisor Ltd ("**HCA**") a wholly-owned subsidiary of HCM, as its portfolio manager in place of ACIS, to manage the investment and reinvestment of the company's assets in accordance with the Offering Memorandum. As such, HCA receives (or is entitled to receive if certain conditions are met) reimbursement of its expenses, and also a fee payment, effectively equivalent in the first place, to 20% of profits made on investments after the shareholder/investors themselves have received an initial return of 8% (compound) on their investments, and with further provisions for the ration of distribution in relation to any monies earned in excess of this return. However, it is HCM which in fact provides portfolio management services to HCLOF as the "sub-advisor" of HCA.

(iv) All the members of HCLOF also entered into a Members' Agreement, ("**the Members' Agreement**") to which HCLOF itself, and HCA as its portfolio manager, were also parties. The terms of the Members' Agreement have assumed some significance as will appear, and, indeed, were intended to take priority over the Articles of Association, in case of conflict (see Clause 21).

- For present purposes it is to be noted that Clause 20 contains several "General" provisions, including a denial of any partnership relationship between the parties (Clause 20.3), and in particular Clause 20.5 provides that

  > *"Each party shall at all times act in good faith towards the other Parties and shall use all reasonable endeavours to ensure that this Agreement is observed."*

23. By this time HCLOF itself had subscribed for and held certain CLO Notes issued under the ACIS name. ACIS was the portfolio manager of these CLOs, themselves. The relevant CLO SPVs for the purpose of these proceedings are ACIS 2014-4 Ltd, ACIS 2014-5 Ltd and ACIS 2014-6 Ltd, which can be conveniently referred to as "**ACIS-4**", "A**CIS-5**" and "**ACIS-6**" (together, "**the ACIS CLO**s"). HCLOF was the 100% owner of ACIS-4 and ACIS-5, but only 87% owner of ACIS-6. The remaining 13% of ACIS-6 was owned by another corporate entity, NexPoint Strategic Opportunities Fund ("**NexPoint**"). The Jurats are satisfied on the balance of the evidence, that Mr Dondero also had/has an interest, or an influential association, with NexPoint.

2018

24. On 30 January 2018 Mr Terry commenced "involuntary bankruptcy proceedings" (no doubt the equivalent of compulsory winding up) against ACIS in Texas, in support of enforcing his entitlement under his arbitration award. His action cited concerns that HCM, then under the control of Mr Dondero, had been depleting ACIS's assets.

25. On 14 May 2018, and doubtless after strenuously contested proceedings, the Texas Bankruptcy Court appointed an independent Trustee over the Bankruptcy of ACIS. That Trustee apparently issued various proceedings against HCLOF between May and July 2018. On 31 May, the Texas Bankruptcy Court took the further measure of issuing, of its own motion, a Temporary Restraining Order ("**TRO**") prohibiting HCLOF from taking any actions in furtherance of optional redemptions or other liquidations of its ACIS CLO Notes. Condensing a long story, this TRO was subsequently continued by injunction on 21 June 2018, confirmed on 30 August 2018. An appeal by HCLOF failed.

26. From August 2018, HCM ceased to use ACIS personnel for the management of its business and instead formed an association with Brigade Capital Management LLP ("**Brigade**").

2019

27. On 31st January 2019, the Texas Bankruptcy Court confirmed the fourth iteration of a "Plan of Reorganisation" (no doubt the equivalent of a Creditors' Voluntary Arrangement) for ACIS, put forward by Mr Terry and the ACIS Bankruptcy Trustee in the ACIS Bankruptcy. This was known as "Plan D". The Court dismissed objections from HCM and from HCLOF, acting by Mr Scott and Ms Bestwick. Within Plan D it was provided that ownership of ACIS should be transferred to Mr Terry. The Plan also included an injunction preventing HCLOF from seeking the redemption of the ACIS CLOs until the earliest of

    i. the resolution of ACIS's claims against (among others) HCM and Mr Dondero,

    ii. payment in full of claims established against ACIS,

    iii. a material default under Plan D, or

    iv. further order of the Court.

Appeals brought by HCM and HCLOF failed.

28. On 16th October 2019 HCM filed for bankruptcy in Delaware, but this filing was transferred to Texas on 4th December 2019. Mr Dondero was still President and CEO of HCM at this time. Proofs of substantial debts, including a claim from Union Bank of Switzerland for just over $1Bn and a claim from previous litigation regarding another HCM fund ("Crusader"), of around $190Mn were filed against HCM.

29. On 24th October 2019 CDAF and CLOH filed proceedings in New York against parties including (in particular) US Bank as the indentured trustee of the ACIS CLOs, alleging mismanagement of the ACIS CLOs ("**the 2019 Lawsuit**").

2020

30. On 9th January 2020 the Texas Bankruptcy Court approved a settlement between HCM and its committee of unsecured creditors in the HCM Bankruptcy. Within this were terms that

    i. Mr Dondero relinquish control of HCM and resign as President and CEO and officer and adviser of HCM's General Partner, Strand Advisors Inc, and

    ii. A board of directors be appointed for HCM, comprising Mr James Seery of Strand (an experienced financier in the field of distressed investing, and independent of either Mr Dondero or Mr Terry) and two others, one of whom is a retired US Judge.

Mr Dondero remained an unpaid employee of HCM, and its portfolio manager, but the new independent board subsequently brought this relationship to an end as "*untenable*" and appointed Mr Seery as HCM's CEO and Chief Restructuring Officer.

31. Records of proceedings in the US Courts disclose extensive further litigation, after this time, between entities in which Mr Dondero was interested, or which he controlled, on the one hand, and HCM and also Mr Seery on the other. The process of the HCM Bankruptcy also involved ownership of HCM and the majority of its assets being transferred to a trust for its creditors, with all HCM's causes of action being transferred to a litigation sub-trust, again to be pursued, realised or otherwise dealt with for the benefit of its creditors. Whilst this is of no direct relevance to the present application, it is material as context showing the extensive background of hostile litigation.

32. On 31st January 2020 CDAF and CLOH added Mr Terry and ACIS as defendants to the 2019 Lawsuit, but then on 5th February they sought, and were granted, the voluntary dismissal of that suit but without prejudice to refiling to renew it.

33. On 6th February 2020, CDAF and CLOH filed a second lawsuit against US Bank and ACIS alleging mismanagement of the ACIS CLOs, ("**the 2020 Lawsuit**") but on 25th February 2020, they once again sought (and were granted) voluntary dismissal of that suit without prejudice to refiling.

34. On 21st April 2020, through counsel, CDAF and CLOH wrote to ACIS's counsel, seeking changes to the management of the ACIS CLOs, repeating the complaints previously made in the dismissed 2019 and 2020 Lawsuits, but expressly reserving all rights should the matter proceed to litigation. They repeated these sentiments in a further letter of 8th May 2020.

35. In the meantime, HCLOF's investment period expired, on 30th April 2020.

36. On 7th July 2020, Mr Scott and Ms Bestwick resigned as Directors of HCLOF, owing to personal conflicts of interests arising (apparently) in regard to the 2019 and 2020 Lawsuits. They appointed Mr Boleat, who is based in Jersey and Mr Burwood, who is based in Guernsey, as independent Directors in their place. Mr Boleat had been professionally known to Ms Bestwick and he in turn had recommended Mr Burwood. Neither of them had had any previous dealings with Mr Dondero, Mr Terry, Mr Seery, or any employee or representative of HCM, CLOH, HarbourVest, ACIS or US Bank.

37. On 31st July 2020, at HCLOF's Annual General Meeting, Mr Boleat and Mr Burwood were re-appointed by the shareholders of HCLOF, including CLOH. In his oral evidence, Mr Murphy accepted that these two Directors were entirely independent and, indeed, well-qualified for this role by their financial experience.

38. Mr Boleat has been the Director principally concerned directly with the matters in issue in these proceedings. He is a Chartered Accountant, specialising in hedge funds, private equity and debt funds and SPV's and investment groups. He is currently also a director of a number of other substantial investment funds, three of which are listed on the London Stock Exchange. He has been personally regulated by the Jersey Financial Service Commission since 2007, and he has experience of winding up listed funds and the management of a contested take-over of a listed fund. He therefore has considerable experience of corporate governance in the financial sector, in particular as regards investment funds, and including in a contentious context. He is not however, as he emphasises, a qualified lawyer or advocate.

2021

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39. On 14th January 2021, the Texas Bankruptcy Court, acting in the HCM Bankruptcy, approved a settlement agreement between HarbourVest and HCM ("**the HarbourVest Settlement**"). Within this it was provided that HarbourVest should transfer its 49.98% shareholding in HCLOF to HCMLP Investments LLC ("**HCMLPI**"), a wholly-owned subsidiary of HCM and HCM's nominee, (together, therefore, "**the HCM Shareholders**"), thus bringing HCM's effective interest in HCLOF up to 50.612% and making it the majority shareholder. CLOH, Mr Dondero and his two family trusts opposed this settlement. CLOH apparently withdrew its opposition before the hearing, but the other objections were pressed. However, they were dismissed by the Court. HCLOF itself played no part in the settlement.

40. On 22nd February 2021, the Texas Bankruptcy Court approved a Fifth Amended Plan of Reorganisation for HCM. No doubt prompted by the remarkable intensity and extent of the hostile litigation landscape previously noted, this included "gatekeeper" provisions preventing certain persons, including CLOH, from commencing or pursuing litigation against HCM, its subsidiaries, and various other parties connected with it including its directors, without first obtaining the leave of that Court.

41. On 12th April 2021, CDAF and CLOH issued proceedings in Texas against the HCM shareholders in relation to the HarbourVest Settlement, alleging breach of a fiduciary duty said to be owed to them, negligence and breaches of statutory anti-fraud provisions. HCLOF was named as a Defendant. (After certain procedural skirmishes this claim remained on-going in the Texas Bankruptcy Court at the time of this hearing with a decision expected in a few weeks.)

42. On 22nd April 2021, Mr Paul Murphy was appointed as a director of CLOH in addition to Mr Mark Patrick. Mr Murphy is a lawyer based in the Cayman Islands who specialises in the conduct of contentious cross-border insolvencies. He has effectively had charge of these proceedings on behalf of CLOH, in parallel with Mr Patrick, previously the sole director, dealing with other more administrative matters. He obtains his information as to the facts from CLOH's attorneys in other jurisdictions. He has never met Mr Dondero and has no communications with him. The Court infers that this distancing has been intentional, because of the contentious history of the whole matter.

43. On 28th April 2021 HCLOF, ACIS and Mr Terry reached a Settlement Agreement ("**the 2021 Settlement Agreement")** which disposed of the litigation between them and released all cross-claims between them and their affiliates: see Clauses 7, 9 and 10 of that Agreement. CLOH was not a party to that Agreement, and the "*Acis Releasees*" who were the beneficiaries of the releases given by ACIS and Mr Terry expressly excluded Mr Dondero, CLOH, CDAF and other entities owned or controlled by Mr Dondero (Clause 9).

44. Exactly when CLOH became aware of this agreement is not perfectly clear and is a matter of some contention. Mr Murphy says that CLOH was not aware of this Agreement at all until it received discovery in a later action, referred to below. HCLOF points out that Mr Murphy requested a copy of this Agreement from Mr Boleat by an email of 11th January 2022, to which Mr Boleat responded, on 20th January 2022, referring him to an affidavit which had exhibited the Agreement and saying that it was assumed, therefore, that he or CLOH's counsel had a copy. Mr Boleat says that he received no reply. He points out that this complaint was then not raised further until Mr Murphy made his fourth affidavit, on 23rd September 2023.

45. CLOH apparently does not complain that HCLOF's entering into the 2021 Settlement Agreement was itself unfairly prejudicial to its interests. Rather, its complaint is that in doing so, HCLOF agreed to a particular term, contained in Clause 2(iii) of the Agreement, to the effect that HCLOF would thereafter ensure that any third party transferee, assignee or successor, direct or indirect, to the "HCLOF Subordinated Notes" (which were the ACIS

CLO Notes held by HCLOF) would not be affiliated in any way with Mr Dondero, CLOH, CDAF or any other entities owned or controlled by Mr Dondero or managed by any affiliate of his. In effect, this precluded HCLOF from transferring the ACIS CLOs to CLOH (or to any "Dondero entity"), and required HCLOF to take steps to prevent such CLOs coming into CLOH's (or any other Dondero entity's) hands.

46. CLOH complains that this conduct of HCLOF was unfairly prejudicial to its interests as a member of HCLOF, because it created an impediment to CLOH's achieving its desired exit strategy of taking an *in specie* distribution of assets from HCLOF. Mr Boleat has pointed out that CLOH had no right to such a possibility under the terms of its investment, and the possibility of taking any such course was not raised by CLOH until several months later.

47. Under the 2021 Settlement Agreement, though, the injunction which had been preventing HCLOF from seeking to redeem its ACIS subordinated loan Notes was lifted. Consequently, on 12th May 2021 HCLOF was able to exercise its option, contained within its subscription rights as the 100% holder of ACIS-4 and ACIS-5 CLO Notes, and the sufficient majority (86.63%) holder of those in ACIS-6, to request that US Bank redeem or realise all those outstanding Notes, paving the way to a distribution of the proceeds to HCLOF shareholders.

48. Rather promptly thereafter, however, on 14th May 2021 NexPoint filed complaints in the New York Courts against ACIS (as the ACIS CLO portfolio manager), US Bank (as trustee), Mr Terry (as ACIS's principal) and Brigade as its investment manager, alleging breach of fiduciary duty regarding the ACIS-6 CLO ("t**he NexPoint Litigation**").

49. On 17th June 2021, following a finding of contempt of court against Mr Dondero for attempts to interfere with the management of HCM, the Texas Bankruptcy Court required all "Non-Debtor Related Entities", expressly including CDAF and CLOH, to provide evidence of their ownership, and whether Mr Dondero or his family trusts had any direct or indirect ownership interest in them.

50. On 23rd June 2021 US Bank sold the underlying assets held by the ACIS CLOs and redeemed the secure Notes, leaving only the junior subordinated Notes, owned by HCLOF, outstanding. However, US Bank retained the remaining proceeds ("**the Redemption Proceeds**") and declined to release them. It informed HCLOF orally of this decision on 15th July 2021, explaining its reasons.

51. On being informed of the retention, CLOH wrote to HCLOF on 22nd July 2021 expressing concern and asking what action HCLOF was therefore taking. By a letter of 23rd July 2021 HCLOF's administrators, Elysium Fund Management Limited ("**Elysium**'), relayed to CLOH US Bank's explanation of its reasons, namely that it was retaining the Redemption Proceeds to cover its own and ACIS's potential costs and liabilities related to pending and threatened litigation concerning the ACIS CLOs. By a letter of 27th July 2021 CLOH wrote to HCLOF setting out why it considered that US Bank had no right to retain the Redemption Proceeds. By a letter of 28th July 2021, HCLOF wrote to US Bank strongly objecting to the retention, and reserving its right to take legal action, whilst also expressing willingness to enter into discussion to try to find a resolution without the need for this.

52. On 3rd August 2021, on yet another front, the Texas Bankruptcy Court found parties including CDAF, CLOH, Mr Dondero and Mr Patrick, (who was a director of CDAF as well as CLOH) in contempt of court for their respective involvements in bringing proceedings against Mr Seery without the leave of the Bankruptcy Court, in breach of the gatekeeper provisions contained in the Plan of Reorganisation made in HCM's bankruptcy on 22nd February 2021.

53. On 13th August 2021 US Bank's attorneys replied to HCLOF's attorneys setting out US Bank's reasons for considering itself entitled to retain the Redemption Proceeds.

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54. On 31st August, 2021, HCLOF's Interim report and unaudited financial statements to 30th June 2021 were published to shareholders. They included a note to the effect that the Directors of HCLOF (ie Mr Boleat and Mr Burwood) were of the opinion, having taken advice, that US Bank's retention of the Redemption Proceeds was unlawful. This is a point upon which heavy reliance has been placed by CLOH in this Application.

55. On 20th October 2021, CLOH, through Ogier as its Attorneys, emailed the Directors of HCLOF requesting information regarding the retention of the Redemption Proceeds. On 26th October 2021, Carey Olsen on behalf of HCLOF, replied that US Bank's stated justification for such retention was threatened litigation from CLOH, and also the NexPoint Litigation, in which HCLOF was a named defendant.

56. On 2nd November 2021, CLOH raised with HCLOF for the first time, an issue regarding HCLOF's Advisory Board, its composition and the permissible functions of its members, in all the circumstances. Although this issue was pursued initially as a complaint, in the end, it has not been relied on. It is not therefore, described any further in this factual account. However it is an example of, and a reminder that there were yet, other matters of dispute being raised, and forming part of the general background picture.

57. On 10th November 2021, Mr Murphy wrote further to the Directors of HCLOF on the subject of US Bank's retention of the Redemption Proceeds, but he added, as a final comment, a question whether the Company would consider making an "*in-kind distribution from the underlying assets*". He repeated this request in an email of 28th November 2021. On 3rd December 2021 Mr Boleat, on behalf of HCLOF rejected this request, giving various commercial reasons (dilution of HCLOF's power and influence as itself a holder of such assets; practical problems as to whether it was feasible, and concern as to provoking more expensive and hostile litigation by upsetting the status quo). He also pointed out that the retention issue could be resolved quickly if NexPoint would release its claims in the NexPoint Litigation, and CDAF and CLOH would confirm that they did not have any claims against US Bank or ACIS, as this would remove any excuse that US Bank might have for making any retention.

58. In the meantime, on 24th November 2021 HCLOF applied to intervene in the NexPoint Litigation, on the basis that NexPoint had insufficient standing, under the terms of the ACIS-6 CLO, to bring any such claim, since its holding was a mere 13% and a 25% interest was required under the terms of the CLO itself. On 7th December 2021 the New York Federal Court granted this motion. The actions of HCLOF in making this intervention are asserted by CLOH to be detrimental to its interests as a shareholder in HCLOF, and consequently the reasons for this intervention have become material. This intervention has continued to be another main plank of CLOH's case that the business of HCLOF has been carried on in a manner which is unfairly prejudicial to its interests as a member of HCLOF.

59. In the meantime, again, on 1st December 2021, Mr Seery, on behalf of HCM as HCLOF's Portfolio Manager, wrote, at the request of HCLOF, to US Bank challenging their retention of the Redemption Proceeds and demanding their distribution by 15th December 2021. Unsurprisingly, this did not happen. The general wind-down business of HCLOF was continuing however, and on 16th December 2021, HCLOF's Board approved payment of a dividend to shareholders of £15.86Mn, leaving HCLOF with cash in hand of about $15Mn.

60. On 24th December 2021, US Bank's attorneys reiterated to HCLOF its reasons for retaining the Redemption Proceeds and its belief that it faced a very real threat of proceedings from CDAF and CLOH. ACIS's attorneys wrote similarly to HCLOF maintaining that the retention of the Redemption Proceeds was justified both under the terms of the ACIS CLOs trust indentures, and as a matter of case law. At the same time, US Bank, ACIS and Mr Terry issued proceedings in New York, seeking declarations against CDAF, CLOH and

NexPoint to the effect that none of those Defendants had any viable claims against any of the Plaintiffs in respect of the ACIS CLOs ("**the Declaratory Action**"). They then wrote on 28th December 2021, asking CLOH and CDAF to release their threatened mismanagement claims so as to avoid further "unnecessary" litigation.

61. From HCLOF's subsequent Annual Report and Financial Statements, HCLOF's assets at 31st December 2021 amounted to $76Mn, including significant interests in the ACIS CLOs. Of this some $38Mn was cash in hand.

2022

62. On 10th January 2022 CLOH and CDAF refused to release their threatened mismanagement claims against US Bank, ACIS and Mr Terry.

63. On 11th January 2022, Mr Murphy wrote to HCLOF's Directors, requesting information about some of the matters later complained of in this Application, but also putting forward, once again, "exit proposals" that HCLOF should make an *in specie* distribution to CLOH, in satisfaction of its share entitlement. On 20th January 2022, Mr Boleat once again rejected this proposal.

64. On 21st March 2022, the value of the Redemption Proceeds retained by US Bank was about $39Mn.

65. On 12th April 2022, Ogier, on behalf of CLOH wrote what was effectively a letter before action to Carey Olsen, on behalf of HCLOF, setting out complaints later included in this Application and again making the "exit proposal" of an *in specie* distribution to CLOH, but also now including an alternative proposal that HCLOF should buy back CLOH's shares in HCLOF. On 13th April, Mr Seery wrote on behalf of HCM stating that the HCM shareholders did not regard these proposals as being in their best interests and they would not be supporting them. On 14th April, Carey Olsen replied to Ogier, refuting the various complaints made.

66. HCLOF's AGM took place on 19th May 2022. At the meeting, Ogier, on behalf of CLOH, requested the Directors to consider potential ways for CLOH to "exit" HCLOF.

67. Possibly arising from this, on 28th June 2022 HCLOF wrote to shareholders, including CLOH, making an offer to buy back shares in HCLOF *pro rata* at 85% of the current NAV of the company. HCLOF had just recently acquired cash as a result of selling its interests in MGM Studios equity and, whilst this was insufficient to buy back all HCLOF's outstanding shares, the HCM Shareholders had already informed HCLOF that they did not wish to take up this Share Buy Back offer. This meant that there would be sufficient cash in HCLOF to enable it to purchase the remaining shares, held principally by CLOH, and the HCM Shareholders had no objection to this.

68. However, on 7th July 2022, CLOH rejected this offer, in effect because it rejected the discount value of 85% of NAV being proposed. Indeed, at one point CLOH appeared to allege that the very making of such an offer constituted unfairly prejudicial conduct by HCLOF, although it is difficult to see how this could be. The assertion was eventually moderated to a submission that the proposal of such discount was evidence of a mindset, and a pattern of conduct, of HCLOF's preferring and advantaging the HCM Shareholders' interests and subordinating those of CLOH, which was said to support CLOH's other claims of demonstrable unfairly prejudicial conduct.

69. On 15th July 2022 HCLOF therefore informed shareholders that the Share Buy Back Offer had lapsed owing to insufficient support, and that a dividend would be paid instead. On 18th

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July it therefore declared a cash dividend to investors (paid on 22nd July), totaling some $22.Mn. This left HCLOF with about $15.5 Mn in cash.

70. On 9th August 2022, the New York Federal Court ruled in the NexPoint Litigation that NexPoint's claims were a matter of state law and were not within the jurisdiction of the Federal Court.

71. On 31st August 2022 CLOH provided the HCM Shareholders in HCLOF with a draft of this Application and the Affidavit of Mr Murphy in support. This was as an exhibit to an application CLOH proposed to make in the Texas Bankruptcy Proceedings (later filed on 9th September 2022) applying for an order recognising that HCLOF was not a protected party under the gatekeeper provisions, so that, therefore, these proceedings could be brought.

72. On 28th September 2022 the Texas District Court made a second finding of contempt of court against Mr Dondero and others, expressing itself to be satisfied from evidence that there was ample evidence before the State Court of Mr Dondero's control over CDAF and CLOH, notwithstanding the absence of his holding any formal position.

73. On 4th October 2022 NexPoint refiled a portion of its complaint against US Bank, ACIS and Mr Terry in the New York State Court. On 30th November 2022 HCLOF intervened in this litigation on the same basis as its previous intervention in the Federal case.

74. On 8th December 2022, US Bank, ACIS and HCLOF agreed a draft Settlement Agreement, to be held in escrow pending fulfilment of certain requirements. These requirements were fulfilled when the Texas Bankruptcy Court issued its decision on 27th February 2023 (referred to below), and this agreement therefore subsequently became the "**2023 Settlement Agreement**", which has also become a major plank in CLOH's assertion of unfair prejudice.

2023

75. On 24th February 2023 HCM filed a motion in the Texas Court seeking permission to bring proceedings to have parties designated the "Dondero Entities" (expressly including CDAF and CLOH) declared vexations litigants, and to restrain their ability to bring litigation against HCM and its management.

76. On 27th February 2023 the Texas Bankruptcy Court in the HCM Bankruptcy issued an order in favour of CLOH, confirming that HCLOF was not a protected party under the gatekeeper provisions, thereby permitting CLOH to commence the current proceedings against HCLOF.

77. The day after this, on 28th February 2023, HCLOF, US Bank and ACIS signed, or perhaps confirmed, the 2023 Settlement Agreement, and HCLOF so informed its shareholders by letter. The terms of the 2023 Settlement Agreement secured the release by US Bank of $16.5Mn worth of the retained Redemption Proceeds, which would then be free to be distributed to investors. However, that Agreement also included three provisions which CLOH now says were unfairly prejudicial to its interests as a member of HCLOF. These are

    i. Clause 4 of the 2023 Settlement Agreement whereby HCLOF agreed, upon receipt of the partial release of the funds being retained by US Bank, to release US Bank from any claims (including therefore its claim that the retention was intrinsically unlawful) until after final disposal of the Declaratory Action, subject only to an agreement that it and US Bank would meet and confer in good faith about the potential release of the remaining sums (Clause 4 (b) and (c));

ii. the term at Clause 6 of that Agreement whereby the parties agreed to co-operate to pursue fees and costs from entities, including expressly NexPoint and itself, incurred in various pieces of litigation; and

iii. Clause 12 (a) (ii) whereby HCLOF again agreed to procure that any transferee, assignee or successor to the ACIS CLOs (there called the "HCLOF Notes") should not be affiliated in any way to CDAF, CLOH, NexPoint, Mr Dondero or any entity owned, controlled or affiliated with him, and also take steps to prevent either the transfer of its management agreement or the transfer of the HCLOF Notes, to any Dondero entity.

78. CLOH did not discover the actual terms of the 2023 Settlement Agreement until 16th May 2023, through its US Counsel. When it did, those terms, and the coincidence that this agreement appeared to have been made immediately after the order obtained by CLOH which enabled it to proceed against HCLOF by these proceedings, of which it had forewarned HCLOF in August 2022, caused Mr Murphy to conclude that this had been part of a deliberate plan to obstruct CLOH and its desire to "exit" HCLOF. HCLOF's entering into the 2023 Settlement Agreement, has therefore been cited as another major plank of CLOH's claim to have suffered unfair prejudice.

79. To bring matters finally up to date, this Application was issued on 6th March 2023. Since then

i. On 30th March 2023, CLOH, together with CDAF filed a defence and counterclaim in the Declaratory Action in New York, seeking its own declaratory relief, but also seeking damages based on, broadly, the same allegations of misconduct regarding the management of the ACIS CLOs as had been the basis of the 2019/2020 Lawsuits, withdrawn at the time, but again raised in correspondence in April 2020, and never released. Their motion to join HCLOF in those New York proceedings was granted on 1st May 2023.

ii. On 7th September 2023, NexPoint's appeal against the dismissal of its Federal litigation (heard in April 2023) was dismissed.

The Action and the Trial

80. CLOH's Application was launched on 6th March 2023, supported by a lengthy affidavit of Mr Murphy sworn on 7th March 2023. Mr Murphy swore two further affidavits on 14th March 2023 and 2nd June 2023, setting out the various matters which CLOH claimed were conduct of HCLOF which was unfairly prejudicial to it, entitling it to relief. Mr Boleat swore a lengthy affidavit in reply on 26th June 2023, in which he refuted CLOH's claims, explaining all the actions taken by him and Mr Burwood on behalf of HCLOF since his appointment, and making the particular point that they had taken advice from both financial experts and legal advice where they deemed it necessary and had had regard to such advice in forming their views as to what steps it was appropriate to take in HCLOF's best interests. He suggested that CLOH's claim seemed rather to be with regard to the appropriateness of the actions which the Board had taken (and with which Mr Murphy, on behalf of CLOH patently did not agree) rather than of any conduct which could fairly be viewed as prejudicial to the interests of CLOH. Mr Murphy swore his fourth affidavit in answer to some of the points made by Mr Boleat on 14th September 2023.

81. The hearing took place on 24th-26th and 30th October 2023. Advocate Alex Horsbrugh-Porter appeared for CLOH and Advocate Mark Dunster represented HCLOF. Both Mr Murphy and Mr Boleat gave oral evidence, and were cross-examined on their affidavits. The Court reserved judgment.

82. Certain parts of the evidence of Mr Boleat revealed legal advice which had been given to HCLOF in the context of litigation against third parties, and also certain financial information. HCLOF wished to waive privilege in such advice for the purpose of these legal proceedings only, and clearly the advice and information was reasonably regarded as commercially sensitive. Consequently, the Court permitted such sensitive information to be redacted out of those parts of the evidence which might be in the public domain and made privacy orders in respect of unredacted evidence. It also directed the hearing to go into camera when such parts of the evidence were being dealt with, and it has ordered that those parts of both the evidence and the hearing transcript should be separated in the court records and should be sealed.

83. It has already been observed that the matters relied on by CLOH have changed and developed over the course of the proceedings. Even with a semi-agreed list of issues of 19th September 2023, made five weeks before the hearing as directed by the court, several such issues were then not pursued at the hearing. At the same time, Advocate Horsbrugh-Porter raised points which Advocate Dunster complained were newly raised issues, although since they were either points of law, or arose out of the evidence given, this was not necessarily impermissible, fundamentally. Advocate Dunster has complained, though, that this chopping and changing of issues relied on has made it difficult to understand the case which his client was expected to meet. He also suggests that it demonstrates the weakness of CLOH's case. Advocate Horsbrugh-Porter says that this evolution has simply been the product of events moving on, and his client's having discovered, or been subjected to, yet more matters which they perceive as unfair prejudice.

84. By the time of the hearing the matters identified by CLOH as being those upon which it relied as conduct of the affairs of HCLOF which was unfairly prejudicial to its interests as a member of HCLOF were the following

    i. Entry into the 2021 Settlement Agreement having regard to Clauses 2 (iii), 7, and 9 and 10 thereof;

    ii. Entry into the 2023 Settlement Agreement having regard to Clauses 4, 6 and 12 thereof;

    iii. (Possibly) failing to inform CLOH that it was negotiating the above Agreements;

    iv. Intervening in the NexPoint Litigation; coupled with

    v. Failure to sue US Bank to obtain the retained Redemption Proceeds, when their retention was recognised to be unlawful;

    vi. Continuing to use HCM as effective Portfolio Manager when HCLOF's business was in "wind-down" mode, thereby incurring the unnecessarily high fees payable out of HCLOF's funds.

In closing speeches, however, Advocate Horsbrugh-Porter only pressed items (i), (ii), (iv), and (v). These will be considered later. It is convenient now, though, to consider the law.

The legal framework

85. By way of background, the power of the court to grant relief in a case of the "unfairly prejudicial conduct" of a company's affairs under ss 349 and 350 of the Companies Law is entirely statutory. It was adopted into Guernsey law from the company law of England and Wales, where it was introduced in its present form by s 75 of the English Companies Act 1980, after the language of an earlier attempt to provide such a remedy (in s 210 of the

Companies Act 1948, which used the word "oppressive") had been found to be construed too restrictively by the courts.

86. The jurisdiction was introduced to alleviate injustices faced by minority shareholders who felt that the company's affairs were being conducted in a manner detrimental to them, but for whom other means of redress were highly unsatisfactory. If they could allege that the conduct of which they complained constituted a wrong to the company itself, but that the company could not, or would not, take action because the alleged wrongdoers were in control of the company, they could seek permission to bring a "derivative action", whereby they were authorised to use the company's name to pursue the claim. However, that route was cumbersome and could only bring the relief which the company itself might be entitled to. The only alternative was to seek a "just and equitable" winding up of the company, but that was a "nuclear" option, and was likely to cause considerable damage and depletion to the company's value, and hence the value of their own interests, on any basis. The statutory power was therefore introduced to provide a very wide and flexible discretionary remedy, which could be adapted to fit the merits of any particular case.

Essence of conduct which can be "unfairly prejudicial"

87. However, that jurisdiction had to be reconciled with the general principles of company law, which dictate that the company is a construct whose affairs are governed by the agreements constituted, basically, by the company's articles of association, those being the terms upon which its shareholders have agreed to create it. The jurisdiction is not simply a jurisdiction to remedy any perceived grievance which may be advanced by a member or members of a company. The limits arising from such reconciliation are apparent, therefore, in three particular aspects of the statutory power:

   i. It is the conduct of *the affairs of the company* which founds the jurisdiction, not the conduct of any particular member (unless that conduct does, in fact, constitute conduct of the affairs of the company itself);

   ii. The jurisdiction is to grant relief on the grounds that the affairs of the company are being or have been conducted in a manner which is not merely "*prejudicial*" to the interests of the "*members generally*" (ie, the company as a whole) or to "*a part of the members including* [the complainant]"; the relevant conduct has to be "*<u>unfairly</u> prejudicial"* (emphasis added). This recognises the fact that there is an intrinsic prejudice in the very position of a minority shareholder, in that such a shareholder's wishes or interests may be overruled by the majority, whether directly by force of numbers, or indirectly through the majority's ability to appoint directors more attuned to their own views. That situation is not <u>unfairly</u> prejudicial, because it is inherent in the structure of the company to which the minority shareholder has subscribed. It only becomes unfairly prejudicial if that power is exercised in some way which goes outside the boundaries of what can be seen as properly inherent in the agreement which the complaining member has subscribed to.

   iii. The "*unfair prejudice*" must have been suffered to the interests of the complainant *as a member of the company*. This limitation is implicit in the words of the statutory provision. If the prejudice is suffered only to some other interest of the complainant, which cannot be seen to be part of his interests as a member of the company, then relief under the statutory power is not available. The interests of a member of a company are linked, of course, to the value of his share-holding, but are essentially his right to have the company (in whose enterprise he has a financial interest) administered and managed properly in the best financial interests of the enterprise as a whole.

It is also to be observed that the formulation of s 349 provides the court with jurisdiction in three distinguishable situations. The first is that the prejudice has been suffered by the whole undertaking of the company, and the complainant complains as a representative of the whole company. The second is that the prejudice has been suffered by some part of the membership, and the complainant complains as a representative of that part. The third is that the prejudice has been suffered by a "part" of the membership comprising solely the complainant. That ultimate reduction renders the complaint effectively an individual one. But whatever the situation, the relevant prejudice must be seen to be being (or have been) suffered to the complainant's interests as a member of the company, and not in some other interest.

88. The parties are broadly in agreement as to the above principles. Their differences are as to their true extent, and/or their application. It is therefore important to keep in mind the legal framework of the "unfair prejudice" jurisdiction which CLOH seeks to invoke when considering the facts of the case.

89. As the Guernsey provision has been imported from English law, with the wording of s 349 (1) the Companies Law being identical with that of (now) s 994 of the English Companies Act 2006, and with there being little Guernsey law on the application of the relevant principles, it is accepted that Guernsey law will regard English authorities on the topic as highly persuasive: see *Prodefin Trading Ltd v Midland Resources Holding Ltd and others* (Royal Court Judgment 7/2017). Collas B there (at [55]-[56]) discussed the applicable principles of English law, and approved a succinct expression of the three points noted in Para [87] above, as stated in *Apex Global Management Limited v Fi Call Limited* [2015] EWHC 3239 (Ch) per Hildyard J at [37], as being a correct expression of Guernsey law.

90. In their submissions on the correct interpretation of these principles, both Advocates start from the Privy Council case of *O'Neill v Phillips* [1999] 1 WLR 1092, which is now regarded as the leading authority in England and Wales.

91. At 1098D and onwards, Lord Hoffmann said

"In section 459 [as it then was] *Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief….. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based on rational principles. ….*

"Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ('it's not cricket') it may maybe unfair to take advantage of them. All is said to be fair in love and war. So the context and backgrounds are very important."

"In the case of section 459 the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly company law has developed seamlessly from the law of partnership, which was treated by equity … as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in

> *certain relationships in which it considered this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.*
>
> *"The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith".*

92. Lord Hoffmann also referred back to his previous observations in In *Re Saul D Harrison & Sons PLC* [1994] BCC 475, to similar effect, at [488]:

> *"In deciding what is fair or unfair for the purposes of s 459, it is important to have in mind that fairness is being used in the context of a commercial relationship. The articles of association are just what their name implies: the contractual terms which govern the relationships of the shareholders with the company and each other. They determine the powers of the board and the company in general meeting and everyone who becomes a member of a company is taken to have agreed to them. Since keeping promises and honouring agreements is probably the most important element of commercial fairness, the starting point in any case under s 450 will be to ask whether the conduct of which the shareholder complains was in accordance with the articles of association. The answer to this question often turns on the fact that the powers which the shareholders have entrusted to the board are fiduciary powers, which must be exercised for the benefit of the company as a whole. If the board act for some ulterior purpose, they step outside the terms of the bargain between the shareholders and the company. Although one begins with the articles and the powers of the board, a finding that conduct was not in accordance with the articles does not necessarily mean that it was unfair, still less that the court will exercise its discretion to grant relief. There is often sound sense in the rule in Foss v Harbottle. Not only may conduct be technically unlawful without being unfair, it can also be unfair without being unlawful. In a commercial context this may at first seem surprising. How can it be unfair to act in accordance with what the parties have agreed? As a general rule, it is not. But there are cases in which the letter of the articles does not fully reflect the understandings upon which the shareholders are associated."*

93. Thus – and the Advocates both agree on this – the starting point in judging whether conduct is "*unfairly prejudicial*" to the interests of any member is the agreement documents which govern his or its relationship with the company and with the other members. Here, that is the Articles of Association of HCLOF and the Members' Agreement, both set up in November 2017.

94. The difference between the Advocates is that on behalf of HCLOF, Advocate Dunster submits that those documents are not merely the starting point but also the finishing point of the enquiry whereas Advocate Horsbrugh-Porter for CLOH submits that it is not that cut and dried.

Applicant's submissions

95. Advocate Horsbrugh-Porter on behalf of CLO makes a two-fold submission. He submits, first, that there has in fact been a breach of the governing agreements. He relies on Clause 20.5 of the Members' Agreement, (see above) which obliges HCLOF to act "*in good faith*" towards the other parties such as CLOH.

96. Unsurprisingly, Advocate Dunster was emphatic that Advocate Horsbrugh-Porter should state clearly whether he was alleging bad faith on the part of HCLOF and, specifically, Mr Boleat as the relevant human agent. This would of course, be a serious allegation to make against a professional person. Advocate Horsbrugh-Porter was emphatic that he was not alleging bad faith against Mr Boleat, but also that he did not need to. He submitted that a "good faith" clause, such as this, could be breached in two ways; the first was by a party acting dishonestly, but the second was by a party acting in a way which would

> "*be regarded as commercially unacceptable by reasonable and honest people*"

even if not dishonest, citing *Re Compound Photonics Group Ltd* [2022] EWCA Civ 1371 at [241]. Such a test was objective: see per Slade J in *Re Noble & Sons (Clothing) Ltd* [1983] BCLC 273 at 290f-291a, proposing that the test was

> "*whether a reasonable bystander observing the consequences of* [the directors'] *conduct would regard it as having unfairly prejudiced the petitioner's interests.*"

97. It was not, therefore (he submitted) necessary that the conduct under examination should have been accompanied by dishonesty, or even a conscious malevolent intent or ulterior motive, which were the ingredients of bad faith. It was merely necessary for the court to look at the actions complained of and conclude that reasonable and honest people would regard them as commercially unacceptable, even if the actual parties had taken such actions in a subjectively innocent way. Such a finding was perfectly possible, therefore, even if – as he did accept – Mr Boleat had acted honestly.

98. His second, alternative, submission was that this was a case in which equitable considerations, and hence constraints on the actions of HCLOF in the interests of fairness, did come into play. He emphasised that the cases did not lay down that this could never arise in the context of a purely commercial agreement, but only that this was the "general rule". The general proposition therefore admitted exceptions, dependent on the case itself, as was recognised by Arden J in *Re BSB Holdings Ltd* 1996 1 BCLC 155 ChD at 245. He submitted that the highly unusual circumstances of this case, which he urged could be described as "unique", were such as to impose equitable constraints on HCLOF which amounted to a duty not to take actions which would hinder the ability of CLOH to "*receive the Redemption Proceeds* [this apparently meaning its substantial share of the sums being retained by US Bank] *via any available avenue"*. It could be seen that this had been breached, by the individual matters of complaint raised, or by an overarching view of them in combination.

99. The unusual circumstances giving rise to this equitable constraint were, he submitted, the facts that

    i. HCLOF's business was now, and had been since April 2020, in "wind-down" mode rather than conducting active business;

    ii. the sums being withheld by US Bank were part of the assets which ought to be distributed to HCLOF's shareholders, including CLOH;

    iii. HCLOF had at all times been of the view that such withholding was unlawful;

    iv. the existence of the multi-faceted litigation between "Dondero Entities" and "Terry Entities" in the United States, in which ACIS was one of the latter and CLOH was one of the former;

v. Mr Terry had told Mr Boleat that ACIS and US Bank were considering withholding reserves before HCLOF entered into the 2021 Settlement Agreement; and

vi. the Members' Agreement did not contemplate protracted litigation being on foot after HCLOF's ivestment period came to an end in April 2020.

100. He submitted, therefore, that there was no specific contractual machinery dealing with the present situation. In particular such matters as the entering into of the 2021 Settlement Agreement, intervening in third party litigation, and the unanticipated position in general, created a situation in which equitable considerations could (and did) arise, so as to affect and constrain the company's exercise of any legal powers apparently conferred by the contractual documents. With the test for whether such constraints ought fairly to be observed being focused on the consequences of the company's actions (see the citation from *Re Noble* (above)), and the motivations or state of mind of the directors therefore being irrelevant, he submitted that it could be seen that the conduct of which complaint was made here could and did fall within the scope of "unfairly prejudicial" conduct.

Respondent's submissions

101. Advocate Dunster, on the other hand, submits that, really, the only question is the plain and simple one: has there been a breach of the contractual terms governing the relationship between HCLOF and CLOH? There is no room for equitable considerations in the present situation, and since (he submits) there plainly, on examination, has been no such breach, there has been no unfairly prejudicial conduct, that is really the end of the case.

102. He accepts that there are, of course, instances in which equitable considerations can arise, and form a constraint on the directors' exercise of powers which they might strictly have under the company's constitution, but he submits that the cases make it clear that that is not the norm, and it is particularly unlikely to occur where agreements have been drawn up, formally and obviously with legal advice, with an entirely commercial objective, and between sophisticated parties. He cites, the recent case of *Re Hut Group Ltd* [2021] EWCA Civ 904, in which David Richards LJ (as he then was) expressed the position as follows at [9]:

> "… *the terms on which a member agreed that the affairs of the company should be conducted will usually be found in the articles of association, any shareholders' agreements, the fiduciary (now statutory* [in the UK]) *duties of directors and the principles of law which limit the power of a majority of members to bind the minority by resolution in general meeting. There may be cases, such as those discussed by Lord Wilberforce in Re Westbourne Galleries Ltd [1973] AC 360 at 379, where the particular circumstances of the case, normally involving the personal relations between members of a small company, may subject the exercise of legal powers to equitable restrictions going beyond the articles, agreements and rules of law. However, such cases are not the norm. As Lord Wilberforce said, the company structure "is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally, so whether the company is large or small."*

The court rejected the proposition that the application of equitable considerations such as discussed by Lord Wilberforce was called for in that case, (at [10]) because

> *"… The relationship between all the parties has at all times been entirely commercial, as evidenced by the detailed and complex provisions, including those for the protection*

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of members' interests, contained in the company's articles and in the shareholders' agreement to which [the applicant] acceded when it became a shareholder."

103. Advocate Dunster submits that that is precisely the position in this case. The relations between HCLOF and its shareholders have always been entirely commercial, and are to be treated, therefore, as governed by the commercial agreements which they have entered into. There is no room for equitable considerations to modify these where, as here, there are comprehensive professionally-drafted company documents, executed between sophisticated parties whose intentions are entirely commercial. Unless, therefore the court finds some breach of the terms of those documents the Application must fail for that reason, and he submits that the evidence shows quite clearly that it cannot – as he submits is rather underlined by the lengths which CLOH has had to go to, chopping and changing its complaints, in order to try, unsuccessfully, to construct one.

104. The circumstances cited by Advocate Horsbrugh-Porter did not (he submitted) make the situation unusual or unique so as to somehow affect, change, overturn or abrogate the parties' contractual agreements, just because they might not have been expected.

105. He criticises Advocate Horsbrugh-Porter's attempt to construct a breach of the "good faith" clause as something of a contortion. He submits that there can be no breach of a duty to "act in good faith", other than by acting in bad faith – a charge which Advocate Horsbrugh-Porter expressly disavows – and one cannot get away from that. In the quotation from *Compound Photonics* (above) the court was saying that "bad faith" could take two forms: dishonesty or behaving in a way which was commercially unacceptable to honest and reasonable people, but the latter was still bad faith; it was not something different. There is no middle ground between bad faith and good faith, as being some sort of lack of good faith which could give rise to a breach of a good faith clause without being itself bad faith.

106. He further relies on dicta in *Re Corion Ltd* [2013] EWCA Civ 781, at [51], that a general term of an obligation to act in good faith cannot in itself impose an obligation to "*act in a manner outside the terms of the ... agreement*", and that a duty of good faith should not cut across other express contractual rights: see *TSG Building Services plc v South Anglia Housing Ltd* [2013] EWHC 1151 (TCC) at [51].

Discussion

107. The issue here is whether, in the present situation, any question of unfair prejudicial conduct necessarily requires there to have been some breach of the agreements which contractually govern the relations between HCLOF and CLOH (and if so whether there has been such a breach) or whether equitable principles have any supervening application. This is a matter of law. On these points the Lt-Bailiff unhesitatingly prefers Advocate Dunster's submissions to those of Advocate Horsbrugh-Porter.

108. As regards the first question, the only term of the contractual documents which Advocate Horsbrugh-Porter relies on as having been breached is the "duty to act in good faith" clause at Clause 20.5 of the Members' Agreement. As to this, the Lt-Bailiff accepts Advocate Dunster's submission, first, that there is no conceptual space where actions can be a breach of a duty to act in good faith but simultaneously not amount to bad faith. Actions are either the one or the other, albeit the mental element – and there must be one – may not amount to actual dishonesty. It is in fact difficult to see how performing a contract strictly according to its terms could ever amount to bad faith (except possibly where the party asserting that it was doing so knew or seriously suspected that the counterparty had contracted under a mistake about the effect of the relevant term, which is not this case and is very far from it).

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109. As to Advocate Horsbrugh-Porter's second, alternative, contention, the Lt-Bailiff again accepts Advocate Dunster's submission that there is really no room for equitable considerations to modify or constrain a party's reliance on its powers and rights embodied in the express terms of the relevant contracts where the context is a commercial relationship, and the contractual documents are carefully drawn, no doubt after negotiation, clearly with legal advice, and made between commercially sophisticated parties. These contractual documents are, the court finds, plainly within that class.

110. The Lt-Bailiff holds that the fact that the ensuing circumstances may not have been anticipated as the context in which these contractual documents would be operated is just not relevant. Parties make contracts in order to lay down the principle of the terms which are to govern their relations in the future, and the future is inevitably uncertain. Each accepts, therefore, that those principles will apply to the future position even if, and very possibly even because, that is not certain and not certainly predictable, in itself. In the event, those principles may turn out to be more to the liking or advantage of one side than the other, but in the interests of securing their initial bargain, the parties accept that degree of uncertainty as to the particular result. Unless the singular degree of unusualness about any future situation is sufficient to frustrate the contract – a very high threshold – the parties are taken to accept that the principles they have laid down will apply to their relevant rights and obligations in any future situation, for better or worse, and there is no half way house where "equity" can be called on to intervene to modify that result.

111. In any event, the Lt-Bailiff holds that none of the features of the matter cited by Advocate Horsbrugh-Porter in support of his argument that the situation here is so unexpected or "unique" as to justify the imposition of equitable considerations *ex post facto,* comes anywhere near justification for such an argument. It is by no means unpredictable, or even out of the norm, for a company to get embroiled in legal proceedings, whether directly itself, or through being sucked into proceedings involving its affiliates or associates. Even if the intensity of such hostile proceedings is remarkable, that makes no difference in principle. There is no reason why decisions as to the actions best undertaken in the company's best interests in the context of litigation should not be regarded as another matter for the business judgment of the company's directors, just like any other decision as to the conduct of the company's affairs. On analysis, that is all that has happened here, and CLOH's complaint then simply becomes an allegation of bad business judgment, or, more accurately perhaps, of a business judgment with which it does not agree.

112. In addition, it is apparent from the authorities that the features which have caused the courts to hold that equitable considerations do have a place in governing the controlling parties' conduct of the affairs of a company have been matters which applied or arose *at the time of the creation of the corporate relations between the parties.* They thus underlay such agreements and implicitly formed part of the agreement between the parties, but were simply not expressed in the documents (see the quotation from Hoffmann LJ, as he then was, in *Re Saul D Harrison* (above)). Examples are understandings that all participators should share in management decisions, making it unfairly prejudicial for one faction to oust the participation of another, or understandings that profits should be shared by the mechanism of dividends such that it was unfair for a majority faction subsequently to vote itself disproportionate remuneration by way of salary. None of the factors cited in this case is in any way rooted in any such underlying understanding between the parties (in particular, CLOH and HCLOF) because they had no such pre-existing relationship to give rise to it. The framework for their relationship was created, apparently entirely for commercial reasons and on an arm's length basis, by the transactions in November 2017.

113. The Lt-Bailiff accepts that there will not be an absolutely rigid rule that there could "never" be a situation in which equitable principles could be invoked in the interpretation of behaviour under a purely commercial corporate relationship. However, that possibility

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could only be in a very extreme and very rare case, which is not this case. The Lt-Bailiff is fortified in this view because it appears to her that admitting the influence of equitable principles in determining any particular case is tantamount to implying a term into the contractual documents that such an interpretation should apply. The conditions for implying terms into formally drafted contractual documents are stringent; they effectively require a finding that, on an objective basis, such a term "must have been" intended by both parties to the agreement, see, eg *Att Gen for Belize v Belize Telecom Ltd* [2009] UKPC 10 at [16] – [27]. That, again, is just not this case.

114. There are no compelling considerations for the finding of any such implication here. Indeed, the terms of the documents even point away from any such intention, in particular the general provisions of Clause 20 of the Members' Agreement, and specifically Clause 20.3, where the parties thought it appropriate to record, expressly, that their arrangements were not a partnership, and thus exclude the equitable considerations which may underlie partnership relations.

Conclusion

115. Thus, the Lt-Bailiff has held that it is not open to CLOH to allege breach of the "act in good faith" clause whilst simultaneously disavowing any intention to allege bad faith, but it is also the case that that breach is the only actual breach which is alleged of the express contractual terms which govern the parties' relations *inter se*. That first ground is therefore dismissed as any possible basis for CLOH's claim to relief. She has also rejected Advocate Horsbrugh-Porter's alternative proposition that, in the circumstances of this case, there is scope for invoking equitable considerations as a constraint on HCLOF's exercise of its legal powers in support of an assertion of unfairly prejudicial conduct. Having done so, the Lt-Bailiff agrees with Advocate Dunster that that is really the end of the case.

116. However, in case the latter finding is wrong, and since the matter was fully examined and argued at the hearing the Court has gone on to examine the various matters of allegedly unfairly prejudicial conduct ultimately relied on by CLOH (see Para [84] above), as facts capable of constituting "unfairly prejudicial conduct" against HCLOF within the meaning of s 349 of the Companies Law.

117. This exercise entails looking at the consequences of such conduct rather than (as above) considering the nature of the conduct itself as a matter of law, in the contractual context.

Unfairly prejudicial conduct – the complaints examined

118. A finding of unfairly prejudicial conduct within s 349, as the gateway for any judicial intervention in the company's affairs, requires findings that the conduct which is impugned has caused prejudice to the interests of the complainant as a member of the company, and that such prejudice is unfair. The first is a matter of law, the second is a matter of fact, but they are sufficiently intertwined that it is convenient to consider them together in relation to any particular complaint.

119. Before turning to this, though, it is appropriate to note legal authority as to the requirement that the relevant prejudice is prejudice to the "*interests of the members*" of the company (or some part of them). This has been held to mean the interests of the members of the company *as such members*. Thus, if the prejudice being suffered from the conduct complained of is suffered to a different interest of the relevant plaintiff, not being his interest as a member of the company, no relief can be given.

120. By way of example, see *Re J E Cade & Son Ltd* [1992] BCLC 213, in which relief was refused because the petitioner was complaining at the family company refusing to give up

possession of the farm of which he was the freehold owner, and in those circumstances he was held to be seeking to protect his interests as landlord, and not any interest of his as a member of the company. That case also recognises that there are limits on the court's wide discretion when granting relief on the basis of "equitable considerations", reiterating that this does not mean just whatever the judge might think fair.

121. As the interests of a shareholder in a company are broadly financial, certainly where the shareholding is an investment, it would seem that prejudice to his interests as such shareholder must itself *prima facie* be financial detriment, and this will, clearly, normally be the case. It is not clear whether any other kind of prejudice could justify the court's intervention in a purely commercial case, ie in contrast to the cases of family, or informal, type arrangements noted above, where there is a broader underlying substratum of rights and expectations. This question was not really investigated in this case, because all the matters of prejudice being contended for, in the end, do appear to come down to adverse financial consequences, even if indirect ones.

122. However, it was noted that the cases do establish that the "*interests of [the plaintiff] as a member of the company*" may be construed with some flexibility so long as such interests are sufficiently linked to the member's status as a shareholder in the particular case. In *Gamlestaden Fastigheter AB v Baltic Partners Ltd* [2007] Bus L R 1521, the UK Privy Council held that the interests of a member of the company could extend to encompass its interests as a lender to the company (ie not merely as a holder of equity, ie shares, in the company) where the lending had been made as part of the whole package of the arrangements under which the company relationship had been set up. The actual decision, however, was simply that it was not unarguable that a member's interests could be held to extend that far in such circumstances, so that the fact that there was no loss caused to the value of the petitioner's actual shareholding was not sufficient to enable the respondent to strike the claim out summarily. It was not, therefore, a final decision.

123. With that introductory comment this judgment turns to the complaints of allegedly unfairly prejudicial conduct of the affairs of HCLOF which are put forward by CLOH: see [84] above. These are taken in a convenient order for this judgment.

(1) Failure to inform CLOH that it was negotiating the Settlement Agreements, and
(2) Retention of HCM as (effective) Portfolio Manager.

124. These two complaints are items (iii) and (vi) in Advocate Horsbrugh-Porter's list. They are touched on first, because whilst they figured in CLOH's case up to and including the opening of the trial hearing, they were not pursued by Advocate Horsbrugh-Porter in his closing address, and were effectively treated as withdrawn.

125. For the sake of completeness, however, the court records that such abandonment must be right. A shareholder's entitlement to information is only to be found in the terms, either express or possibly implied, within the contractual documents governing the company's obligations in this respect, or in statute. There is no obligation, express or implied, (and none has been suggested) in the relevant documents in this case which would oblige the Directors of HCLOF to inform the shareholders, or a shareholder, about anything they were doing or proposing to do in their day to day management of the company's affairs, still less to consult any such shareholder or seek its approval. Negotiating and concluding agreements to further what they judge to be the promotion of the company's best interests falls within the scope of management decisions. Concluding a settlement of disputes or differences perceived to hinder the company's best interests are within this concept. The particular personal interests, or self-interest, of a particular shareholder, such as CLOH, cannot, and did not, alter that position. Of course, directors may *choose* to inform shareholders of what they are doing in any particular case, and shareholders may be grateful

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or gratified to receive information, but that is not the same thing as a duty on the directors to do so, such that a failure could be regarded as any unfair prejudice to shareholders.

126. Likewise, the retention of HCM (effectively) As the Portfolio Manager of HCLOF is a decision as to the running of the company's affairs which is within the scope of the Directors' authority. It might have been expected, intuitively, that CLOH's complaint here would be of an unacceptable possibility of bias, arising from the current differing allegiances of the two major shareholders in HCLOF - HCM and CLOH - which have been brought about by the events which have happened. HCM, the effective portfolio manager of HCLOF through HCA, is now a "Terry" entity, whereas CLOH remains a "Dondero" entity.

127. However, as that was not the position at the time when the relevant contracts were entered into (November 2017) it is not a feature which could therefore have any implied effect on the intended meaning and effect of those documents, and in any event, the transactions by which the ownership of a majority shareholding passed away from CLOH (in fact, to HarbourVest entities), was the result of CLOH's own voluntary actions. There is no evidence as to whether or how far the HarbourVest entities were connected with the "Dondero" camp, and if this status had been a matter of significance, then one would have expected it to have been regulated in the documents; there has been no suggestion of any such provision.

128. However, that is not the complaint which was in fact advanced on behalf of CLOH. CLOH accepts that it is quite common in the finance industry for a portfolio manager, or adviser, to be also an affiliate or associate of a major shareholder in the company, and that this is not perceived as being unacceptable or seriously objectionable, although where this relationship is envisaged, the Offering Memorandum will (as it does here) record that conflicts of interest may arise with regard to the manager's functions because of its relationship or involvement with other companies or entities, and that a subscriber for the shares shall have no complaint on this score. In this case, there are enormously extensive warnings about conflicts of interest on the part of the Portfolio Manager contained in the Offering Memorandum, at pages 37 – 40. They are clearly designed to alert investors to such possibility and to forestall and prevent any complaints on that score.

129. The complaint which was actually pressed on behalf of CLOH was that the retention of a Portfolio Manager in relation to HCLOF's business, at all, was prejudicial to its members (including CLOH) having regard to the fact that HCLOF was now no longer actively investing (and had not done so since April 2020) and was in "wind-down" mode; the Portfolio Manager agreement was therefore causing excessive and unnecessary high fees to be charged on HCLOF's assets. In answer to this Mr Boleat on behalf of HCLOF gave evidence that there were still many functions relating to the management of HCLOF's investments, requiring the expenditure of time and effort, to be performed by the Portfolio Manager even if these no longer included actively seeking out or dealing with investments.

130. The Jurats accept this evidence, and it was not really challenged. Advocate Dunster also pointed out that it was not clear what remedy was being sought by CLOH on account of this complaint, but it would seem to amount to requiring HCLOF to terminate the Portfolio Management Agreement, even though the question whether this was legally possible had not been grappled with.

131. Once again, this dispute seemed to become reduced to a complaint about a management decision of the Directors Whether because of the above facts, or for some other reason, this complaint was ultimately abandoned by CLOH, and in the judgment of the Lt-Bailiff, this was correct.

The eventual matters of actual complaint

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132. Four matters were therefore left as matter of substantive complaint pursued by CLOH as constituting "unfair prejudice" under s 349 at the end of the hearing.

Preliminary point

133. In each case, the basis of the characterisation of such conduct as "*unfair*" was formulated by Advocate Horsbrugh-Porter, in his final submissions, by reference to his argument that such conduct was a breach of the good faith clause (Clause 20.5 of the Members' Agreement), for being "*commercially unacceptable to reasonable and honest people*", or alternatively that this conduct brought into play "equitable considerations" of constraint on HCLOF which had not been observed, the reason being that the conduct in question hindered the ability of CLOH to get in a position to obtain the "*Redemption Proceeds*" by some "*available avenue*".

134. The Lt-Bailiff has already dismissed these two submissions as a matter of underlying legal principal. It is emphasised that the consideration of the particular complaints below, as to whether they could amount to "unfairly prejudicial" conduct, is required only if that initial dismissal is held to be wrong.

(3) Entry into the 2021 Settlement Agreement

Backdrop

135. The Jurats find the situation at the time of the conclusion of the 2021 Settlement Agreement to be as follows, taken from the evidence in Mr Boleat's affidavit which was not really challenged.

136. At the time of the appointment of Mr Boleat and Mr Burwood as Directors of HCLOF in 2020 (with, it is to be noted, the positive support of CLOH at that time), HCLOF was being prevented from realising its interest in the ACIS CLOs, and distributing the proceeds to its investors in accordance with its objectives, by the US Court's injunction prohibiting such redemptions made in the ACIS Bankruptcy Plan of Reorganisation (ie Plan D) on 31st January 2019. This had been made at the time when ACIS had been in the "Terry" camp, and HCM in the "Dondero" camp, although the landscape had later changed.

137. Reviewing the position, the Directors concluded that the most beneficial course for HCLOF - indeed Mr Boleat described it as the only commercially justifiable action - was to seek to achieve the lifting of the injunction. This meant reaching a settlement with ACIS to resolve the claims, other proceedings and other possible claims or proceedings between ACIS and HCLOF, and also those facing HCLOF's former Directors, whom HCLOF would be *prima facie* obliged to indemnify under their service contracts. At the same time, HCLOF was receiving suggestions that early 2021 was becoming an optimal moment in the market to redeem the ACIS CLOs. Having reassured themselves of the soundness of this approach by taking independent financial advice, the Directors intensified negotiations with ACIS and Mr Terry, through lawyers, ultimately achieving the 2021 Settlement Agreement on 28th April 2021.

Applicant's submissions

138. It is not contended that entering into the 2021 Settlement Agreement was outside the powers of Mr Boleat and Mr Burwood as the duly appointed Directors of HCLOF, nor that doing so was not reasonably thought by them to be a step to be taken in HCLOF's best interests. In the light of Mr Boleat's evidence referred to above, this is really inevitable.

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139. In the end, CLOH's objections were focused on certain terms of the 2021 Settlement Agreement, namely Clauses 2 (iii), 7 and 9, and in particular the first such term. Clause 2 (iii) reads, so far as material here:

> *"….HCLOF further agrees that:*
>
> *"(iii) any third party transferees, assignees or successors* [to the HCLOF Subordinated Loan Notes", ie the ACIS CLOs] *shall not be affiliated in any way with James Dondero, CLO Holdco Ltd, the Charitable DAF Fund LP or any other entities owned or controlled by James Dondero, including but not limited to any funds or entities managed by an affiliate of James Dondero".*

- Clause 7 provided for the dismissal "with prejudice", (ie expressly without the right to refile) of certain identified ACIS lawsuits against HCLOF, against HCLOF's former Directors, Mr William Scott and Ms Bestwick, and against HCM also within the various terms, against HCM.

- Clause 9 provided for ACIS and Mr Terry to release, in comprehensive terms, all their claims against HCLOF itself, its successors, assigns, agents, advisers, and representatives, officers and its former Directors by name, but excluding, expressly and by name (although presumably for the avoidance of doubt) any such release as regarded CDAF, or any of its subsidiaries including CLOH, and also against Mr Dondero and other named persons related to or associated with Mr Dondero.

- HCLOF gave similarly wide reciprocal releases in Clause 10, in favour of ACIS, Mr Terry, Brigade, US Bank National Association, Moody's Investor Services, the ACIS CLOs and others, and their respective successors, assigns agents, officers advisers and directors, etc.

140. In his closing submissions on behalf of CLOH Advocate Horsbrugh-Porter concentrated on Clause 2 (iii). He submitted that HCLOF's agreeing to this clause was prejudicial to CLOH because it prevented HCLOF from making an *in specie* distribution of the ACIS CLOs to CLOH "*as a shareholder*", thus preventing a valuable "exit" route from the company for CLOH (ie by the implementation of such an *in specie* distribution, as CLOH has been pressing for) and consequently prejudicing CLOH by preventing it from subsequently taking direct action against US Bank, after such an *in specie* distribution had been effected - presumably through *locus standi* gained through then being the direct holder of some ACIS CLO Notes.

141. CLOH's primary contention was that this clause was an unnecessary clause to put in the 2021 Settlement Agreement, having regard to its purpose and its machinery. It was even, apparently, submitted that this lack of necessity suggested that its inclusion must have been prompted simply from a wish to damage CLOH.

142. As regards the other clauses referred to (Clauses 7 and 9 in particular) the objection appeared to be, that these clauses, and the specific exclusion of CLOH from the benefit of the ACIS releases being granted, was indicative of bias against CLOH, or favouritism of the interests of others rather than CLOH, and was "unfairly prejudicial" on this score. This last point was not really pressed, however, in Advocate Horsbrugh-Porter's final position.

Respondent's submissions

143. Advocate Dunster submitted, first, that there was no challenge to Mr Boleat's evidence as to the merits and desirability of achieving the position achieved by the 2021 Settlement Agreement, as regards paving the way to redeem the ACIS CLOs, reducing legal costs and

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reducing indemnity liabilities to the former Directors, and that this was perceived by the Directors, and reasonably perceived, to be in the best interests of HCLOF. He also pointed out that, at the time of the 2021 Settlement Agreement, there had been no suggestion that CLOH was seeking any *in specie* distribution of HCLOF's assets as a means of exiting the fund; that suggestion was only first broached in Mr Murphy's letter of 10th November 2021.

144. Furthermore, this was not something to which CLOH had any right as a shareholder. It was (he submitted) even contrary to the terms of the Offering Memorandum, which stated very clearly that "*Shareholders have no right to have their Shares redeemed or repurchased by the Company*". There was therefore no reason why the Directors should have considered the impact of the terms of the 2021 Agreement on that possibility, still less any evidence that there was an intention to frustrate such possibility.

145. Mr Boleat also gave evidence that the restriction on transfers of HCLOF's assets was a requirement of ACIS (as to which the reasons are fairly obvious, from the circumstances) and were regarded by the Board as being of no practical disadvantage to HCLOF at all, not least because the intention at that time, was to liquidate the ACIS CLOs as quickly as possible, converting them into cash which would be paid back to shareholders, so that the possibility of an *in specie* distribution was theoretical only.

146. In summary, he submitted that the evidence shows that none of the Clauses complained about infringed any contractual right of CLOH; it could be seen that Clauses 7 and 9, did not infringe any right of CLOH, but benefitted HCLOF generally and also because they released claims against other parties, as to which HCLOF could have become liable on contractual indemnities. The whole 2021 Settlement Agreement plainly benefited HCLOF and, more importantly was reasonably and honestly seen by the Directors to do so. The effects of the 2021 Settlement Agreement therefore could not be the basis for any viable submission that the conduct by which it was obtained amounted to conduct which was unfairly prejudicial to the interests of the members of HCLOF in general, or CLOH in particular, as such a member.

Discussion and conclusion

147. The first consideration is whether Clause 2 (iii) could be said to prejudice CLOH's rights as a member of the company. Advocate Dunster argues that it cannot, because it only prejudices the possibility of CLOH ever gaining direct title to the ACIS CLOs, and this is not a right that CLOH ever had, as a shareholder of HCLOF at all.

148. The Lt-Bailiff agrees. She accepts Advocate Dunster's argument noted above at [144], although it does appear to depend somewhat on the phrase "*redeemed or repurchased*" being capable of encompassing a surrender of shares in return for an *in specie* distribution of ACIS CLOs, rather than for cash; the Offering Memorandum seems, rather, to be ruling out CLOH's alternative proposal of a buyback. However, the Lt-Bailiff does accept that it is fair to say that an *in specie* distribution of HCLOF's investments appears to be outside the contemplation of the Offering Memorandum. The point that CLOH has never enjoyed any right as a shareholder to be able to acquire the underlying assets of HCLOF is a strong one.

149. The final submissions of Advocate Horsbrugh-Porter, describing the detrimental effects on it of which CLOH complains (see [140] above) show that the prejudice which CLOH perceives it has suffered is, really, to the prospect of getting itself into a position to pursue mismanagement claims against ACIS (and possibly Mr Terry) through being the actual direct owner of ACIS CLOs. However, the preservation of the opportunity for a shareholder to acquire an interest which will provide a means of leveraging a dispute with a third party is not, in the Lt-Bailiff's judgment, a prejudice suffered in connection with its interests *as a member of the company*.

150. The Lt-Bailiff felt, at times, that Advocate Horsbrugh-Porter's argument appeared to be tantamount to a submission that the Directors of HCLOF owed a duty to act evenhandedly between shareholders - obviously, in particular, CLOH and HCM, bearing in mind that their respective personal positions had by then come into conflict with each other within the wider landscape of interests and disputes between "Dondero" and "Terry" entities. It appeared to be being suggested that there was an unacceptable element of bias in their actions, exemplified by Clause 2(iii) of the 2021 Settlement Agreement, which expressly singled out CLOH (though amongst others) for disadvantageous treatment not meted out to HCM, and Clause 9 which, again expressly singled out CLOH and its affiliates for emphatically not being accorded the benefit of the "*ACIS Releases*".

151. The Lt-Bailiff rejects any such implicit submission. It contends for a parallel with the duties of trustees to act even-handedly between beneficiaries, but the situation here is entirely different. The fiduciary duty of company directors is to act in the best interests of the company as a whole - in effect, its enterprise, although this is conveniently described as a duty owed to the impersonal "general body of shareholders". It is no part of a company director's general duties to consider or take account of the personal interests or circumstances of particular shareholders when considering the general question, what is in the best interests of the company, in general? In fact, any such proposition would be entirely unworkable in practice. Considering the best interests of one individual shareholder or set of such shareholders and any attempt to further, or not damage, these, would almost inevitably lead to a failure to do the same as regards the interests of another shareholder or set of shareholders. It would also, in any event, be all too likely to put directors in an impossible position of conflict of interest.

152. As regards the submission that the clause was "unnecessary" the Lt-Bailiff considers this to be entirely beside the point. Once it is accepted (as is Mr Boleat's unchallenged evidence) that Clause 2(iii) was a provision which was sought and required by ACIS, the question for the Directors was then simply whether, taking the balance of advantage and disadvantage, agreeing to its inclusion was in the best interests of HCLOF with a view to achieving the most beneficial position for it overall. That is a matter of business judgement, and is a decision quite well within the ambit of what would be a reasonable decision in the circumstances.

153. The Lt-Bailiff therefore rejects this argument of unfair prejudice, on the grounds that, as formulated by Advocate Horsbrugh-Porter, it does not disclose any prejudice to the interests of members of HCLOF, or to a part of such membership including CLOH, as members of the company.

154. For completeness though, but also to illustrate the distinction between the interests of CLOH personally and the interests of CLOH as a member of HCLOF, the Lt-Bailiff notes that it might be possible to discern some prejudice in the latter capacity, on the basis of the following analysis.

155. In agreeing to the restriction on transferees laid down in Clause 2(iii), the Directors did, in effect, fetter their discretion as to the persons to whom they would consider selling the ACIS CLO Notes owned by HCLOF. They thereby limited the market for the disposal of such CLO Notes. If they were ever to sell those CLO Notes, they would, in the normal case, expect to sell to the highest bidder, but would now do so in that restricted market. They would thereby prevent HCLOF, and by extension its shareholders, from gaining the possible increased financial benefit (a higher payment for the relevant CLOs) which might be obtainable from any of the excluded parties as a potential special purchaser of such Notes, because of a perceived collateral advantage in making such purchase (as demonstrated by Advocate Horsbrugh-Porter's argument). Thus, this limiting of the market could be argued

to have created a prejudice to the members of HCLOF generally, by potentially reducing the realisable value of their interests.

156. Mr Boleat's evidence was that the restriction did not appear to the Directors to affect HCLOF materially because once the instruction had been given to liquidate the CLOs, as the Directors intended, those CLOs would have no assets in them and would be valueless. Thus, this particular point does not appear to have been considered.

157. However, the Lt-Bailiff does not consider that this arguable shortcoming would make any difference to the ultimate position here (and she therefore did not think it necessary to ask for any further argument from the parties upon it) for the following reasons.

158. First, the analysis that such prejudice actually occurred is highly speculative; it owes more to theory than to any reality in evidential fact. Second, this is backed up by the fact that CLOH apparently did not perceive this prejudice (ie the potential forgoing of an element of value in HCLOF's underlying assets) as actually occasioning any damage to its (CLOH's) interests at all, because it never raised this point, whilst making very many others of greater or lesser substance. Third, Clause 2(iii) was not entered into in isolation but as part of a package deal contained in the whole of the 2021 Settlement Agreement and the question whether any potential prejudice caused by Clause 2 (iii) was adequately compensated by the benefits of other aspects of the whole package was a matter for the business judgment of HCLOF's Directors. To decide to accept this clause was, in the Lt-Bailiff's judgment, *prima facie* well within the ambit of an objectively reasonable business judgement by directors of HCLOF in all the complicated set of circumstances pertaining, even if the Directors themselves had not directly evaluated this particular point. The company itself could not have raised any complaint (see *Carlyle Capital Corporation Ltd v Conway* (2017) Royal Court Judgment 38/2017 at [393] and [395]).

159. As CLOH did not take this point at all in its argument, that really is enough to dispose of it in practice. However, insofar as the situation could be thus perceived to give rise to some element of prejudice (to refer back to the words of s 349 (1) of the Companies Law) "*to the interests of members of [HCLOF] generally*" (as contrasted with, merely, to the personal interests of CLOH, which was what was argued), and insofar as such element of prejudice had any substance in fact rather than merely commercial theory, the Court is of the view that it would not, in all the circumstances, amount to unfair prejudice, bearing in mind that it is, *ex hypothesi* here, the interests of the whole membership of HCLOF which is the factual situation being considered, and the effect upon which CLOH would be complaining about. Moreover, on any basis, the Court would not think it appropriate to exercise its discretion to grant any relief to CLOH in respect of such postulated prejudice, in all the above circumstances.

(4) Intervening in the NexPoint Litigation; coupled with
(5) Failure to sue US Bank to obtain the retained Redemption Proceeds.

160. These complaints can conveniently be taken together, here, as they are next in point of time, and they are argued on an interlinked basis by CLOH.

Backdrop

161. After the 2021 Settlement Agreement procured the lifting of the injunction which prevented HCLOF from seeking redemption of its ACIS CLOs, HCLOF was able to and did instruct US Bank to effect redemption. US Bank had not been a party to the 2021 Settlement Agreement. Mr Boleat's evidence was that the Directors expected that there would be an immediate and smooth release of the Redemption Proceeds by US Bank to HCLOF's investors, as a dividend distribution in accordance with their rights. However, US Bank,

instead, asserted a right to retain such proceeds as security for its contractual indemnity against costs, expenses or liabilities incurred by it as indentured Trustee of the relevant CLOs, claiming to be at clear risk of incurring such costs, expenses or liabilities in various lawsuits, current, potential and future, which it faced from entities controlled by or connected with Mr Dondero. Acting on these asserted rights, US Bank refused to release $41.5Mn of the proceeds.

162. There was obvious objective justification for US Bank's claimed fears. First, there were the two claims brought by CLOH itself amongst others in late 2019/early 2020 each withdrawn, but reserving the right to bring them again, combined with the fact that the claiming parties had refused to confirm later that these proceedings were unconditionally withdrawn, and indeed a threatening letter on behalf of CDAF and CLOH had been written in May 2020.

163. Second, at the same time as the CLOs were being redeemed, and further justifying US Bank's expressed fears, NexPoint – a Dondero entity - commenced an action against ACIS, Mr Terry, Brigade and US Bank as a minority 13% noteholder in ACIS-6 (possibly amongst other investments) alleging breach of fiduciary duty in the management of certain CLOs by ACIS.

164. Whilst the Directors of HCLOF were advised in June 2021, that US Bank's retention of the Redemption Proceeds was unlawful, US Bank disagreed - and of course it still held the funds. The Directors of HCLOF therefore needed to consider how best to deal with this situation, in what they judged to be HCLOF's best interests. In principle, of course, this meant deciding on the best, most cost-effective and potentially successful, route to recovery of the retained money.

165. The Directors took advice. This has been adduced in these proceedings, but in redacted form, with its full contents sealed, in view of their privileged nature, and the sensitivity of particular comments being brought into the public domain against this hostile and complicated litigation background. During the second half of 2021 the Directors sought, through their lawyers, to persuade US Bank that their retention of the funds was not lawful, but US Bank was adamant.

166. HCLOF plainly had two broad potential courses of action. The first was to seek to negotiate a way to get US Bank to agree to release the proceeds, which effectively meant having all the current and potential litigation terminated ("Option 1"). The second was to sue US Bank for the release of the proceeds ("Option 2"). Having considered detailed advice as to the merits of each option, taken from three eminent US law firms, the Directors decided that the better course was Option 1. The disadvantages of Option 2 - apart from the sheer litigation risk that, however, strong they thought their case was, it might not succeed - were the time that this would be likely to take, and also the fact that involving US Bank directly in proceedings would invite it to use and deplete the funds it was retaining in defraying its own legal costs.

167. The Directors also decided, again on advice, that intervening in the NexPoint litigation in the way which was chosen, (which they did in December 2021 in the Federal case, and again in November 2022 in the State case) would be a cost-effective part of this course of action, because they could assist in getting the NexPoint action struck out, in which case the justification for US Bank to retain moneys against the likely costs of, at least, that action would disappear. Since NexPoint was only a minority shareholder in ACIS-6, holding only 13% of the shares, the presence of HCLOF in the action, as both the majority shareholder and in support of the point that NexPoint's interest was below the 25% interest which the terms of ACIS-6 laid down as the minimum interest required in order to launch mismanagement claims, was thought to add considerable weight to resisting such claims.

(At the time of writing this judgment, the US court's judgment in the US application to strike out NexPoint's claim is awaited shortly).

The complaints

168. CLOH's complaint is that HCLOF did not take Option 2 and simply sue US Bank when they should have done, because they had received clear advice, which they believed in (and indeed, relayed to shareholders in a Directors' report at the time) that the retention was unlawful. This is the fundamental complaint, with the intervention in the NexPoint litigation being criticised as a part of that alternative, unjustified, strategy.

Applicant's submissions

169. Essentially Advocate Horsbrugh-Porter's submission is that it was unfairly prejudicial conduct of HCLOF to choose the Option 1 approach – seeking, without resort to the courts, to bring about a situation where US Bank would accept that there was no need for them to retain the Redemption Proceeds or any part of them – in preference to the Option 2 approach – that of simply suing for their release – with the intervention in the NexPoint proceedings being a particular aspect of this.

170. He submits that intervening in the NexPoint Litigation was unfairly prejudicial to CLOH because

    (i) it directly affects CLOH's right to receive the Redemption Proceeds, it was obviously doomed to failure, given the litigious nature of the Dondero and Terry entities, and it did not deal with US Bank's known stance that there was potentially "future" litigation justifying retention, not just the NexPoint action;

    (ii) it would be a far longer process than simply suing directly to recover the retention monies;

    (iii) it would be using HCLOF money wastefully, simply to duplicate defences already raised by ACIS, US Bank itself, Mr Terry and Brigade;

    (iv) it would be a more costly process than simply taking direct action; and

    (v) it was actually seeking to use HCLOF monies to strike out an action which, if it succeeded could bring in about $50Mn of recoveries for HCLOF itself.

171. He submits that failing to sue US Bank to recover the proceeds in the summer of 2021 was unfairly prejudicial to CLOH because

    (i) it similarly directly affects CLOH's right to receive the Redemption Proceeds;

    (ii) doing so accorded with the Directors' expressed view in the summer of 2021 that US Bank's withholding such proceeds was unlawful;

    (iii) doing so was quicker and cheaper than the "negotiation and pressure" route; and

    (iv) doing so was in fact the only route by which CLOH could receive its share of the Redemption Proceeds given the terms of the 2021 (and later the 2023) Settlement Agreement.

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172. Advocate Horsbrugh-Porter relies on the fact that the Directors advised shareholders, in the summer of 2021, that the retention of the Redemption Proceeds by US Bank was unlawful, without caveat or qualification. Therefore, the obvious and only right course was to take proceedings in accordance with that view.

Respondent's submissions

173. Advocate Dunster submits that these complaints boil down to complaints about the commercial decisions as to the best route forward in HCLOF's interests. They are therefore, effectively, complaints about management decisions, taken in good faith by the Board for what they reasonably perceived to be those ends, and as such they do not provide a legal foundation for a finding of "unfairly prejudicial conduct" on any basis.

174. Elaborating, he submits that Mr Boleat gives a clear explanation as to why direct legal proceedings were not taken, on the basis of legal advice about the totality of legal and procedural considerations, and the consequent relevant commercial implications (those advices being confidentially exhibited to his affidavit, and therefore not recited here). He points out that CLOH has not identified any errors in the advices given to the Board, which CLOH would have to show was so obviously wrong that the Board should not have followed it. As this advice depends on US Law and procedure, any such contention would require to be backed by expert evidence, but CLOH has not sought to adduce any. Instead this whole assertion relies on the opinion of Mr Murphy, who admitted he was not an expert in New York Law, but opined that the case had a 70%-80% chance of success which was well within the bounds of what he would regard as mere "litigation risk", so that he himself would have advised that HCLOF should go ahead and sue. Advocate Dunster submitted that was an astonishingly arrogant approach to take on any basis, but it was certainly insufficient to support any finding that the contrary approach was unfairly prejudicial to any shareholder.

175. Advocate Dunster further pointed out that CLOH had produced no evidence to support the proposition that HCLOF (and therefore its shareholders) would have been better off, now, if HCLOF had taken direct proceedings against US Bank in the summer of 2021; that proposition was merely assertion. CLOH has therefore failed to <u>prove</u> any prejudice to its interests as a member of HCLOF, at all.

176. Specifically as regards the decision to intervene in the NexPoint Litigation, Advocate Dunster submitted that Mr Boleat had once again explained why the Board saw this as being in the interests of HCLOF – namely that the dismissal of the NexPoint litigation would remove the basis for US Bank's retention of at least part of the Redemption Proceeds and make it more likely that it would release at least some of them to HCLOF, and he was not challenged on this evidence, which was supported by some of the confidential legal advice; all that was put to Mr Boleat was that HCLOF's intervention was not necessary, because ACIS and US Bank were themselves defending the proceedings.

177. In summary, this was, he submitted, once again, a commercial decision by the Board, taken, obviously, perfectly reasonably and (as was not challenged) in good faith. It was not suggested to have breached any rights which CLOH had under the contractual documents. Finally, no prejudice to CLOH as a shareholder had been suffered, the only prejudice alleged being the unsupported assertion, for which there was no evidence, that HCLOF would have been "better off" if the Board had not made the intervention.

Discussion and conclusion

178. The Court unhesitatingly prefers Advocate Dunster's submissions on these two linked topics. There is ample evidence that the Board made carefully considered, and apparently reasonable decisions, based on taking appropriate advice, as to which approach to obtaining

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release of funds to HCLOF from US Bank was most likely to be cost-effective. The decision to pursue the approach of trying to remove US Bank's own reasons for wishing to withhold the monies, as opposed to the confrontational approach of simply suing them and relying on the legal advice obtained being ultimately – and how long and how expensive "ultimately" might prove to be could not be regarded as clear – held to be correct, is a decision perfectly, it seems to the Court, within the range of decisions which a reasonable board of directors might take in the circumstances of this case. The Court agrees with Advocate Dunster that Advocate Horsbrugh-Porter's submission that suing US Bank rather than seeking to achieve the release of funds by other means would be cheaper and quicker than taking this latter course is simply assertion, with no evidence either adduced or appearing, to support it.

179. The Court finds that CLOH's submission that this amounted to unfairly prejudicial conduct towards it really does simply come down to the fact that it is conduct with which it (more accurately its current director, Mr Murphy) does not agree. That is not sufficient grounds for a finding of unfairly prejudicial conduct. Moreover, CLOH has not proved to the satisfaction of the Court that there has been any actual prejudice suffered by it as a result of these actions. Still less has it proved that such conduct has prejudicially affected CLOH's interests *as a member of HCLOF* unfairly.

180. It should be expressly recorded that the fifth point submitted (see [170] above) by Advocate Horsbrugh-Porter to amount to prejudice suffered as a result of the intervention in the NexPoint Litigation, (namely that intervention to try to get the NexPoint litigation struck out in respect of the ACIS-6 CLOs was using HCLOF's funds to defeat a claim (of breach of duty) which if successful, would have brought significant moneys in to HCLOF) was not, so far as the Court can see, raised in argument or evidence prior to Advocate Horsbrugh-Porter's closing speech. In particular it was not put to Mr Boleat in evidence.

181. In the Lt-Bailiff's judgment, it is not open to CLOH to rely upon this point in those circumstances. However, even if that were permissible, such a point appears to be entirely speculative, and the weight which could be attached to it as a factor supporting a criticism of the Board's decision is impossible to assess. The *Court* is therefore not satisfied that even those asserted facts could be sufficient to found a finding of unfairly prejudicial conduct towards CLOH, whose interests on this point are no different from those of any other shareholder in HCLOF.

(6) Entry into the 2023 Settlement Agreement

Backdrop

182. By this time, US Bank and ACIS had launched their own action, the December 2021 Declaratory Action, seeking declarations that none of the designated Dondero entities had viable claims against them, prompted by those entities' (including CLOH) refusal to confirm that they were not going to bring proceedings. However, those entities, including CLOH, had filed counterclaims, seeking their own declaratory relief, and these proceedings had continued, in amongst the other litigation noted above, during the following year.

183. Meanwhile, in line with its chosen strategy to obtain release of the Redemption Proceeds retained by US Bank, the Directors had sought to negotiate with US Bank, and also, necessarily, with ACIS, who were embroiled in claims for which indemnities could be claimed against HCLOF, to try to secure the release of at least some of the $41.5 Mn being retained by US Bank. Those negotiations culminated in an agreement in escrow in December 2022, which became unconditional and effective on 28th February 2023 – apparently, indeed, triggered by the decision of the Texas Court that CLOH did not require the permission of the Texas Court to launch these proceedings against HCLOF.

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184. The 2023 Settlement Agreement contained extensive recitals of the state of the various Reserve Funds held in respect of each of the ACIS CLO Notes, and the potential claims for indemnity by US Bank as Trustee, and ACIS entities as Portfolio Manager and Collateral Administrator of such Notes (as there defined). It provided also for the release from such reserves to HCLOF of a total of $16.5 Mn, (about 40% of the entire reserve) which was then distributed to HCLOF's shareholders in March 2023. The Agreement contained provisions for reporting to HCLOF by US Bank and ACIS of the state of the reserves continuing to be held thereafter, and provisions preserving the rights of HCLOF to pursue its claim to the remainder of the sums, but also that the parties would negotiate in good faith about their continuing dispute.

The complaints

185. CLOH's eventual complaints focus on three particular paragraphs of the 2023 Settlement Agreement, namely paragraphs 4(b), 6 and 12(a). It argues that HCLOF should not have agreed to these terms, and that its conduct in doing so was unfairly prejudicial to CLOH. It complains that these terms, coupled with the previous conduct already referred to, have left CLOH in an inescapable situation in which it is *"trapped in perpetuity*" with no prospect of receiving the share of the $41.5 Mn Redemption Proceeds to which it is entitled.

Applicant's submissions

186. As to Clause 4(b), by this clause HCLOF agreed to forbear from taking steps (declarations of default, or proceedings) to obtain release of the proceeds of the ACIS 4 and ACIS 5 Notes until after the very final disposal of the Declaratory Action (of 24th December 2021), with the parties (ACIS, US Bank and HCLOF) agreeing thereafter to meet and confer in good faith about potential distribution of the relevant reserves and further release of claims. By Clause 4(c) similar provisions were made in respect of the reserves retained in relation to ACIS-6, although no complaint is actually made by CLOH with regard to this.

187. CLOH submits that Clause 4(b) by preventing distributions until the termination of the litigation, thus ties the relevant funds up for a long and uncertain amount of time. In addition, the ultimate proviso is not even for payment, but merely for discussion and negotiation about possible payment. It therefore lacks any contractual bite and there is no guarantee of the release of the funds at all. It also puts (it is complained) undue pressure on CLOH to withdraw its counterclaim in the Declaratory Action. It is submitted that all this is unfairly prejudicial to CLOH.

188. As to Clause 6, by this clause HCLOF agreed to cooperate with US Bank and ACIS to pursue actions to recover fees, expenses and other liabilities from NexPoint in relation to the NexPoint Litigation, from NexPoint, CDAF and CLOH itself in relation to the Declaratory Action, and against any Dondero entity (including NexPoint CDAF and CLOH) which pursued litigation related to the ACIS CLOs. CLOH submits that by authorising HCLOF's funds to be spent in actively assisting third parties to sue it (CLOH) as HCLOF's own shareholder, and committing time and resources to pursuing it as such, this is conduct which is unfairly prejudicial to it.

189. As to Clause 12(a), by this Clause HCLOF agreed, once again, that any sale or transfer of the "HCLOF Notes" (that is, the ACIS CLOs) should provide (i) that the relevant transferee and its successors should be bound by the terms of the 2023 Settlement Agreement, and also (ii) that any such transferees should not be affiliated in any way with CDAF, CLOH, NexPoint, Mr Dondero or any entities owned or controlled directly or indirectly by Mr Dondero or any funds or entities managed by an affiliate of his, and further (iii) that HCLOF would not consent to, and would do all in its power to prevent, the transfer of its management

of, or discretionary control over, its assets, or the transfer of the HCLOF Notes, to any Dondero entity.

190. CLOH submits that this has prevented it from availing of a valuable "exit route" from HCLOF via an *in specie* distribution, and prevents it from taking direct action against US Bank after such a distribution, and "*guarantees*" that US Bank will not release the reserves in the light of their letter of 13th August 2021 (this is the letter which set out US Bank's reasons for retaining part of the Redemption Proceeds in the first place).

191. CLOH also complains that holding the 2023 Settlement Agreement in escrow until the Texas Bankruptcy Court made its order of 27th February 2023 was reprehensible conduct, because it pressurised CLOH, unduly, to withdraw this Application.

192. Advocate Horsbrugh-Porter also submitted, generally, and he persisted in this in his closing submissions, that entering into the 2023 Agreement could be seen, in all the circumstances, to be an attempt to "*stifle and sabotage"* CLOH's exit proposals to enable it to part ways with HCLOF and, with its timing, was a "*cynical attempt to stave off"* this Application. These features were, he submitted, commercially unacceptable conduct, which was unfairly prejudicial to CLOH, and entitled it to relief.

Respondent's submissions

193. Advocate Dunster submits that the starting point, based on Mr Boleat's effectively unchallenged evidence, is that these were the best terms available if HCLOF wanted to secure the release of at least some part of the Redemption Proceeds, and it in fact achieved the release of a significant part. Furthermore, it is not alleged that entering into any of the terms complained of was any breach of HCLOF's Articles of Association or the Members' Agreement (except in the general respects of lack of good faith which have already been dismissed above).

194. As to the "standstill" agreements in Clause 4, he points out that they are, simply that – standstill agreements. They do not forgo or release any rights or claims by HCLOF, and are thus of negligible, if any, disadvantage. He submits that it is simply wrong to argue that entering into such a standstill agreement placed "unfair" pressure on CLOH to withdraw its counterclaim in the Declaratory Action. HCLOF was obliged and entitled to take what steps appeared to be *in the interests of HCLOF* in the situation where CLOH might, or might not, proceed with such counterclaim. In addition, it must be likely that the US courts would have put such litigation on hold until the disposal of the NexPoint litigation and the Declaratory Action and Counterclaims, in any event.

195. As for Clause 6, he submits that this clause was self-evidently for HCLOF's benefit because, as pointed out by Mr Boleat in his evidence, any recoveries which were made would swell HCLOF's assets. He submitted that the suggested prejudice was not suffered by CLOH as a member of HCLOF but, and clearly only, as a litigating party.

196. As for Clause 12(a)(ii), this Clause self-evidently largely replicated the existing prohibitions contained in Clause 2(iii) of the 2021 Settlement Agreement, and therefore, Advocate Dunster submits, in itself it effected no prejudice against CLOH at all. Once again, in any event, it disclosed no arguable prejudice to CLOH in the capacity of a member of the company.

197. Finally Advocate Dunster resists, strongly, any submission of reprehensible or unconscionable conduct by the Directors, which he submits should not have been made or persisted in. The clear evidence is that the Directors acted solely in what they honestly perceived to be the best interests of HCLOF, as was their duty. If their actions are perceived

to cause damage to CLOH, then it is because of CLOH's separate status as a litigating party, or as a member, also, of the Dondero entities group, but not as a member of HCLOF and certainly not in a manner or to an extent which could justifiably be said to be unfair.

Discussion and conclusion

198. The Court once again prefers the submissions of Advocate Dunster to those of Advocate Horsburgh-Porter, and for much the same reasons generally, as it has found to apply in relation to each of CLOH's individual matters of complaint.

199. The Jurats accept Mr Boleat's evidence that the 2023 Settlement Agreement was pursued and negotiated on the basis of genuinely seeking the agreement that was most beneficial to HCLOF in the circumstances. The Court can see no prejudice to CLOH as a member of HCLOF in any of the matters challenged by Advocate Horsbrugh-Porter in relation to the 2023 Settlement Agreement, nor that any of the matters complained of were unfair, in all the circumstances.

200. CLOH's arguments in themselves show, once again, that any prejudice of which it is complaining is in reality prejudice to its interests as a litigating party, or as an affiliate of the Dondero group of entities, rather than as a member of HCLOF. Furthermore, its complaints about particular decisions themselves are really complaints about management decisions taken by the Directors, decisions which it is not entitled to control but with which it disagrees, in its own particular interests.

201. The fact that CLOH's complaints are made from its viewpoint as a litigating party rather than as a shareholder is illustrated by the fact that one such complaint, pursued in this Application has even been an allegation that it was reprehensible conduct by the Directors of HCLOF, against CLOH's interests, to enter into the 2023 settlement in escrow, dependent, apparently, on it being settled that CLOH was entitled to pursue this foreshadowed application. Viewed from a neutral standpoint, taking this step can be seen to be a perfectly reasonable step in the best interests of HCLOF, which the Directors were obliged to protect, when threatened with such an application.

202. This also illustrates why CLOH's approach, that the Directors were somehow "unfairly" disadvantaging CLOH in contrast with other shareholders simply cannot found a viable claim of *unfairly* prejudicial conduct by HCLOF. If the Directors refrained from taking a step which would be in the interests of HCLOF as they perceived it, because it worked independent disadvantage to a major shareholder (CLOH), they would not only be in breach of their fiduciary duty to HCLOF, but would also by the standards of CLOH's own argument, be acting unfairly prejudicially to the interests of the other part of the shareholder body.

203. CLOH's rights as a member of HCLOF were, and are, to have HCLOF's affairs conducted properly and competently by its Directors, in accordance with, and in the apparent best interests of, HCLOF's function as a closed-ended investment scheme as described in its Offering Memorandum, its Articles of Association and the Members' Agreement. CLOH had no further rights grafted on to this regime, and has no grounds for complaint under ss 349 and 350 of the Companies Law if measures lawfully taken by HCLOF in its own best interests should work to its perceived actual or relative (to other shareholders') disadvantage, because of CLOH's individual position.

204. CLOH is entitled to the benefit of the arrangements in HCLOF's constitutional documents. Insofar as CLOH might have been able and wished to avail itself of an opportunity to negotiate an arrangement which was outside the ambit of those constitutional documents, such an opportunity was merely a general commercial opportunity. It has no special

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protected significance. It was not a right enjoyed by CLOH as a member of HCLOF, and the fact that its inclination or enthusiasm to pursue such opportunities might be influenced by the fact that it is a shareholder in HCLOF can make no difference to this.

205. CLOH argues that the matters of unfair prejudice of which it complains can if necessary be regarded in combination, and would then amount to unfairly prejudicial conduct on this basis. Having considered and rejected CLOH's complaints individually for the reasons given above, the Court confirms that it rejects this argument. Taking all CLOH's complaints in combination does not increase their weight, nor, in particular, does the totality of them become prejudice to CLOH's interests as a member of HCLOF when the individual component parts are not.

Relief

206. This can be dealt with quite shortly, in view of the fact that the Court has rejected CLOH's case that it is entitled to any relief. It should, however, be dealt with for completeness.

207. Assuming that CLOH had established its case of unfairly prejudicial conduct, it sought by way of relief in its Application, an order that it should transfer its shares in HCLOF back to HCLOF, in return for HCLOF transferring to it full legal and beneficial title to the assets of HCLOF in the proportion (49.015%) of CLOH's shareholding in such assets, either by way of a redemption of shares, or a share buyback. These transactions were known as the "Exit Proposals".

208. However, as had been pointed out to CLOH, and as Advocate Dunster submitted in his argument, there were three reasons why the court could not, or should not, order such relief.

209. The first is that HCLOF is not lawfully competent to undertake the share buyback proposed in the Exit Proposals because of the provisions of s 314 of the Companies Law, which requires a buyback of a company's shares to be authorised by an ordinary resolution of the company's membership. This would therefore require the support of HCM, as the majority shareholder, and that support had been enquired about, but is not forthcoming.

210. Second, the position is actually more acute, because under s 3.2 of the Members' Agreement, it was provided (for the protection of shareholders' rights *inter se*) that HCLOF cannot take any action at any meeting requiring the sanction of an ordinary resolution of the company without that, in fact, being authorised by an extraordinary majority, namely an affirmative vote of 75% of the members. This provision expressly refers to actions such as the "*conversion or redemption of shares"* (except in particular circumstances of default, not applicable here): see Clause 3.2.3. Once again, the required majority could not be obtained without the support of HCM as majority shareholder which is not forthcoming.

211. The third reason is that making any order for an *in specie* distribution would override the contractual rights of third parties under Clause 2(iii) of the 2021 Settlement Agreement or Clause 12(a) of the 2023 Settlement Agreement, and the Court will not make orders pursuant to its statutory jurisdiction under s 350 of the Companies Law which have that effect.

212. Advocate Dunster submits that the third reason is insurmountable, because it is established that the Court will not grant discretionary relief - which is what the power pursuant to ss 349 and 350 is - which infringes the contractual rights of third parties (or requires something which the respondent cannot lawfully do): see *Warmington v Miller* [1973] QB 877 at 886. In addition, the courts are warned, in any event, about making orders for distributions *in specie*: see *Re Neath Rugby ltd (No 2)* [2007] EWHC 2999 (Ch) at [250].

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213. The two former reasons are also insurmountable at present, because HCM is not a party to the Application, so that it cannot be bound by any order which might be made by the Court under which, possibly, its refusal of consent might be overridden, (without conceding that the Court could, should or would do so). This difficulty, moreover, would not be surmountable either, at present, because HCM cannot be convened as a party to this Application without the permission of the Texas Court, because doing so would fall foul of the gatekeeper provisions in the HCM Bankruptcy proceedings.

214. Because of those difficulties and other practical difficulties which it perceived about the grant of relief in any other form which might normally be contemplated in an application of this type, immediately before closing speeches in the hearing, CLOH notified HCLOF that it would be seeking a different form of relief. This was an order that HCLOF should effect a buy out of CLOH's shares, apparently for cash, at a full price proportionate to their relative share of HCLOF's NAV, in two parts, namely an immediate purchase within 14 days of 85% of such holding, with the remaining 15% being purchased once the US proceedings (presumably the Declaratory Action) had been concluded.

215. The background to this was no doubt the offer of 28th June 2022 by which HCLOF had revealed that they had sufficient cash in hand to re-purchase all the shares of all the minority shareholders at 85% of their relative NAV value. At that time CLOH had refused to accept that there should be a minority discount applied to the NAV figure, and so the offer had lapsed, but the making of it suggested that HCLOF would have enough funds to implement the first part of CLOH's proposed buy out.

216. Advocate Dunster's response was that this form of relief was not only not justified on the facts, nor supported by legal principle, but was in fact impossible for the court to grant. Apart from his general submissions that CLOH's claim failed on its merits, and laying aside any argument about whether or not any valuation of the shares would properly require a minority shareholding discount to be applied, (which he submitted, it did: citing *Shanda Games Ltd v Maso Capital Investements Ltd* (Cayman Islands) [2020] UKPC 2 at [38] and [42]) he submitted that it was impossible to calculate NAV properly without taking into account the wholly unquantifiable contingent liabilities of HCLOF which were contingent on the outcome of several sets of contentious US proceedings. Equally, there were contingent in-flows of cash, in the shape of possible litigation costs recoveries, which might replenish the sums taken from the retention reserves by US Bank to fund its own defence costs. No relief dependent on a valuation of HCLOF's undertaking was therefore capable of accurate or fair quantification.

217. Perhaps most significantly, the relief suggested by CLOH would still infringe the first two objections noted above, namely that, without HCM's consent, it would infringe both s 314 of the Companies Law and would "ride roughshod" over the terms of Clause 3 of the Members' Agreement.

218. Since the Court has already concluded that CLOH's application fails on the merits, it is not necessary for the Court to decide the above points. It records, however, and admittedly without having heard extensive argument in all the circumstances of this case, that it would be inclined to accept the objections raised by Advocate Dunster on behalf of HCLOF. Where that would have left the matter, if it had been necessary to consider the question of appropriate relief, is therefore unclear and any decisions of principle upon such questions will have to await their arising in another case.

Summary of conclusions and disposal

219. The Court therefore summarises its conclusions as follows:

220. The Applicant's Application fails for the following reasons, alone or in combination:

(i) The Applicant has established no breach towards it of any term of the contractual documents defining the legal rights of the parties.

(ii) This case is one of a detailed and sophisticated commercial contractual relationship. There is nothing in the circumstances of this case which can be cited as an "equitable consideration" importing any restraint on HCLOF's right to exercise its own rights under that relationship.

(iii) There is no evidence that the Directors of HCLOF have taken steps other than in what they honestly and reasonably believed to be the best interests of the company, HCLOF, itself. CLOH's complaints are largely simply that it disagrees with what have been, on the face of it, valid and appropriate management decisions made by HCLOF's admittedly independent Directors.

(iv) Even if there were grounds for invoking "equitable constraints", the matters of complaint ultimately relied upon by CLOH do not disclose (except possibly in one minor respect) any prejudice arguably being suffered to the interests of CLOH *as a member of HCLOF*. The substance of CLOH's complaints relate to perceived disadvantage to it as a party engaged in litigation, whether with HCLOF or other third parties.

(iv) The minor respect (a possibly discernible consequence of Clause 2(iii) of the 2021 Settlement Agreement discussed at [155] – [159] above) was not argued by CLOH, appears to be theoretical only rather than real, and is so minor and incidental that in the judgment of the Court it would not, in any event, justify the court's intervention.

(v) Even if CLOH could be said to have suffered prejudice in its position as a member of HCLOF as a result of any of the matters complained of, the Court is not satisfied that this could be characterised as "unfair" prejudice in all the circumstances of the case.

(vi) In any event, viewing the case as a whole, the Court would not consider it appropriate to exercise its discretion to intervene.

(vii) Furthermore, the Court considers that it would not be open to it to grant any form of relief which CLOH has sought or now seeks.

221. The Application will therefore be dismissed. As regards costs, the Court will make an order dismissing the Application with the Respondent's costs to be paid by the Applicant on the recoverable basis unless either party wishes to contend that some other costs order is appropriate. If so, that party should notify the court and the other party within 7 days of the handing down of this judgment and further directions will be given by the Lt-Bailiff.

Her Hon Hazel Marshall KC, Lt-Bailiff
1 December 2023

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