IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	)	Case No. 19-12239 (CSS)
Debtor.	)	**Hearing Date: Nov. 19, 2019, at 12:00 p.m. (ET)** **Obj. Deadline: Nov. 12, 2019, at 4:00 p.m. (ET)**
	)	**Docket Ref. Nos. 5, 75, 77**

OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTOR'S (I) MOTION FOR FINAL ORDER AUTHORIZING CONTINUANCE OF THE EXISTING CASH MANAGEMENT SYSTEM, (II) MOTION TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF RESTRUCTURING OFFICER, AND (III) PRECAUTIONARY MOTION FOR APPROVAL OF PROTOCOLS FOR "ORDINARY COURSE" TRANSACTIONS

The official committee of unsecured creditors (the "Committee") of Highland Capital Management, L.P. (the "Debtor" or "Highland") hereby submits this omnibus objection to (I) the *Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* [Docket No. 5] (the "Cash Management Motion"), (II) the *Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services,* Nunc Pro Tunc *as of the Petition Date* [Docket No. 75] (the "DSI Retention Motion"), and (III) the *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 77] (the "Ordinary Course Protocols Motion," and together with the DSI Retention

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

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Motion and the Cash Management Motion, the "Motions"). In support of its opposition to approval of the Motions, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee was formed two weeks ago, on October 29, 2019,[2] and is in the process of gathering information and familiarizing itself with the Debtor's opaque and complex organizational structure, business operations, and assets under management.[3] As the Court may be aware, however, certain members of the Committee have been engaged in highly contentious litigation with the Debtor and, as a result, are intimately familiar with the business practices of the Debtor and its principals, including Mr. James Dondero.[4] A variety of courts, arbitration panels, and administrative tribunals have made troubling findings in recent years that the Debtor and its principals have, among other things, (i) breached their fiduciary duties to investors, (ii) engaged in intentional fraudulent transfers (many times moving assets offshore into judgment-proof entities), willful misconduct, and self-dealing, and (iii) siphoned-off assets of the Debtor. The Committee is extremely concerned that the Debtor and Mr. Dondero are likely to continue such questionable conduct.[5] Rigorous oversight of the Debtor and its assets and operations and,

[2] On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief commencing this chapter 11 case, and the United States Trustee appointed the Committee approximately two weeks later on October 29, 2019 [Docket No. 65]. The Committee moved quickly following its appointment to retain Sidley Austin LLP ("Sidley") as its proposed counsel and FTI Consulting Inc. ("FTI") as its proposed financial advisor. The Committee has served both formal and informal discovery requests on the Debtor.

[3] As one bankruptcy court recently found, the Debtor's organizational structure consists of "approximately 2,000 separate business entities." *In re Acis Capital Mgmt.*, 584 B.R. 115, 119 (Bankr. N.D. Tex. 2018).

[4] Mr. Dondero owns 100% of equity in the Debtor's' general partner, Strand Advisors, Inc., and, in that capacity, signed the authorization for the Debtor to commence its chapter 11 case. *See* Voluntary Petition [Docket No. 1]; *Declaration of Frank Waterhouse in Support of First Day Motions* [Docket No. 9], ¶ 51.

in particular, its transactions with other entities that may be controlled by Mr. Dondero or individuals who may be acting in concert with him, is needed to ensure that the rights of the Debtor's creditors are protected and the value of the Debtor's assets is maximized.

2. The Committee opposes approval of the Motions because the relief the Debtor has requested could allow the Debtor and Mr. Dondero to continue their questionable conduct under the guise of "ordinary course" practices. The Committee agrees that this case requires "complete transparency and fairness with respect to the Debtor's insider relationships" (DSI Retention Motion, ¶ 6), but the half-measures the Debtor has proposed leave too much ambiguity for Mr. Dondero and other insiders to exploit. As described in detail below, the Debtor (under the control of Mr. Dondero) has been found on multiple occasions to have breached its fiduciary duties to investors and has made material misrepresentations to investors and to its auditor. The Committee believes that Mr. Dondero, in particular, cannot be trusted to act in the best interests of the Debtor's estate. The Committee is also concerned that the Ordinary Course Protocols Motion and certain aspects of the DSI Retention Motion, if approved, would potentially cement in place an inadequate corporate governance structure with insufficient oversight of the Debtor's business operations by the Court and the Committee, and leave too much control ultimately vested in Mr. Dondero.

3. Specifically, the Committee is concerned that the proposed protocols set forth in the Ordinary Course Protocols Motion are inadequate to prevent Mr. Dondero from engaging in self-dealing transactions with the Debtor. Indeed, each of the Debtor's business lines provides opportunities for malfeasance: (a) the Debtor trades through non-debtor affiliates controlled by

[5] The Committee and its advisors intend to closely scrutinize all prepetition and post-petition transactions involving the Debtor to determine whether any are avoidable and/or give rise to claims against Mr. Dondero and other insiders, including other entities that may be controlled by or under the influence of Mr. Dondero.

Mr. Dondero; (b) the Debtor's investment management services create an opportunity for Mr. Dondero to deplete value from the Debtor's estate via redemptions, improper subsidization of affiliates' operating expenses, and the payment of above-market management fees to entities he controls; and (c) the shared services that the Debtor provides to its affiliates likewise create an avenue for value to improperly flow to non-debtor affiliates if the Debtor is not adequately compensated in return. The proposed protocols are wholly inadequate to protect the Debtor against self-dealing and conflicts of interest, because they (i) allow Mr. Dondero to remain in control of the Debtor and (ii) seek to designate far too many types of extraordinary transactions as being "ordinary course." The Committee views the protocols as, at best, half-measures that are intended to create the appearance of independence and impartiality when, in fact, nothing has changed. Mr. Dondero remains in control of the Debtor, pulling the strings of the roughly 2,000 entities within the Debtor's organizational structure while the proposed Chief Restructuring Officer ("CRO") is left to determine whether a particular transaction is "ordinary course" and whether any entities affiliated with Mr. Dondero are on the other side. It is entirely unclear what information will be made available to the CRO and when, and how, the CRO is expected to evaluate such information given his limited involvement with the Debtor.[6] This situation is a recipe for disaster, and the Court should not countenance it by approving the protocols.

4. The DSI Retention Motion is similarly problematic because it seeks approval of a corporate governance structure rife with potential conflicts of interest and insufficient oversight. To start, the proposed CRO, Mr. Bradley Sharp, will continue to report to Mr. Dondero with respect to all matters related to the Debtor's restructuring, allowing Mr. Dondero to make the final decision on matters that could benefit him or his affiliates personally. *See* DSI Retention

[6] The Committee has been informed that DSI and the CRO were engaged by the Debtor on October 7th and only started their work during the week of October 21st.

Motion ¶ 10(b)(i). Furthermore, the CRO protocols that are set forth in Exhibit A to the DSI Retention Motion (the "DSI Engagement Letter") do not provide for sufficient oversight of the Debtor, its management and operations, and, in particular, any transactions between or among the Debtor and its non-debtor affiliates, and they seek to put in place a governance structure that is woefully inadequate for this case. For example, the DSI Engagement Letter states that the CRO "will have ability to approve" any transaction with an entity in which Mr. Dondero has any direct or indirect ownership interest, or any affiliate of such entity, but this language does not require oversight of all interested transactions. The Debtor should be required to seek Court approval, and not just the CRO's blessing, for all transactions with insiders. And, the DSI Engagement Letter provides that the CRO will have "exclusive authority" to determine whether a transaction is in the ordinary course of the Debtor's business, but such decisions should be made by the Court after notice and a hearing, particularly if there is any question about whether insiders are involved or receiving benefit. Finally, the DSI Engagement Letter states that the CRO will have "exclusive power" to pursue claims against insiders and affiliates even though the CRO will continue to report to Mr. Dondero and, indeed, can be fired by Mr. Dondero for any reason or no reason at all. This power also includes the collection of any receivables owed by insiders (including millions of dollars owed to the Debtor by Mr. Dondero) and *qualified* authority to prosecute any avoidance actions. *See* DSI Engagement Letter, at 2 ("CRO will take into account whether there are sufficient assets in the estate to pay all creditors in full without prosecuting avoidance actions."). Such terms should not be authorized except under a confirmed chapter 11 plan. In sum, the CRO protocols create the appearance of oversight by independent professionals, but they leave far too many loopholes and opportunities for mischief by Mr. Dondero and other insiders.

5. Finally, the Committee is concerned that the Cash Management Motion provides additional avenues for Mr. Dondero to siphon value from the Debtor's estate in the absence of appropriate oversight.[7] As an initial matter, the Debtor holds the majority of its bank accounts at NexBank, SSB ("NexBank") – a bank owned indirectly by Mr. Dondero and Mr. Mark Okada (co-founder and minority owner of the Debtor). It is inappropriate, and frankly unprecedented, for the Debtor's cash to sit in a bank controlled by its insiders. Furthermore, each of the proposed intercompany transactions raises significant concerns for the Committee and requires closer scrutiny. It is not clear from the Cash Management Motion that the proposed intercompany transactions provide any benefit to the *Debtor*. As more fully described below, each of the intercompany transactions involves cash flowing to non-debtor affiliates with no immediate (if any) compensation or other benefits for the Debtor. Mr. Dondero has an established history of using affiliated entities to strip value away from creditors, and should not be allowed to continue doing so under the guise of "ordinary course" intercompany transactions. There should be a strict delineation between the Debtor and its non-debtor affiliates, and all transactions between or among the Debtor and any affiliated entities should be closely scrutinized.

6. The Committee requests that each of the Motions be continued until the Committee has had a chance to complete its diligence and ensure that appropriate safeguards are in place to protect the Debtor's estate.[8] However, if the Court is inclined to consider the Motions

[7] Each of the DSI Retention Motion and the Ordinary Course Protocols Motion also include requested relief with respect to intercompany transactions. To ensure that the Court is not granting conflicting relief with respect to intercompany transactions, the Committee submits that the propriety of intercompany transactions should be determined only in connection with the Cash Management Motion.

[8] Additionally, the Committee respectfully requests that this Court first consider the Committee's motion to transfer venue [Docket No. 86] (the "Venue Transfer Motion") before adjudicating the Motions. If the

at this time, the Committee respectfully requests that the Court (a) only approve the Cash Management Motion on a further interim (rather than final) basis,[9] and closely scrutinize any transactions between or among the Debtor and its affiliates, (b) approve the terms of DSI's engagement by the Debtor solely with respect to DSI serving as the Debtor's financial advisor (i.e., without approving any governance protocols that are set forth in the DSI Retention Motion or granting the CRO any investigative powers), and (c) deny the Ordinary Course Protocols Motion.

SUMMARY OF FINDINGS REGARDING THE DEBTOR'S BUSINESS PRACTICES

7. For the Court's benefit, the Committee has included in this objection a summary of various findings regarding the Debtor made by courts, arbitration panels, and administrative tribunals in recent years. Such findings demonstrate that the Debtor's business practices and transactions with affiliates must be closely scrutinized, and that the Debtor, Mr. Dondero, and his leadership team have proven themselves willing to violate even strict oversight structures that were put in place by courts supervising other bankruptcy proceedings in which the Debtor was involved.

I. The SEC Administrative Proceedings.

8. On September 25, 2014, the Securities and Exchange Commission (the "SEC") instituted administrative and cease-and-desist proceedings against Highland pursuant to

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Court is inclined to grant the Venue Transfer Motion and transfer this case, the transferee court should hear and decide the Motions.

[9] The Committee requests that any further interim relief be subject to the following conditions: (i) aggregate expenditures for Intercompany Transactions do not exceed $1.7 million from the Petition Date through the term of the interim order and such expenditures are commercially justifiable and inure to the benefit of the estate (e.g., only entering into loans with market interest rates and appropriate security); (ii) with respect to shared services, the Committee reserves its rights to all expense allocations; and (iii) pending establishment of protocol to confirm adequate confirm adequate oversight, all trading activity and any additional borrowing amounts on margin in the Jefferies Prime Brokerage Account should cease on the basis that funding of operations is restricted to the Highland Select Fund.

Sections 203(e), 203(i), and 203(k) of the Investment Advisors Act of 1940 (the "Advisors Act"), captioned *In the Matter of Highland Capital Mgmt., L.P.*, File No. 3-16169 (the "SEC Administrative Proceedings").[10] The SEC commenced the SEC Administrative Proceedings following "certain instances by Highland of trading securities between its clients' accounts and accounts in which Highland and its principals maintained an ownership interest." *See* SEC Order ¶ 2. The SEC determined that Highland knowingly engaged in multiple transactions with its client advisory accounts without disclosing that Highland was acting as principal, or obtaining client consent, before the trades were completed. Many of such trades took place during September and October 2008 – the onset of the Great Recession. *See* SEC Order ¶¶ 6-7. During the relevant time period, Highland also failed to maintain sufficient documentation in relation to certain principal transactions. *Id.* In response to these violations, the SEC mandated that Highland retain a qualified independent compliance consultant and implement all recommendations made by such consultant. *See* SEC Order ¶¶ 12-26. The SEC also ordered Highland to cease and desist from committing any future violations of the Advisors Act and pay a civil penalty. *See id.*, Sec. IV.

II. The Redeemer Committee Litigation.

9. Beginning in 2006, Highland was the investment manager for Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund II, Ltd., and Highland Crusader Ltd. (collectively, the "Crusader Fund"). The Crusader Fund's assets lost significant value in September and October 2008, and on October 15, 2008, the Debtor placed the Crusader Fund in wind-down, compulsorily redeeming the Crusader Fund's limited partnership interests, and declared it would liquidate the Crusader Fund's remaining assets for

[10] A copy of the order instituting the SEC Administrative Proceedings is attached hereto as **Exhibit A** (the "SEC Order").

distribution to investors. Disputes soon arose as certain investors asserted that Highland and its senior executives (principally, Mr. Dondero) had engaged in self-dealing, conflicted transactions, and other violations of their fiduciary duty to the Crusader Fund, and an involuntary winding up proceeding that was commenced in Bermuda against Highland Crusader Fund II, Ltd. In July 2011, Highland, the Crusader Fund, and most investors of the Crusader Fund adopted the Joint Plan of Distribution (the "Crusader Plan")[11] and Scheme of Arrangement approved by the Supreme Court of Bermuda.

10. Given the significant allegations of Highland's wrongdoing, the Crusader investors insisted that the Crusader Plan include numerous safeguards to prevent Highland from engaging in self-dealing, or otherwise acting to benefit Highland to the investors' detriment. *See* Partial Final Award (dated March 6, 2019) at 2-3.[12] A foundational protection was the establishment of the committee of Crusader Fund investors (the "Redeemer Committee"), "which was created so as to allow the investors in the Funds to have a greater level of influence over the affairs of Highland Capital than an ordinary creditors' committee would have in the liquidation of the Fund." *Id.* at 3.

11. The Crusader Plan imposed significant restrictions on Highland's ability to conduct business with, or trade equity interests in, the Crusader Fund, and granted the Redeemer Committee the authority to protect the investors' interests with respect to these transactions. For example, Highland and its affiliates were prohibited from engaging in transactions with the Crusader Fund absent the Redeemer Committee's prior approval. Highland and its affiliates were prohibited from acquiring any equity interests in the Crusader Fund unless the Redeemer

[11] A copy of the Crusader Plan is attached hereto as **Exhibit B**.

[12] A copy of the Partial Final Award, dated March 5, 2019 (the "Partial Final Award"), is attached hereto as **Exhibit C**.

Committee approved, and Highland was required to offer the Redeemer Committee the opportunity to cause the Crusader Fund to purchase those interests for the fund's benefit (i.e., a right of first refusal) before it could acquire any such interests. *See* Partial Final Award at 21, 25, 34.

12. In April 2016, the Redeemer Committee discovered that Highland had covertly and improperly taken $32.3 million in cash out of the Crusader Fund. The Redeemer Committee then terminated Highland as investment manager for the Crusader Fund, and brought claims against Highland in arbitration for its repeated breaches of the Crusader Plan and its fiduciary duties to the Crusader Fund. The arbitration panel (the "Panel") consisted of three members selected by the parties: the Honorable John Martin (retired District Court Judge, S.D.N.Y.), Michael Young, and David Brodsky (chair). The Panel unanimously issued three partial final awards and one final award (collectively, the "Awards")[13] against Highland.

13. The Panel found that Highland, Mr. Dondero, and Highland's in-house lawyers violated their fiduciary duties to the Crusader Fund, engaged in willful misconduct, self-dealing, and secrecy, and made multiple misrepresentations to the Redeemer Committee and the Crusader Fund's investors, as well as Highland's auditors. The Panel found that Mr. Dondero was actively involved in the misconduct and that Highland's General Counsel, Scott Ellington, and its Assistant General Counsel, Isaac Leventon, were integral to implementing Highland's deceitful

[13] In its first Partial Final Award on April 21, 2017, the Panel awarded the Redeemer Committee injunctive relief ordering Highland to turn over the books and records of the Fund to the Redeemer Committee pursuant to Section 2.05(a) of the Plan, because Highland had refused to abide by its disclosure obligations under the Plan and Scheme.

In its second Partial Final Award on July 20, 2017, the Panel ruled against Highland on Highland's counterclaims for advancement of its legal fees and injunctive relief.

On May 9, 2019, the Panel issued the Final Award (the "Final Award"), a copy of which is attached hereto as **Exhibit D**, inclusive of damages, attorneys' fees, and costs, fully and finally resolving all remaining issues in the Arbitration.

schemes. The following discussion summarizes three of the schemes that Highland perpetrated, despite the strict requirements of the Crusader Plan:[14]

A. Highland Improperly Took $32.3 Million from the Crusader Fund as "Deferred Fees."

14. In early 2016, Highland unilaterally took $32.3 million in cash from the Crusader Fund for itself, claiming it was entitled to such amount as "Deferred Fees" under the Crusader Plan. Partial Final Award at 14. Although the Crusader Plan did provide Highland the opportunity to earn Deferred Fees, they were only to be paid to Highland upon the "'complete liquidation' of the Crusader Funds' assets." Partial Final Award at 9. The deferral of the payment was a key feature of the Crusader Plan—"an incentive to Highland to complete [the] liquidation of the portfolio[.]" *Id*. at 14. At the time Highland took the Deferred Fees, there was no question that this condition had not been satisfied. Indeed, the Crusader Fund still has not completed the liquidation of its assets as of this date, and the condition has not yet been satisfied.

15. Highland, however, asserted that it was entitled to the Deferred Fees under the "impossibility doctrine:" It claimed it could not liquidate the Crusader Fund's assets for a period due to a temporary restraining order issued in a separate litigation with UBS; in other words, Highland claimed it would have received the Deferred Fees "but for" the restraining order. *Id.* at 10.

16. Highland's General Counsel, Mr. Ellington, testified in support of this position that "in January 2016, he and others spoke on several occasions with lawyers from [Highland's outside counsel] Akin Gump regarding the premature taking of the Deferred Fees, and that he received the advice that 'the deferred fees could be taken under the circumstances,' that it was a

[14] The Committee is filing the two principal arbitration decisions attached as **Exhibits C** and **D** to this Objection under seal so that this Court has the opportunity to fully comprehend the breadth and depth of Highland's pervasive misconduct.

calculated risk and that, if successfully challenged, Highland would only owe 'nominal interest.'" *Id.* The Panel found that Mr. Ellington's testimony was not true. As the Panel explained, "Mr. Ellington's testimony is not supported by the hourly billing records of Akin Gump, which do not show any time being billed in January 2016 for anything having to do with this or any other Highland-related issue." *Id.*

17. The Panel also found that Highland had considered using the "impossibility defense" affirmatively to justify taking cash from the Crusader Fund on multiple prior occasions, but was advised the doctrine did not apply. *Id.* at 12. The Redeemer Committee also strongly rejected this position when Highland raised it. *Id.* The Panel found that "[n]otwithstanding two prior and unsuccessful attempts to use the doctrine to evade its obligations, Highland was not deterred and in late 2015 and early 2016, with the assistance of its inside counsel, but not on the advice of Akin Gump, planned for and then executed on the strategy to take the Deferred Fees." *Id.* It was clear to the Panel that Highland's inside counsel knew that the defense did not apply to Highland's taking of $32.3 million from the Crusader Fund. *Id.* at 14 ("Indeed, we find that Highland – and its inside counsel – knew none of the factors were applicable when Highland asserted the defense."). The Panel concluded that "Highland's reliance on the UBS TRO was pretextual to support Highland's true goal of benefiting itself over the interests of the Fund and the Committee." *Id.* at 30. The Panel also found that, after Highland took the $32.3 million, it intentionally misled the Crusader Fund's auditors, PwC, to conclude that the Redeemer Committee had approved Highland's conduct, and that Highland did that "so as to induce PwC to provide the opinion Highland needed to have clean financials." *Id.* at 11.

B. Highland Purchased Crusader Fund Equity Interests in Violation of the Crusader Plan.

18. When negotiating the Crusader Plan, investors were concerned that Highland could later "strong-arm" investors to sell their equity interests in the Crusader Fund to Highland at below fair value prices. To prevent that, the Crusader Plan expressly requires that all transfers of such equity interests to Highland or its affiliates may only be consummated with express approval of the Redeemer Committee and after the Redeemer Committee is offered a right of first refusal ("ROFR"). Partial Final Award at 26; Crusader Plan §§ 2.05(f), 5.04. The Crusader Plan refers to such equity interests in the Crusader Fund as "Plan Claims."

19. The Panel found that Highland engaged in willful misconduct by purchasing twenty-eight Plan Claims in the Crusader Fund in violation of the Crusader Plan. Highland pursued a complex and secret scheme orchestrated by Mr. Dondero and carried out by Mr. Leventon, Highland's Assistant General Counsel:

(a) First, Highland caused (without the Redeemer Committee's knowledge) the Board of Crusader's Master Fund to prospectively approve any transfers of interests in the Crusader Fund to Mr. Dondero, Highland, or its affiliates, so long as they offered the highest price.

(b) Second, Mr. Leventon used that resolution on Highland's behalf to lay "the groundwork for purchasing the Plan Claims for itself and bypassing the Committee's ROFR," by "[u]sing that Resolution [to inform] multiple investors interested in possible transfers of their interests, that Highland had a ROFR to purchase any Plan Claims, [and] never mentioning the [Redeemer] Committee's prior and superior ROFR." Partial Final Award at 27.

(c) Third, "Highland hired a broker to solicit all Fund investors, except those who were on the [Redeemer] Committee, to buy their interests at half or approximately half of the NAV that Highland had itself set." *Id.* at 27. Highland instructed the broker, Wake2O, to only "reach out to all *non-committee* members" and use Highland-drafted talking points that misrepresented on whose behalf Wake2O was acting, and represented, without apparent foundation, that the offering price of 50% or 55% of the net asset value was '[t]he current best market bid' and that price would go down in the future." *Id.* at 28-29 (emphasis added). In doing so, Highland schemed "to purchase a majority of the [Crusader] Fund without the [Redeemer]

> Committee's knowledge," using misrepresentations and deceit to acquire Crusader Fund interests at a steep discount. *Id.* at 28.

20. The Panel found that Mr. Dondero was the driving force behind this operation: "Throughout Wake2O's engagements, [Wake2O] was under pressure from Highland's CEO to pursue investors so that Highland could obtain a greater share of the Fund." *Id.* at 29. Mr. Leventon, in executing the scheme, lied to Crusader Fund investors: "Highland continued misrepresenting to investors that it had a ROFR and never mentioned in its communications that the [Redeemer] Committee was the entity actually possessing that right. *Mr. Leventon was the principal instrument through which this misrepresentation and omission were communicated.*" *Id.* at 30 (emphasis added).

21. As a result of Highland's secret scheme, Highland acquired a substantial number of equity interests in the Crusader Fund for drastically less than the fair value of those interests, in violation of the Crusader Plan. It again tried to use the "impossibility defense" to justify its affirmative conduct. Unsurprisingly, the Panel found that Highland's reliance on impossibility "was a façade, designed to enable Highland to attempt to purchase a majority interest in the Fund without the Committee's knowledge." *Id.* at 28. The Panel held that Highland had committed willful misconduct and breached its fiduciary duty to the investors, and ordered Highland to return the equity interests, and all distributions it had received on account of those interests, to the Crusader Fund with interest. *Id.* at 30, 53.

C. Highland Used Straw Purchasers to Buy Crusader Fund Assets.

22. Highland also violated the Crusader Plan's prohibition on related-party transactions by causing the Crusader Fund to sell its assets to Highland affiliates at a discount without disclosing the transactions to the Redeemer Committee—much less receiving its required approval. *See* Partial Final Award at 34. In late 2013 and early 2014, Highland caused

the Crusader Fund to sell numerous shares of interests in collateralized loan obligations (commonly called "CLOs"), telling the Redeemer Committee that sales were to third parties. In reality, Highland used a straw buyer as a middleman to purchase the shares at one price, only to then resell the shares to a Highland affiliate for a higher price, oftentimes before the first transaction had even closed. *See* Partial Final Award at 35 ("Highland sold the CLOs to a broker for one value and then the broker turned around and sold the CLOs to the Highland affiliate for a higher value. Thus, the Fund received less than it was entitled to receive had the transaction been done without the middleman. . .").

23. The Panel found that Highland orchestrated these straw purchases by design to "avoid obtaining the consent of the [Redeemer] Committee." *Id*. As the Panel observed, Mr. Dondero was recorded on tape instructing a subordinate to execute a CLO trade through a straw man purchaser. *Id*. at 35. The Panel held that Highland breached the Crusader Plan and its fiduciary duty to investors by engaging in these self-dealing transactions, and ordered Highland to pay the Crusader Fund the difference between the low price the Fund received, and the higher price actually paid for the shares. *Id*. at 35, 55.

D. The Panel Awarded the Redeemer Committee its Attorneys' Fees and Costs.

24. Finally, the Panel awarded the Redeemer Committee its attorneys' fees and costs for prosecuting the Arbitration, finding:

> [W]ith respect to **each of the claims** on which we have determined that the Committee is entitled to prevail, we have noted above the many occasions where, during the time it was investment manager and thereafter, Highland engaged in conduct that breached the Plan, breached fiduciary duties, **involved secrecy, misrepresentations, and false statements by the most senior executives, and constituted willful misconduct**. Furthermore, **large portions of the defense set forth by Highland's witnesses were unworthy of belief** and reflect the fact that Highland knew that it had no legitimate defense to many of the Committee's claims. Accordingly, in our discretion, based on the foregoing, we

> award Claimant its legal fees and costs for the litigation of this arbitration.

Id. at 53 (emphasis added).

25. The Awards are powerful evidence that Highland, Mr. Dondero, and his leadership team cannot be trusted to abide by court-imposed rules. Despite the detailed Crusader Plan that set clear limits on Highland's actions, and despite oversight by the Redeemer Committee, Highland continued to engage in self-dealing and breaches of fiduciary duties. The Panel's rulings leave no question as to the lack of trustworthiness of Highland, Mr. Dondero, and Highland's in-house lawyers.

III. The Acis Bankruptcy Cases.

26. As set forth in the Venue Transfer Motion, the Debtor has been actively involved in the involuntary chapter 11 cases of its former affiliates Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, L.P. ("Acis GP," and together with Acis LP, "Acis") pending in the United States Bankruptcy Court for the Northern District of Texas (the "Dallas Bankruptcy Court") and captioned *In re Acis Capital Mgmt., L.P.*, Case No. 18-30264 (SGJ) (the "Acis Bankruptcy Cases"). Acis was the structured credit arm of the Debtor. *In re Acis Capital Mgmt., L.P.*, No. 18-30264 (SGJ), 2019 WL 41719, at *5 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019). When the Acis Bankruptcy Cases were commenced on January 30, 2018, there was complete overlap between Acis and the Debtor at the executive level, with Mr. Dondero serving as President of Acis and the Debtor's Chief Financial Officer and first day declarant, Frank Waterhouse, serving as Treasurer.

27. Prior to the commencement of the Acis Bankruptcy Cases, Acis and the Debtor were parties to litigation with Joshua Terry, stemming from the Debtor's termination of Mr. Terry's employment in June 2016. *See In re Acis Capital Mgmt., L.P.*, 584 B.R. 115, 120

(Bankr. N.D. Tex. 2018). Mr. Terry ultimately obtained a $7.9 million arbitration award against Acis on October 20, 2017, based on claims of breach of contract and breach of fiduciary duties. Indeed, the arbitration panel found:

> Highland's termination of Terry was, in fact, pre-textual, without basis of cause and only because Dondero wanted him gone. Terry's opposition to Dondero's . . . plan was not self-dealing and not a breach of fiduciary duty. Terry's opposition to Dondero's plan to not pay investors and extend past due and near due notes was appropriate and was ultimately accepted by all to be the correct approach to complete the Trussway/Targa acquisition. Dondero was simply angry and realized Terry was not a "yes man" willing to let Dondero have his wrongheaded way, so Dondero fired Terry on the spot and later sought to characterize Terry's termination of employment as "for cause."

See Final Award (dated October 20, 2017), at 10.[15]

28. The Texas state court confirmed the arbitration award in December 2017. During the process of pursuing post-judgment discovery, Mr. Terry discovered a number of suspicious transactions and transfers that he believed were "pursued without any legitimate business purpose and with the purpose of denuding Acis LP of its assets and to make it judgment proof." *In re Acis Capital Mgmt., L.P.*, 584 B.R. at 120. These transactions included the following, which started just days after the issuance of the arbitration award on October 20, 2017:

(a) the October 24, 2017 transfer of Acis LP's 15% interest in Acis Loan Funding, Ltd. ("ALF")[16] back to ALF (with "[n]o credible business

[15] A copy of the Final Award, dated October 20, 2017, is attached hereto as **Exhibit E**.

[16] ALF has three equity owners: "(i) a 49% equity owner that is a charitable fund (i.e., a donor advised fund or "DAF") that was seeded with contributions from Highland, is managed/advised by Highland, and whose independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero; (ii) 2% is owned by Highland employees; and (iii) finally, ALF ***may*** be 49% owned by a third-party institutional investor based in Boston that Highland believed it was required to keep anonymous at the Trial." *Id*. at 125.

justification" offered for the transaction), which rendered Acis LP unable to continue serving as a CLO manager for regulatory purposes;[17]

(b) the October 27, 2017 decision of ALF to replace Acis LP as portfolio manager with a newly-formed Cayman Island entity called Highland HCF Advisor, Ltd.;

(c) the November 3, 2017 assignment and transfer of Acis LP's interests in a note receivable from Highland with a balance of over $9.5 million to another newly-formed Cayman Island entity, Highland CLO Management Ltd.;

(d) the December 19, 2017 transfer of Acis LP's "risk retention structure" vehicle and contractual right to receive management fees (with a combined value of $5 million) to yet another newly-formed Cayman Island-based Highland entity, Highland CLO Holdings, Ltd.;

(e) the December 18, 2017 conveyance of (i) Dugaboy Investment Trust (a Dondero family trust) and Mark Okada's entire limited partnership interests in Acis LP (74.9% and 25%, respectively), to another newly-formed Cayman Island entity called Neutra, Ltd and (ii) Dugaboy Investment Trust's 100% membership interest in Acis GP to Neutra, Ltd.;[18] and

(f) the intended February 2018 reset on Acis CLO 2014-3, which would have the effect of depriving Acis LP of a valuable asset, which could realistically be expected to provide millions of dollars of future collateral management fees.

See id. at 127-30. In addition, pursuant to amendments made to Acis' shared services agreements with Highland, "starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level." *In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *8. Mr. Terry sought a temporary restraining order to halt any further transfers and then filed the involuntary bankruptcy petitions against Acis on January 30, 2018. *See In re Acis Capital Mgmt., L.P.*, 584 B.R. at 121.

[17] The court determined that "[n]o credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was 'toxic' in the market place (due to litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business." *Id*. at 127-28. The court found the testimony of Highland's witnesses to not be credible. *Id*. at 128.

[18] Mr. Okada testified that he made millions of dollars in equity dividends from his equity investment in Acis LP before he conveyed his interests away for no consideration in return, making the decision all the more suspect. *See In re Acis Capital Mgmt., L.P.*, 584 B.R. at 130.

29. Upon consideration of the involuntary petitions, the Dallas Bankruptcy Court "heard considerable evidence involving potentially voidable transfers that may have occurred involving the Alleged Debtors and Highland/Highland-affiliates" and found there was a "legitimate prospect" that the Debtor would "continue dismantling [Acis], to the detriment of Acis LP creditors." *Id.* at 147, 149. Indeed, "[t]he one thing that the court was wholly convinced of was that conflicts of interest among Highland and the Alleged Debtors abound, and no one is looking out for interests of the Alleged Debtors as a fiduciary should." *Id.* at 132 (emphasis added).

30. Additionally, in connection with confirmation of the Acis debtors' chapter 11 plan, the Dallas Bankruptcy Court found that the plan injunction was necessary to prevent the credible immediate and irreparable harm that Highland could inflict on Acis and its creditors. *See In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *10. The Dallas Bankruptcy Court further concluded that the **"record contain[ed] substantial evidence of both intentional and constructive fraudulent transfers,"** and "[t]he numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear[ed] more likely than not to have been made to deprive the Debtor-Acis of value and with the **actual intent to hinder, delay, or defraud the Debtors' creditors**." *Id.* at *11 (emphasis added).

31. The Dallas Bankruptcy Court made a number of troubling findings with respect to the trustworthiness of the Debtor's principals. In connection with deciding the propriety of the involuntary petitions, the court "**found the testimony of almost all of the witnesses for the Alleged Debtors to be of questionable reliability and, oftentimes, there seemed to be an effort to convey plausible deniability**." *In re Acis Capital Mgmt., L.P.*, 584 B.R. at 131 (emphasis added). There was also conflicting testimony as to the decision-making process:

Highland's in-house lawyers "stressed that Mr. Dondero (the president and manager of the two [Acis] entities) had the ultimate decision making authority for [Acis]. Meanwhile, Mr. Dondero testified that, while he has decision making authority at Acis LP, he usually delegates to Highland's in-house lawyers," i.e., Scott Ellington and Isaac Leventon. *Id.* In connection with confirmation of the Acis plan, the Dallas Bankruptcy Court also found that Highland's General Counsel, Scott Ellington, appeared to have manufactured a narrative to justify prior actions—the fraudulent transfers—testifying to justifications for which there was "no credible evidence." *In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *16. Mr. Ellington blamed a passive investor for demanding the fraudulent transfers, but that same passive investor denied the accuracy of Mr. Ellington's testimony. *See id.* Further, the Dallas Bankruptcy Court found that the witnesses of Highland CLO Funding Ltd., a party advised and "controlled by Highland in every way" appeared to "be nominal figureheads who are paid to act like they are in charge, while they are not." *Id.* at *17.

OBJECTION

32. The foregoing summary demonstrates that there is a well-established history of the Debtor's principals breaching fiduciary duties to investors, engaging in self-dealing, using affiliated funds to transfer value away from creditors, and concealing transactions with the Debtor's affiliates—even while acting under rules imposed by a liquidation plan approved by a court. As the Redeemer Committee's arbitration award starkly describes, Mr. Dondero and the Debtor's in-house counsel are well versed in developing and then implementing complex stratagems to evade carefully designed, court-approved corporate governance provisions that were expressly designed to prevent such conduct. The Committee believes that Mr. Dondero is simply incapable of acting as a fiduciary for the Debtor and its creditors and that rigorous oversight is needed to ensure that the Debtor is acting in the best interests of its creditors, is fully

disclosing all transactions with its affiliates, and is not engaging in any undisclosed or questionable transactions with entities controlled by or under the influence of Mr. Dondero.

33. The Committee is concerned that the relief requested in the Motions, taken together, would permit the Debtor to continue its troubling behavior with insufficient oversight. The Debtor and its principals have demonstrated time and time again that they cannot be trusted. The Debtor has done nothing to earn the deference that it seeks pursuant to the Motions. To the contrary, its pattern of violating fiduciary obligations, deceitful behavior, and self-dealing transactions with affiliated entities warrant close and rigorous scrutiny from the Court and the Debtor's creditors.

I. Cash Management Motion.

34. As described above, the Debtor has a history of moving value away from its creditors via intercompany transactions (often through sham "middle men," i.e., other entities controlled by Mr. Dondero or individuals within his orbit). The relief requested in the Cash Management Motion would potentially allow the Debtor to continue such practices while in chapter 11. Indeed, the Committee has significant concerns regarding the scope of the intercompany transactions with respect to which the Debtor is seeking approval. Currently, the Debtor appears to be transferring cash to non-debtor entities and receiving little to no value in return. For example, the Debtor provides $1 million per month in funding to Highland Multi Strategy Credit Fund, L.P. ("MSCF")[19] so that MSCF can pay life settlement policy premiums and fund its other operating costs, but the Debtor only receives 0% interest notes in return with no apparent guarantee of repayment (or any reimbursement from the other investors in MSCF). The Debtor apparently assumes that MSCF's investments will eventually become liquid and will

[19] The Committee has been informed that the Debtor holds a minority ownership interest in MSCF but is funding 100% of the policy premiums.

allow MSCF to repay the notes, but in the meantime the Debtor assumes the risk of non-payment and does not appear to be appropriately compensated for taking that risk.

35. The Committee has similar concerns regarding the intercompany transactions involving Highland Capital Management Korea Limited, Highland Capital Management Latin America, L.P., and Highland Capital Management (Singapore) Pte Ltd.:

(a) The Debtor has provided its non-debtor subsidiary Highland Capital Management Korea Limited ("HCM Korea") with a $20 million revolving note to cover funding calls from an investment fund, HCM Korea Fund, of which HCM Korea is a minority limited partner.[20] HCM Korea is not paying any interest on the note and is expected to draw an additional $3 million (for a total of $6 million outstanding) over the next one to two years. The Debtor's return on investment appears to be a mere assurance that HCM Korea "will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to investors." Cash Management Motion, ¶ 16.b.

(b) Similarly, the Debtor contributes equity to non-debtor subsidiary Highland Capital Management Latin America, L.P. ("HCM Latin America") to cover the costs of consultants involved in advising and marketing the "SA Fund."[21] The Debtor anticipates providing HCM Latin America with equity contributions of $1-1.5 million per year, in addition to its previous $700,000 equity contribution, until the Argentinian market recovers. The Debtor, in return, purportedly believes that the equity contribution will lead to returns on its investment if and when such market recovery occurs. *See* Cash Management Motion, ¶ 16.c.

(c) The Debtor also covers the marketing costs of its Singapore subsidiary, Highland Capital Management (Singapore) Pte Ltd ("HCM Singapore"). The Debtor "believes" it will generate an increase in revenue from management fees, and that such revenue would offset the costs paid by the Debtor. Moreover, the Debtor notes that HCM Singapore has "solicited investments in the Debtor's managed funds" but has not explained whether such managed funds are 100% owned by the Debtor. *See* Cash Management Motion, ¶ 16.d.

(d) The Debtor also provides back office support services to its clients from time to time and then allocates the expenses to the clients for reimbursement. As noted in the Motions, a large number of the Debtor's "clients" are in fact

[20] The Committee has asked the Debtor to explain HCM Korea Fund's ownership structure.

[21] The Committee has asked the Debtor to explain the ownership structure of the SA Fund (as such term is defined in the Cash Management Motion).

> affiliates. Without oversight, Mr. Dondero could easily manipulate the "expense allocation" mechanism to transfer value to non-debtor affiliates.

36. The Debtor has an established history of utilizing intercompany transactions to transfer value away from its creditors. The Committee is in the process of conducting formal and informal discovery with respect to the intercompany transactions and respectfully submits that final approval of the Cash Management Motion should not be granted until the Committee has had sufficient time to investigate whether (i) any of the intercompany transactions involve entities owned or controlled by Mr. Dondero or other insiders of the Debtor and (ii) such intercompany transactions are likely to result in any meaningful benefit to the Debtor's estate.

37. Additionally, the Committee is concerned that the majority of the Debtor's bank accounts are held at NexBank, which is indirectly owned by Messrs. Dondero and Okada. The Committee does not believe it is appropriate for the Debtor's bank accounts to remain in a bank owned by the Debtor's insiders. Any final approval of the Cash Management Motion should be conditioned on the Debtor's agreement to promptly move its accounts to a non-affiliated bank that is signatory to a Uniform Depository Agreement with the United States Trustee.

II. DSI Retention Motion.

38. The Committee does not object to the Debtor's retention of DSI as its financial advisor. Rather, the Committee believes that the DSI Retention Motion improperly (and prematurely) seeks this Court's approval of a corporate governance structure that is inadequate for this case and leaves far too many opportunities for mischief by the Debtor's insiders.

39. To start, the Debtor is asking this Court to decide in the first month of this chapter 11 case that the Debtor's proposed CRO should have exclusive powers to investigate and pursue estate claims against insiders. This relief is entirely inappropriate, particularly given the nascent stage of these proceedings. The Committee is still in the preliminary stages of its

investigation and should not be prejudiced from seeking any appropriate relief with respect to any potential estate claims against insiders. Furthermore, it is inappropriate for the CRO to report to Mr. Dondero and be subject to termination by Mr. Dondero for any reason while, at the same time, having the "exclusive power" to pursue claims against insiders (including Mr. Dondero) and affiliates (subject to the qualification that the CRO must "take into account whether there are sufficient assets in the estate to pay all creditors in full *without* prosecuting avoidance actions").

40. Second, the Committee is concerned that approval of the DSI Retention Motion would potentially permit Mr. Dondero to continue his "ordinary course" activities without any real oversight by the CRO, the Court, or the Debtor's creditors. DSI and the CRO were only engaged on October 7th and are still in the process of understanding the Debtor's complex organizational structure. It is particularly inappropriate, under these circumstances, to vest the CRO with the authority to: (i) approve transactions between or among the Debtor and entities in which Mr. Dondero has a direct or indirect ownership interest and (ii) determine whether a transaction is in the ordinary course of the Debtor's business. The Committee believes that such decisions should be made by the Court after notice and a hearing, and not by the CRO. Mr. Dondero has already proven on multiple occasions that he cannot be trusted as a fiduciary, and all transactions between or among the Debtor and other entities that he controls must be closely scrutinized.

41. Finally, the Debtor appears to be seeking approval to continue engaging in intercompany transactions with its affiliates pursuant to the DSI Retention Motion, which relief should be considered in connection with the Cash Management Motion. Such relief is not appropriate in any event, for the reasons set forth above.

III. Ordinary Course Protocols Motion.

42. The Ordinary Course Protocols Motion gives the Committee considerable cause for concern. Essentially, the Debtor is seeking this Court's approval to continue engaging in transactions that it considers to be "ordinary course" without any transparency—without needing Court approval, but also without providing any advance notice or even after-the-fact reporting to the Committee. Whether a transaction is "ordinary course" would be left to the CRO to decide even though the CRO has only been involved with the Debtor for a few weeks. The CRO, meanwhile, would report directly to Mr. Dondero and could be fired by him for any reason. The Committee suspects that many of the transactions that the Debtor considers to be "ordinary course" involve non-debtor entities that are controlled by or affiliated with Mr. Dondero.

43. The Committee finds several aspects of the Debtor's so-called "Ordinary Course Services" to be troubling or to require additional information, including:

(a) The Debtor buys and sells securities through Highland Select Fund, L.P., a non-debtor entity that is managed (and partially owned) by Mr. Dondero. The Committee is concerned that this arrangement gives Mr. Dondero significant control over the Debtor's assets without sufficient oversight.

(b) It is unclear to the Committee whether it makes sense for the Debtor to make additional investments in the Petrocap Entities (particularly in light of the significant distress that oil and gas companies are facing) and whether any of the Debtor's affiliates or insiders, including Mr. Dondero, are also invested in such entities. The Committee notes that Petrocap is managed by two former employees of the Debtor.

(c) There is no transparency regarding the hedge funds, private equity funds, separately managed accounts and CLO funds for which the Debtor is providing investment management services. It is entirely possible, if not likely, that Mr. Dondero is affiliated with or controls certain of such funds. Debtor's counsel has already advised the Committee that two hedge funds have made redemption requests to the Debtor, and the Committee needs time to investigate whether Mr. Dondero is the one pulling the strings on such redemption requests. The Committee also needs time to investigate the reasons why the total assets under management by the Debtor appear to have declined in recent years, whether management rights have been transferred away from the Debtor to affiliates (as happened in the Acis Bankruptcy

Cases), and whether the Debtor is being appropriately compensated for its management services.

(d) The Debtor provides shared services to several of its non-debtor affiliates (including, presumably, other entities owned or controlled by Mr. Dondero). The Committee needs time to investigate whether the Debtor is being fairly compensated for such shared services.

(e) The Debtor's directors' and officers' insurance coverage ("D&O Insurance") is provided by Governance Re Ltd., a Bermuda entity owned by Messrs. Dondero and Okada. The Committee needs time to investigate whether the terms of the D&O Insurance are "market," as the Debtor contends, or whether the Debtor's estate should obtain D&O coverage from another provider.

In sum, there is little transparency into the Debtor's "ordinary course" business practices. The Committee needs time to investigate whether there are legitimate business justifications for the proposed transactions and whether the Debtor is being fairly compensated for its services to non-Debtor affiliates, among other things. The Committee is concerned that its interests would be irreversibly prejudiced if the Court were to prematurely grant the relief sought in the Ordinary Course Protocols Motion. Indeed, other courts have had to impose injunctions against the Debtor and its principals to ensure that they would not deplete value to the detriment of creditors. *See In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *9-10 (temporarily enjoining Highland, affiliates, and related parties from effectuating an optional redemption or liquidating the Acis CLOs and related actions "to avoid immediate and irreparable harm to the Reorganized Debtor").

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Committee respectfully requests that the Court deny the relief requested in the Motions for the reasons set forth herein, or in the alternative, continue the Motions until further notice, and grant such other and any further relief as the Court deems just and proper.

Date: November 12, 2019
Wilmington, Delaware

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Proposed Counsel for the Official Committee of Unsecured Creditors

Exhibit A

SEC Order

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3939 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16169

In the Matter of **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(i), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(i), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Highland Capital Management, L.P. ("Highland" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(i), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Respondent

1. **Highland Capital Management, L.P. ("Highland")** is a limited partnership organized under the laws of Delaware with its principal place of business in Dallas, Texas. Highland has been registered with the Commission as an investment adviser since 1997. Highland serves as an investment adviser to, among others, unregistered hedge funds and private accounts.

Summary

2. These proceedings arise out of certain instances by Highland of trading securities between its clients' accounts and accounts in which Highland and its principals maintained an ownership interest, without adhering to certain requirements set forth by the Advisers Act. In addition, with respect to these principal transactions and certain other business operations, Highland failed to keep and maintain true, accurate and current books and records as required by the Advisers Act.

Background

3. Highland, an investment adviser that has been registered with the Commission since 1997, primarily focuses on investments in the debt instruments of distressed companies, debt-related structured products, and other securities that are not listed or traded on a national securities exchange. Although a market for these securities does exist, many of these securities are considered illiquid and trade primarily among institutional investors.

Highland Engaged in Improper Principal Transactions

4. A cross trade is a transaction between two accounts managed by the same investment adviser. Cross trades can benefit clients in a number of ways, including: (i) enabling the transfer of securities among client accounts without having to expose the security to the market, thereby saving transaction and market costs that would otherwise be paid; (ii) eliminating counterparty risk; and (iii) providing an adviser with added flexibility when dealing with an illiquid asset. Cross trades can be executed by an adviser on an agency or a principal basis. In an agency cross trade, the adviser buys or sells a security in the account of one client with the account of another client. In contrast, in a principal cross trade, the adviser - acting for its own account - buys a security from, or sells a security to, one of its client's accounts.

5. Although cross trades can be appropriate in many circumstances, they also can create the possibility of a conflict of interest for an adviser: the better the price the adviser obtains for the selling client, the worse it is for the buying client, and vice versa. And, cross trades involving a principal account heighten the potential for unfair treatment. Highland was aware of the potential conflicts created by cross trading, and established a process for its compliance department to monitor such trades.

6. Between 2007 and 2009, Highland knowingly engaged in a number of transactions with its client advisory accounts without disclosing in writing that Highland was acting as principal, or obtaining client consent, before the trades were completed (the "Trades").[1]

7. Many of the Trades took place during September and October 2008 when, with the onset of the financial crisis, asset values were dropping and the market for credit products was increasingly illiquid. As a result, margin calls were being made on Highland's accounts. According to Highland, many of the Trades were executed in an effort to generate or maintain liquidity for the advised accounts.

8. For example, on September 23, 2008, an account in the name of and owned by Highland purchased $3,300,423 in securities from one of Highland's clients, a hedge fund it advised. Highland failed to properly obtain the consent of the hedge fund prior to completing the transaction. As another example, on September 19, 2008, Highland advised two hedge fund clients to sell approximately $15 million in debt securities to four separate accounts in which Highland maintained an ownership interest. Again, Highland failed to properly obtain the consent of the hedge fund clients prior to completing the transaction.

Highland Failed to Maintain Accurate Books and Records

9. During the relevant time period, Highland failed to maintain books and records that were true, accurate, and current in relation to certain of the Trades and certain other business operations, as required by the Advisers Act: Highland failed to maintain sufficient documentation in relation to certain principal transactions; Highland maintained trade blotters that reflected certain transactions, but those transactions were either not reflected on a general ledger or did not have a corresponding order ticket, or vice versa; Highland's internal records at times conflicted with those of its former third-party administrator; and, in at least two instances, Highland failed to maintain documents supporting the transfer of funds from a client account to an account maintained by Highland or its principals.

Violations

10. Section 206(3) of the Advisers Act prohibits an investment adviser, acting as a principal for its own account, from knowingly buying from or selling to a client any security without disclosing in writing to such client the capacity in which the adviser is acting and obtaining the client's consent before the completion of the transaction. During the relevant period, as described above, Highland engaged in numerous such transactions without disclosing in writing to the relevant client the capacity in which Highland was acting or obtaining timely consent. As a result, Highland willfully violated Section 206(3) of the Advisers Act.

11. Section 204(a) of the Advisers Act and Rule 204-2(a) thereunder require investment advisers to make and to keep true, accurate, and current books and records, and to maintain certain other records for a period five years. Rule 204-2(a)(3) requires investment advisers to keep a

[1] Highland did ultimately receive client consent for many of the Trades; however, this consent was received after the Trades had settled, and therefore did not comply with the requirements of Section 206(3) of the Advisers Act.

memorandum concerning certain transaction details for the purchase or sale of any security. Highland, as detailed above, failed to make and keep true, accurate, and current certain required books and records. As a result, Highland willfully violated Section 204(a) of the Advisers Act and Rule 204-2 thereunder.

Undertakings

Respondent has undertaken to:

12. The Respondent shall no later than four (4) months after the issuance of this order retain at its expense a qualified independent consultant (the "Consultant") not unacceptable to the staff of the Commission to conduct a comprehensive review of the Respondent's compliance and control systems relating to principal trades, and the creation and retention of its books and records. The Respondent shall require the Consultant to assess the adequacy of the Respondent's compliance and control systems as they relate to principal transactions and the creation, retention, and adequacy of its books and records.

13. The Respondent shall require the Consultant, within six (6) months of the Consultant's engagement, to submit a report of his/her findings and recommendations ("Initial Report") simultaneously to the Commission's Division of Enforcement and Office of Compliance Inspections and Examinations ("OCIE"), that:

(A) Set forth the Consultant's findings about the adequacy of the Respondent's compliance and control systems as they relate to principal transactions and the creation, retention, and adequacy of its books and records; and

(B) If necessary, makes recommendations regarding how the Respondent should modify or supplement its compliance and control systems as they relate to principal transactions and creation, retention, and adequacy of its books and records.

14. Respondent shall adopt and implement all recommendations made by the Consultant, subject to Paragraph 15 below.

15. If Respondent determines that any of the Consultant's recommendations in the Initial Report are unduly burdensome or impractical, or if they determine that the objectives of the recommendation can be more effectively achieved through another means, the Respondent may propose that a recommendation not be implemented or propose an alternative reasonably designed to accomplish the same objectives, and shall notify the Consultant of any such proposals with thirty (30) days of receipt of the Initial Report. If, upon evaluating the Respondent's proposal(s), the Consultant determines that a recommendation should not be implemented or that a suggested alternative is reasonably designed to accomplish the same objectives as the recommendation in question, then the Consultant may withdraw the recommendation and/or accept the proposed alternative and notify the Commission's Division of Enforcement and OCIE of any such withdrawn recommendations and/or accepted alternatives, and the Respondent shall adopt and implement the accepted alternative(s). If, upon evaluating the Respondent's proposals, the

Consultant concludes that the Consultant's recommendation should be implemented, the Consultant shall notify the Respondent within thirty (30) days of receipt of the alternative proposal and the Respondent and the Consultant shall, with fourteen (14) days of the Consultant's notification, jointly confer with the staff of the Division of Enforcement and OCIE to resolve the matter. In the event, after conferring with the Commission staff, the Respondent and the Consultant are unable to agree on an alternative proposal, the Respondent shall adopt and implement the Consultant's recommendation.

16. Within six (6) months from Respondent's receipt of the Initial Report, the Respondent shall complete implementation of all of the Consultant's recommendations and/or accepted alternatives.

17. No sooner than six (6) months from the Respondent's receipt of the Initial Report, the Respondent shall require the Consultant to conduct a review of the Respondent's implementation of the Consultant's Recommendation set forth above and, within twelve (12) months from Respondent's receipt of the Initial Report, submit a final report ("Final Report") to the Commission's Division of Enforcement and OCIE. The Final Report shall describe the review made of the Respondent's implementation of the Consultant's recommendations and describe how Respondent has implemented and are complying with the Consultant's recommendations.

18. Within two (2) months from Respondent's receipt of the Final Report, a Highland principal shall certify in writing to the Division of Enforcement and OCIE that, to the best of his knowledge based on reasonable inquiry, all of the Consultant's recommendations and any alternative approaches approved by the Consultant have been adopted and implemented by the Respondent.

19. The Respondent shall cooperate fully with the Consultant, including providing the Consultant with access to all relevant files, books, records, and personnel of the Respondent and facilitate access to relevant personnel at any third party service providers as requested for the above-mentioned review, and obtaining cooperation of employees or persons under the Respondent's control. Nothing in the foregoing shall be deemed to require the Respondent to waive its attorney-client privileges or other privileges with respect to privileged documents.

20. The Respondent shall require the Consultant to report to the Commission staff on its activity as the staff may reasonably request.

21. To ensure the independence of the Consultant, the Respondent shall not have the authority to terminate the Consultant without prior written approval of the Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at its reasonably and customary rates.

22. The Respondent shall expend sufficient funds to permit the Consultant to discharge its duties. The Respondent shall permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at a reasonable cost, to carry out its activities, and the cost, if any, of such assistance shall be borne exclusively by the Respondent.

23. The Respondent shall bear the full expense of carrying out these undertakings, including the costs of retraining the Consultant and implementing the Consultant's recommendations.

24. The Respondent shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Fort Worth Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

25. The Respondent may apply to the Division of Enforcement for an extension of the deadlines described above before their expiration and, upon a showing of good cause by the Respondent, the Division of Enforcement may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

26. The Respondent shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to David Peavler, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 204(a) and 206(3) of the Advisers Act and Rule 204-2 thereunder.

B. Pursuant to Section 203(e) of the Advisers Act, Respondent is censured.

C. Pursuant to Section 203(i) of the Advisers Act, Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $225,000 to the Securities and

Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Highland Capital Management, L.P. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to David Peavler, Division of Enforcement, Securities and Exchange Commission, Burnett Plaza, 801 Cherry Street, Suite 1900, Unit 18, Fort Worth, TX 76102.

D. Pursuant to Section 203(k) of the Advisers Act, Respondent Highland shall comply with the undertakings set forth in Section III, Paragraphs 12 through 26, above.

By the Commission.

Brent J. Fields
Secretary

Exhibit B

Crusader Plan

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. IF YOU ARE IN ANY DOUBT AS TO ANY ASPECT OF THESE PROPOSALS OR AS TO THE ACTION YOU SHOULD CONSULT YOUR ATTORNEY OR OTHER PROFESSIONAL ADVISER WITHOUT DELAY

If you have sold or otherwise transferred, or sell or transfer prior to the date of this document as set out below, your interests as a Scheme Creditor you must forward a copy of this document to the person or persons to whom you have sold or otherwise transferred such interests, or to the broker, bank or other agent through whom the transfer was carried out for onward transmission to that person or persons. However, such documents should not be forwarded to or transmitted in or into any jurisdiction in which such act would constitute a violation of the relevant laws in such jurisdiction.

PROPOSAL IN RELATION TO A

SCHEME OF ARRANGEMENT

Pursuant to section 99 of the Companies Act 1981

Between

HIGHLAND CRUSADER FUND II, LTD.

and its

SCHEME CREDITORS[1]

(as defined in the Scheme of Arrangement)

Meetings of Scheme Creditors of the Company to consider the Scheme of Arrangement will be held on 7 July 2011 at 9:00 a.m. and 9:30 a.m. A notice of the meetings is set out on Appendix C of this document.

The action you should take is set out on page 7.

10 June 2011

[1] Scheme Creditors are redeemed investors of the Company.

TIMETABLE

1. Scheme Creditors' Meetings

The meetings of Scheme Creditors to consider and, if thought fit, agree to the Scheme will be held on 7 July 2011 at Wakefield Quin, Victoria Place, 31 Victoria Street, Hamilton, Bermuda commencing at 9:00 and 9:30 a.m.

2. Court hearings

It is estimated that the court hearing to sanction the Scheme will take place on 14 July 2011.*

3. Effective Date of the Scheme

It is estimated that the Effective Date of the Scheme will be in July 2011. It will not occur until all of the conditions precedent to the Scheme have been satisfied.

**With the exception of the date of the Scheme Creditors' meetings, these dates are only guidelines for the implementation of the proposed scheme of arrangement and may be subject to change.*

IMPORTANT NOTICE TO SCHEME CREDITORS

This document has been prepared in connection with a proposed scheme of arrangement (the "Scheme") pursuant to section 99 of the Companies Act 1981 between Highland Crusader Fund II, Ltd. (the "Company") and its Scheme Creditors (as defined in the Scheme).

The Board of Directors of the Company are duly authorised to take all necessary steps in connection with the promotion and implementation of, and conduct of the Company's role under, the Scheme.

The information contained in this document has been prepared by the Company based upon information available to the Company and reflects the views of the Company only and not of any Redeemer.

The statements contained in this document are made as at its date, unless some other time is specified in relation to them, and service of this document shall not give rise to any implication that there has been no change in the facts set forth in this document since such date. Such statements are included for the guidance of creditors on certain issues relevant to the implementation of the Scheme once it becomes effective.

Nothing contained in this document shall constitute any admission of any fact or liability on the part of the Company with respect to any asset to which it may be entitled or any claim against it.

The summaries of the principal provisions of the Plan and the Scheme and related matters contained in this document are qualified in their entirety by reference to the Plan and the Scheme themselves, the full text of which are set out on in Appendix A and pages 27 to 64, respectively, of this document. Creditors are advised to read and to consider carefully the text of the Scheme itself and all appendices to this document.

Although great effort has been made to ensure its accuracy, the Company is unable to warrant or represent the accuracy of the information contained in this document. No person has been authorised by the Company to make any representations concerning the Scheme which are inconsistent with the statements contained in this document and, if made, such representations may not be relied upon as having been so authorised.

Creditors should not construe the contents of this document as legal, tax or financial advice. Creditors should consult their own professional advisers as to the legal, tax, financial or other matters relevant to the action they should take in connection with the Scheme.

CONTENTS

Certain expressions used in this document are defined in the Scheme of Arrangement on pages 29 to 35.

Reference to monetary units herein, such as "dollars" or "$," are to United States currency, unless otherwise expressed herein.

Legal Advisers to the Company in relation to the Scheme of Arrangement

Attride-Stirling &
Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM11
Bermuda

EXPLANATORY STATEMENT

In relation to a

PROPOSAL IN RELATION TO A SCHEME OF ARRANGEMENT

Pursuant to section 99 of the Companies Act 1981

Between

HIGHLAND CRUSADER FUND II, LTD.

and its

SCHEME CREDITORS

(as defined in the Scheme of Arrangement)

INDEX TO EXPLANATORY STATEMENT

Letter from the Company

HIGHLAND CRUSADER FUND II, LTD.

(Incorporated and registered in Bermuda with number 37130)

To Scheme Creditors of Highland Crusader Fund II, Ltd. (the "Company")

Introduction

The purpose of the Scheme Document is to explain the provisions of the proposed Scheme. The Scheme Document comprises the Explanatory Statement, the full provisions of the Scheme and notice of the meetings of Scheme Creditors. For a proper understanding of the Scheme and its implications, you should read the rest of the Explanatory Statement and the Scheme itself.

Who are Scheme Creditors?

"Scheme Creditors" is the term conventionally used to describe the creditors of a company to which a scheme of arrangement under section 99 of the Bermuda Companies Act 1981 relates. In this Scheme, the term "Scheme Creditors" is defined as and refers to all investors of the Company whose share redemptions became effective prior to 30 June 2008 (referred to in this letter as "Prior Redeemers") and investors whose shares were not redeemed on or prior to 30 June 2008 (referred to in this letter as "Compulsory Redeemers" and, together with Prior Redeemers, the "Redeemers").

Other expressions used in this letter are also defined in the Scheme at pages 29 to 35.

Why have you received this document?

You have been sent this document because, according to the Company's records, you are or may be a Scheme Creditor, i.e., a redeemed investor of the Company.

What is a Scheme of Arrangement?

A scheme of arrangement is a compromise or arrangement which is entered into by the Company pursuant to the provisions of section 99 of the Companies Act 1981 and all, or some of its creditors. In this case the Scheme is between the Company and Scheme Creditors only. The Scheme will become effective if, among the other conditions specified in the Scheme:

1. a majority in number representing three fourths in value of those Scheme Creditors in each class who attend a meeting of that class of Scheme Creditors vote, in person or by proxy, in favour of the Scheme;
2. it is subsequently sanctioned by the Bermuda Court; and
3. the order of the Court sanctioning the Scheme is delivered to the Registrar of Companies.

Background

Background information to the Scheme is provided in the Explanatory Statement in paragraphs 1.1 through 1.37.2.

Why has the Scheme been proposed?

The purpose of the Scheme of Arrangement is to implement the Plan in relation to the Company in order make it binding on all Prior Redeemers and Compulsory Redeemers of the Company.

Who is a Scheme Creditor?

Scheme Creditors are Prior Redeemers and Compulsory Redeemers of the Company.

What are you required to do?

The Bermuda Court has convened separate meetings of each of the two classes of Scheme Creditors, the Prior Redeemers and Compulsory Redeemers, for the purpose of voting on the Scheme (the "Scheme Creditors' Meetings"). The Scheme Creditors' Meetings will be held at Wakefield Quin, Victoria Place, 31 Victoria Street, Hamilton, Bermuda on 7 July 2011, commencing at 9:00 and 9.30 a.m. (Bermuda Time). Notice of the Scheme Creditors' Meetings is in Appendix B.

If you intend to vote at the Scheme Creditors' Meeting for your class, you may only do so if you are a Scheme Creditor of the Company in that class. If you are a Scheme Creditor and are an individual, you may attend and vote at the Scheme Creditors' Meeting for your class either in person or by proxy (i.e., you may appoint someone who will attend the Scheme Creditors' Meeting on your behalf and who will vote in accordance with your instructions). Corporations may attend and vote by a duly authorized representative or by proxy.

The value of Scheme Claims for voting purposes shall be their Redemption Amount stated on the Proxy Form sent to each Redeemer with the Scheme representing the Redemption Amount in respect of their redemption calculated in accordance with the Governing Documents

You will find enclosed your Proxy Form in relation to the Scheme Creditors' Meetings. This Proxy Form allows you to appoint a proxy to attend the Scheme Creditors' Meeting for your class and vote on your behalf and to indicate how you (if you attend in person) or your proxy may be voting. Please read the Proxy Form carefully and complete it in accordance with the instructions printed on it and return it to the Company c/o Wakefield Quin Limited at Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda or by electronic mail to HighlandCrusaderFunds@hcmlp.com, in each case marked for the attention of "Highland Crusader Balloting." Each Proxy Form should be submitted so that it is received by 5:00 p.m. (Bermuda time) on 30 June 2011.

Submission of a Proxy Form at a Scheme Creditors' Meeting may be accepted at the discretion of the Chairman. However, it would be greatly appreciated and would help to avoid delay and inconvenience if you could send it to the Company, at the address or e-mail address stated in the preceding paragraph, in advance of the Scheme Creditors' Meetings as of the date and time set forth in the preceding paragraph.

The return of the Proxy Form will not prevent you from attending and voting in person (or in the case of a corporation by duly authorised representative) if you wish to do so.

When does the Scheme become effective?

The Scheme will become effective only if the requisite statutory majority is obtained at each of the Scheme Creditors' Meetings, the Bermuda Court sanctions the Scheme, the order of the Court sanctioning the Scheme is delivered for registration to the Registrar of Companies and the other conditions precedent to the Scheme are satisfied or waived.

The Company believes that the Scheme is in the best interests of the Scheme Creditors of the Company and the Board recommends that Scheme Creditors vote in favour of the Scheme.

Yours faithfully,

James Dondero
Director
Highland Crusader Fund II, Ltd.

1. BACKGROUND TO THE SCHEME

THE COMPANY AND THE HCM FUNDS

1.1. The Company was incorporated on 17 January 2002 as an exempted mutual fund company in Bermuda pursuant to the provisions of the Companies Act 1981.

1.2. The authorised share capital of the Company is US$10.001 divided into 100 voting shares of par value US$0.01 each (the "Management Shares") and 10,000,000 non-voting redeemable participating shares of par value US$0.001 each (the "Participating Shares"). All of the Participating Shares that have been issued are fully paid.

1.3. The Company was organised for the purpose of investing substantially all of its assets in Highland Crusader Offshore Partners, L.P. (the "Master Fund"), a Bermuda exempted limited partnership registered on 10 July 2000. The Company is a limited partner in the Master Fund together with two other entities, Highland Crusader Fund, Ltd., a Bermuda exempted company ("Offshore Fund I"), and Highland Crusader Fund, L.P., a Delaware limited partnership (the "Onshore Fund"). The Company, Offshore Fund I and Onshore Fund (together, the "Feeder Funds") are feeder funds to the Master Fund. The Company was formed by Highland Capital Management, L.P. ("HCMLP"), a Delaware limited partnership, which is investment manager to the Master Fund and the Feeder Funds (together the "Crusader Funds").

FINANCIAL POSITION

Events Leading to the Wind Down

1.4. Following market upheaval throughout 2008, the financial markets took a drastic turn for the worse after the bankruptcy of Lehman Brothers on September 15, 2008, resulting in the most negative conditions in the financial markets, in a generation.

1.5. The credit markets were hit particularly hard. Specifically, the high yield bond and loan markets experienced unprecedented declines in October 2008, with returns of minus 16 and 13.2%, respectively, following negative 8 and 6.7% returns, in September 2008, respectively. To put that in context, the average historical negative monthly returns have been about minus 2% for the high yield bond market for the last 12 years. And negative 1% for loans over the last 11 years.

1.6. In October 2008, the average loan bid plummeted 14 points to 71, eclipsing the prior historical lows of roughly 87 in 2001 and 84 cents on the dollar in March 2008. The October 2008 loss in loans more than doubled the prior record loss of 6.15% in September 2008.

1.7. The week of 10 October 2008 was reported to be the worst week in the 112-year history of the Dow and Friday 10 October's 1,019 point inter-day swing was the most volatile session ever. The stock market dropped 22% in the eight sessions ended October 10, 2008.

1.8. Both the high yield bond market and the loan market had dropped 17% over the prior five weeks. The corporate bond market lost 11% over the prior five weeks and the commercial paper and money markets were on the verge of collapse.

1.9. With the high yield credit markets, for all intents and purposes, frozen, there was little ability to trade. The only sellers in the market were forced sellers and buyers responded accordingly with a huge gap in bid/offer spreads. And in many situations sellers were getting no bids at all.

1.10. Additionally, during this period there was a sharp reduction in the availability and stability of financing. On the heels of Lehman's bankruptcy filing, prime brokers started pulling back financing, increasing discounts, terminating repurchase agreements and trapping cash. The Master Fund, like many other similarly situated funds, saw a dramatic deterioration in the terms and tone of its activities with financing providers, in September and October 2008.

The Wind Down Determination

1.11. Therefore, the Crusader Funds decided to wind down as a means of trying to reduce the risks of being a forced seller and in an effort to preserve as much of the value of each fund as possible for the benefit of all of its constituencies.

1.12. Accordingly, on 15 October 2008, on behalf of the Feeder Funds, HCMLP gave notice of the intention to wind down to investors in all of the Feeder Funds by two letters: one addressed to former investors in the Feeder Funds who had redeemed prior to 15 October 2008 (the "Crusader Fund Prior Redeemers") and one addressed to investors in the Feeder Funds who had not redeemed (the "Crusader Fund Compulsory Redeemers"). By these letters, the investors were given notice that:

1.12.1. All outstanding shares and limited partnership interests were being compulsorily redeemed (with effect on 15 November 2008 in the case of the Company Compulsory Redeemers) and

1.12.2. Payment of the Redemption Amounts due to investors was suspended.

1.13. From 15 November 2008 to the end of March 2011, the Crusader Funds assets have appreciated by approximately 23% and the credit and equity markets have largely stabilized. If the current valuation of the assets is achieved on realisation, the Crusader Funds Redeemers will be paid their Redemption Amounts in full and will be entitled to share in the surplus. Accordingly, the Crusader Funds' decision to suspend payment of Redemption Price has achieved the aim of preserving the Crusader Funds' asset value.

The Disputes Between Prior Redeemers and Compulsory Redeemers

1.14. HCMLP made a proposal for a plan of dissolution in its letters dated 15 October 2008 under which the Prior Redeemers and Compulsory Redeemers were treated alike on the basis that, because they had all been redeemed, they generally had the same rights, though different redemption values as a result of different effective redemption dates. However, this plan of dissolution did not proceed due to disagreement between the Prior Redeemers and Compulsory Redeemers. On 29

January 2009, HCMLP proposed a new plan of distribution to the stakeholders in all of the Feeder Funds, in which it was proposed that the Prior Redeemers receive some priority of distribution proceed payment over the Compulsory Redeemers as an attempted compromise of the dispute between the Prior Redeemers and Compulsory Redeemers.

The Mediation

1.15. HCMLP then initiated a mediation between the Prior Redeemers and Compulsory Redeemers and HCMLP in order to try to agree a plan of distribution, which commenced in April 2009. Both Prior and Compulsory Redeemers appointed representatives to form working groups to represent their separate interests. These working groups then collectively chose a mediator and presented position papers to the mediator to advance their views.

1.16. There were several meetings and numerous discussions and proposals in 2009 and 2010. However, these did not result in an agreement.

THE LIQUIDATION PROCEEDINGS

1.17. Muirfield Offshore Fund SPC, Ltd ("Muirfield") held shares in the Company through its nominee, Royal Bank of Canada, which were redeemed effective 30 June 2008. In July 2010, Muirfield served a statutory demand on the Company demanding payment of the Redemption Amount payable in respect of its shares. The Company rejected the statutory demand on the basis that the payment of the Redemption Amount had been suspended.

1.18. On 14 October 2010, Muirfield presented a winding-up petition (the "Petition") against the Company based upon three grounds: that based on non-payment of the statutory demand the Company was insolvent; that the Company had suspended its business for more than one year; and that due to allegations of bad faith and conflict of interest, it was just and equitable that the Company be wound up.

1.19. The Company vigorously defended the Petition, which was eventually set down for hearing on 2 May 2011. A number of other Company Prior Redeemers and one Company Compulsory Redeemer served notices of intention to appear at the petition hearing indicating that they would support the petition.

1.20. Throughout the period that the Petition was pending, HCMLP continued in its efforts to reach an agreement with Prior Redeemers and Compulsory Redeemers regarding a plan of distribution. With the agreement of a majority of the Company Prior Redeemers who had served notices of intention to appear at the petition hearing (not including Muirfield), the petition hearing was adjourned until 30 May 2011 to enable the Company to prepare and propose a scheme of arrangement to all Company Redeemers. This resulted in the proposal of the Scheme.

1.21. Barclays Bank PLC is a Compulsory Redeemer of the Onshore Fund. It has a pending claim against HCMLP, the Onshore Fund and 7 other funds that are managed by HCMLP that are not Crusader Funds, which has been denied by the defendants. Barclays may be a Non-Consenting Compulsory Redeemer under the Plan.

THE PLAN OF DISTRIBUTION

1.22. In conjunction with preparation of the Scheme, HCMLP and the Crusader Funds prepared a joint plan of distribution of the Crusader Funds (the "Plan"). The Scheme is intended to implement the terms of the Plan. The Plan is being submitted to the other Crusader Fund Redeemers for their consent at the same time as the Scheme is being proposed to the Company Redeemers. The Company's adoption of the Plan is conditional on the implementation of the Scheme. A copy of the Plan is appended as Appendix A to the Scheme. The principal terms of the Plan are reflected in the Scheme, a summary of which is in section 2.

1.23. A key feature of the Scheme and the Plan is that the Master Fund's assets will be distributed in accordance with the collective entitlement of the Prior Redeemers and Compulsory Redeemers under the Scheme and Plan across the Feeder Funds

and not in accordance with the entitlement of the Feeder Funds as between themselves.

PURPOSE OF THE SCHEME

1.24. The purpose of the Scheme is to implement the Plan in relation to the Company by making the terms of the Plan binding on all Company Redeemers.

ADVANTAGES OF THE SCHEME

Position on a liquidation

1.25. If the Company were to go into liquidation, and there were no Plan or Scheme, the Company considers that the Company Prior Redeemers and Company Compulsory Redeemers would be creditors in the amount of their Redemption Amounts calculated in accordance with the Governing Documents and ranking equally. If they are regarded as creditors only and no longer as members of the Company, they would not be entitled to any surplus of the Company's assets after payment of the Redemption Amounts. Although it is clear from the Governing Documents that HCMLP, as holder of the Management Shares, would not have been entitled to the surplus, there are no provisions to deal with a surplus. The Company would have needed to amend the Governing Documents to make such provision. That effect can now be achieved by the Scheme.

1.26. However, it has been alleged by Muirfield in the liquidation proceedings that the compulsory redemption of the Company Compulsory Redeemers was not effective and they are still members of the Company. If this were established to be the case in the liquidation, this would be likely to mean (although this point has not been determined by the Bermuda Court) that the Company Prior Redeemers would be entitled to be paid in full prior to the Company Compulsory Redeemers and that only the Company Compulsory Redeemers would be entitled to the assets remaining after payment of the Company Prior Redeemers.

1.27. The Company considers that it is likely that realisations on the sale of the assets of the Master Fund would be less if the Crusader Funds were to go into liquidation.

If a liquidator were to liquidate assets quickly or without the assistance of HCMLP's knowledge of the assets, the assets available for Distribution may be significantly less and would be further reduced as the expenses of the liquidation would be payable out of the assets.

1.28. A creditors' committee appointed in a liquidation of the Company would not have the same level of influence over the affairs of the Company as the Redeemer Committee will have under the Scheme, which gives it the ability to terminate HCMLP's services as investment manager on 30 days' notice with or without Cause.

Advantages of the Scheme

1.29. The main advantages of the Scheme to the Company Prior Redeemers are:

1.29.1. that the cost of litigating claims (which have principally been threatened by Company Compulsory Redeemers), will be saved, as claims by Scheme Creditors will be barred.

1.29.2. they will be entitled without question to a share of any surplus available for Distribution after payment of the Redemption Amounts.

1.29.3. they will avoid a protracted and potentially multi-jurisdictional dispute, with the Company Compulsory Redeemers.

1.30. The main advantages of the Scheme to Company Compulsory Redeemers are:

1.30.1. that they will receive 40% of Distributions, which is approximately 9 percentage points more than the proportion that their aggregate Redemption Amounts bear to the Company Prior Redeemers' aggregate Redemption Amounts (which is approximately 31% to 69%).

1.30.2. they will be entitled to their pro rata share (with all Crusader Fund Compulsory Redeemers) of (i) the $5 million contributed to the Redeemer Trust Account by HCMLP (ii) any balance on the Redeemer Trust Account after all Redeemer Claims have been resolved or dismissed with prejudice, or the limitation period with respect thereto has expired; and (iii) the amount in the Deferred Fee Account, if the Crusader Funds have not

made aggregate Distributions equal to or in excess of $1.7 billion prior to the 43rd month following the Effective Date, unless HCMLP is terminated other than for Cause prior to the third anniversary of the Effective Date.

1.31. The main advantages of the Scheme to both classes of Scheme Creditor are:

1.31.1. the Scheme will enable the orderly management, sale and distribution of the assets by HCMLP, subject to the Redeemer Committee's right to oversee and terminate HCMLP's services;

1.31.2. the expenses of the liquidation will be saved;

1.31.3. it will provide certainty regarding the respective claims of the Company Prior Redeemers and Company Compulsory Redeemers; and

1.31.4. distributions will proceed on a more timely basis than is likely in a liquidation.

Disadvantages of the Scheme

1.32. There is a risk that the Company Redeemers' Distributions may be less than their Redemption Amounts and this may be more of a risk for Company Prior Redeemers as they are receiving approximately 9 percentage points less than the proportion that their aggregate Redemption Amounts bear to the Company Compulsory Redeemers' aggregate Redemption Amounts.

1.33. Company Redeemers will be barred from bringing claims other than Scheme Claims.

Effect of Releases

1.34. Various releases will be granted under the Scheme and Plan.

1.35. Upon the Effective Date, each of the Company Redeemers release the Crusader Funds, each of the HCM-Related Parties and each of the other Consenting Crusader Fund Redeemers, from any and all claims which each Company Redeemer has, may have or ever had against any or all of the Crusader Funds, such HCM-Related Parties and the other Consenting Crusader Fund Redeemers from the beginning of the world to the Effective Date related to the Crusader Funds including without limitation its administration and wind-down.

1.36. Upon the Effective Date, subject to certain exceptions stated in the Plan and Scheme, the HCM-Related Parties release each of the Company Redeemers, the Crusader Funds, and each other HCM-Related Party from any and all claims, which each HCM-Related Party has, may have or ever had against any or all of them from the beginning of the world to the Effective Date related to the Crusader Funds and their administration and wind-down.

DIRECTORS', INVESTMENT MANAGERS' ETC. INTERESTS

1.37. The interests of the HCM-Related Parties and other associated parties in the Feeder Funds collectively are as follows:

1.37.1. As Prior Redeemers:

Name	US$
Highland 401(k) Plan	31,042.00
Highland Capital Management Services	15,059,961.00
Total	**15,091,003.00**

1.37.2. As Compulsory Redeemers:

Name	US$
Highland 401(k) Plan	175,939.00
Highland Capital Management, L.P. Retirement Plan and Trust	148,707.00
Total	**324,646.00**

These parties will not be voting on the Scheme.

SUMMARY OF SCHEME PROVISIONS

A summary of the principal provisions of the Scheme and related matters is set out in this part of the Explanatory Statement. The full text of the Scheme is set out on pages 27 to 64 of the Scheme Document and qualifies this summary in its entirety. Therefore, Scheme Creditors should carefully read the Scheme itself.

2. The principal terms of the Scheme are as follows:

2.1. The Scheme mirrors the provisions of the Plan to the extent that they are applicable to the Company.

2.2. However, the Scheme is binding only on Company Prior Redeemers and Company Compulsory Redeemers.

2.3. Company Redeemers have a Scheme Claim based upon the Redemption Amount stated on their Proxy Form.

2.4. Company Redeemers are not required to execute a Consent and are deemed to have consented to the Plan by the Scheme.

2.5. The Scheme contemplates that HCMLP will continue to manage the Crusader Funds, subject to the oversight of and at the discretion of the Redeemer Committee. The Redeemer Committee will consist of representatives of 5 Consenting Crusader Fund Prior Redeemers and 5 Consenting Crusader Fund Compulsory Redeemers who will be elected in accordance with the Scheme. The powers of the Redemption Committee include the right to receive monthly reports from HCMLP on the Crusader Funds' performance and Realisation Plan progress; and the right to remove HCMLP as investment manager upon 30 days' notice with or without Cause.

2.6. HCMLP shall be entitled to receive the following fees for its services:

2.6.1. 25 basis points (per annum) calculated based on the value of the net distributable assets of the Company at the beginning of each calendar month, to be paid monthly in arrears out of the assets of the Company; and

2.6.2. Provided that assets equal to or in excess of the amount scheduled in the Realisation Schedule have been distributed during such quarter (with amounts in excess of scheduled distributions for prior quarters being carried over), 125 basis points calculated based on all amounts Distributed during each quarter following the Effective Date (which shall be paid on a Company Redeemer by Company Redeemer basis by deduction from amounts distributed to such Company Redeemers during the quarter;

2.6.3. In the event that HCMLP is removed as investment manager by the Redeemer Committee pursuant to clauses (b) or (c) of the definition of "Cause," HCMLP shall not be entitled to receive any of these fees that are accrued as of the termination date, and shall not, be entitled to any such future fees.

2.6.4. HCMLP shall not be entitled to any future fees after it has been removed as investment manager by the Redeemer Committee.

2.7. HCMLP will continue to be entitled to receive payment in respect of the Deferred Fees, the payment of which has been deferred due to an election contained in the Investment Management Agreement for the Company, which amount to $42,450,226 as at 30 April 2011; provided that (a) HCMLP shall not be entitled to receive payment in respect of such Deferred Fees until the complete liquidation of the Company's assets (except for that portion equal to the amount payable with respect to such Deferred Fees immediately prior to complete liquidation) and (b) the amount payable with respect to the Deferred Fees will be equal to:

(i) $42,450,226 (which is the accrued liability associated with such fees on the Company's books as of 30 April 2011) multiplied by (ii) a fraction, which is expressed as a percentage (the "Distribution Percentage"),

(A) the numerator of which is the amount of assets (in U.S. dollars) that are Distributed to Crusader Fund Redeemers prior to the dissolution of the Crusader Funds and

(B) the denominator of which is $1,634,991,092 (the net distributable assets reflected on the books and records of the Master Fund as of 30 April 2011); and

(c) to the extent that in respect of its claim as a Crusader Funds Compulsory Redeemer Barclays does not execute a Consent and either enters into a settlement agreement or obtains a final, binding non-appealable judgment against the Onshore Fund for, in either case, for an amount in excess of the amount that Barclays would receive as a Consenting Compulsory Redeemer under the Plan (the "Barclays Excess Payment"), HCMLP shall assign to the Onshore Fund its right to receive an amount of Deferred Fees that are then equal to the amount of the Barclays Excess Payment (provided that HCM-Related Parties shall not be entitled to receive any such amounts). If the amount of the Barclays Excess Payment exceeds the amount of Deferred Fees held by HCMLP, HCMLP shall have no further liability or obligations with respect to the Barclays Excess Payment.

2.8. Until the Deferred Fees have been forfeited or paid under the Scheme, the Company shall fully reserve for such fees in cash in an amount equal to the Distribution Percentage calculated as of the date of each Distribution multiplied by the aggregate amount of such fees. The only circumstance where a portion of the Deferred Fees may be forfeited is with respect to the Deferred Fee Contribution as provided in Section 6.02 of the Plan and 5.2 of the Scheme. Otherwise, Deferred Fees are payable under all circumstances to HCMLP, subject to the Distribution Percentage adjustment.

2.9. HCMLP or its successor will oversee the liquidation of the Master Fund's assets in accordance with the Realisation Schedule (in Appendix B) and distribution of the net proceeds of those assets in accordance with the Scheme and the Plan as follows:

2.9.1. As investments in the Crusader Funds are realized (including all interest and dividends related to such investments prior to their realization) and money is available for Distribution or if any other asset of the Company

resulting from an "in kind" distribution from the Master Fund to the Company is liquidated 100% of the Excess Cash of the Company, will be distributed to Company Redeemers in accordance with the Scheme (provided, however, that amounts in, and rights to, the Redeemer Trust Account and the Deferred Fee Account shall not be considered assets of the Crusader Funds for this purpose).

2.9.2. Distributions of Excess Cash will be made as follows:

2.9.2.1. Crusader Fund Prior Redeemers shall be entitled to 60% in aggregate of the total distributions made by the Master Fund constituting Excess Cash (the "Crusader Fund Prior Redeemers' Distribution"). Each Company Prior Redeemer shall be entitled to a Scheme Claim equivalent to that Company Prior Redeemer's pro rata share of the Crusader Fund Prior Redeemers' Distribution, based on that Company Prior Redeemer's Redemption Amount relative to the total of all Crusader Fund Prior Redeemers' Redemption Amounts.

2.9.2.2. Crusader Fund Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions made by the Master Fund constituting Excess Cash (the "Crusader Fund Compulsory Redeemers' Distribution"). Each Company Compulsory Redeemer shall be entitled to a Scheme Claim equivalent to that Company Compulsory Redeemer's pro rata share of the Crusader Fund Compulsory Redeemer's Distribution, based on that Company Compulsory Redeemer's Redemption Amount relative to the total of all Crusader Fund Compulsory Redeemers' Redemption Amounts.

2.10. There shall be no accrual of interest on Redemption Amounts. Distributions will be made on a monthly basis.

2.11. The Scheme provides for mutual releases between the Crusader Funds and the HCM-Related Parties. Further, Article 6 of the Scheme provides that Consenting Crusader Fund Redeemers shall release each of the HCM-Related Parties, and the HCM-Related Parties shall release those Redeemers. Article 6 of the Scheme provides certain qualifications and conditions as well as certain enforcement provisions.

2.12. In partial consideration for the releases provided in clause 6 of the Scheme, on the Effective Date HCMLP shall establish, administer and fund in accordance with the Plan the Redeemer Trust Account with $6,030,000 million in cash. Upon the Effective Date, HCMLP will immediately distribute from the Redeemer Trust Account to:

2.12.1. each Consenting Crusader Fund Compulsory Redeemer (excluding any HCM-Related Party Consenting Crusader Fund Compulsory Redeemer) its pro rata portion of $5 million (which shall be determined based upon each Consenting Crusader Fund Compulsory Redeemer's Redemption Amount as compared to the Redemption Amount of all Crusader Fund Compulsory Redeemers) and

2.12.2. to each Consenting Crusader Fund Prior Redeemer (excluding any HCM-Related Party Consenting Crusader Fund Prior Redeemer) its pro rata portion of $1,030,000 (which shall be determined based upon each Consenting Crusader Fund Prior Redeemer's Redemption Amount as compared to the Redemption Amount of all Consenting Crusader Fund Prior Redeemers).

2.13. Pursuant to the Plan, the portion of such amounts in excess of the Redemption Amounts otherwise attributable to Non-Consenting Compulsory Redeemers shall be contributed to the Redeemer Trust Account and shall not be distributed to Non-Consenting Compulsory Redeemers. Amounts in the Redeemer Trust Account after the distribution of the amounts referred to above and Section 6.01 of the Plan, will be reserved and used to pay all costs of HCMLP-Related

Parties and the Redeemer Committee to defend, respond to, settle and satisfy any Claims by Crusader Fund Redeemers, other than for their Scheme Claim ("Redeemer Claims") and shall be used to defend, respond to, settle and satisfy any such Redeemer Claims in advance of any amounts otherwise properly available for such purposes out of the assets of the Crusader Funds; provided, however, that to the extent that in respect of its claim as a Crusader Fund Compulsory Redeemer Barclays either (i) enters into a settlement agreement or (ii) obtains a final, binding non-appealable judgment against the Crusader Funds, in either case, for amounts less than the amount that Barclays would receive as a Consenting Compulsory Redeemer, HCMLP shall be entitled to an amount from the Redeemer Trust Account equal to such difference less amounts that have been paid in defence of such claim, payable only from amounts otherwise distributable to Onshore Fund Consenting Compulsory Redeemers.

2.14. In partial consideration for the releases provided under Clause 6 of the Scheme, HCMLP will establish the "Deferred Fee Account," on the Effective Date by allocating the right to potentially receive Deferred Fees in an amount equal to the Deferred Fee Contribution (i.e., $10 million) to the Deferred Fee Account. Amounts payable in respect of the Deferred Fee Account will depend upon the amount of distributions that are made by the Crusader Funds.

2.15. The Company will have obligations under Section 2.03 of the Plan (the "Indemnification Obligations"), to the fullest extent permitted by applicable law, to indemnify and hold harmless each other HCM-Related Party against any losses, claims, damages, liabilities, costs or expenses to which such HCM-Related Party may become subject in connection with any claim, investigation or suit threatened or asserted based on such HCM-Related Party's position with respect to or role in connection with the Crusader Funds or HCMLP in respect to its role in connection with the Crusader Funds, unless a court of competent jurisdiction, in a judgment that has become final and that is no longer subject to appeal or review, determines that any such loss, claim, damage, liability, cost or expense is primarily attributable to such HCM-Related Party's wilful misconduct or gross negligence.

2.16. The Scheme contains other provisions including mediation and arbitration of disputes.

2.17. Conditions precedent to the Scheme are that:

2.17.1. the $6,030,000 million in cash referenced in clause 5.1.1 of the Scheme has been deposited in the Redeemer Trust Account by HCMLP; and

2.17.2. the Plan has been adopted by each other Crusader Fund.

3. IMPLEMENTATION OF THE SCHEME

3.1. Meetings of Scheme Creditors

Before the Scheme can become binding on the Company and the Scheme Creditors, a resolution approving the Scheme must be passed by the majority of Scheme Creditors in each class required by section 99 of the companies Act 1981, being a majority in number representing three fourths in value of those Scheme Creditors in each class who, being so entitled, are present in person or by proxy and vote at the meeting of Scheme Creditors convened for each class for the purpose of considering the Scheme.

3.2. Notice of meetings

A meeting of each class of Scheme Creditors for the purpose of considering the Scheme has been ordered to be summoned by the Bermuda Court. If you are a Scheme Creditor, you are entitled to attend and vote at the meeting for your class or classes (for those Scheme Creditors that are both Company Prior Redeemers and Company Compulsory Redeemers. You may attend and vote at the meeting in person (or, if a corporation, by a duly authorised representative) or by proxy. **A notice of the meetings, to be held on 7 July 2011, is set out on Appendix C of the Scheme Document.**

3.3. Forms of proxy

3.3.1. Enclosed with this document you will find a Proxy Form. Please complete, sign and return the Proxy Form in accordance with the instructions printed on it. Completion of the Proxy Form does not prevent you from attending in person (or, if a corporation, by a duly authorised representative) at the meeting.

3.3.2. If you elect to complete a Proxy Form you should return it (in accordance with the instructions printed on such form) to the Company c/o Wakefield Quin Limited, Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda or by email (as a scanned copy) to HighlandCrusaderFunds@hcmlp.com, in each case marked for the attention of "Highland Crusader Balloting."

3.4. Valuation of claims for voting purposes

3.4.1. The value of Scheme Claims for voting purposes shall be the value of the Redemption Amount stated on the Proxy Form sent to each Company Redeemer for the purpose of voting on the Scheme.

3.4.2. In the event that a Scheme Creditor objects to the valuation of its claim as set out in the Proxy Form for the purpose of voting at the meeting, the value of that Scheme Claim shall be determined by the Chairman of the meeting at his discretion, provided that the minimum value of such Scheme Claim determined by the Chairman shall be the Redemption Amount stated on the Scheme Creditor's Proxy Form. In the event of overlapping or duplicative claims only one vote shall be allowed and priority shall be given the person who appears to be the record holder. The Chairman's decision shall be final and binding for the purpose only of valuing the Scheme Claim for voting purposes. The valuation of the Scheme Claim by the Chairman for the purpose of voting at the meeting will be without prejudice to the determination of the Scheme Creditor's claim under the Scheme.

3.5. **Court hearings**

3.5.1. Before the Scheme can become effective and binding:

3.5.1.1. the Bermuda Court must enter an order sanctioning the Scheme after it has been approved by the requisite majority of Scheme Creditors; and

3.5.1.2. The order of the Bermuda Court sanctioning the Scheme must be delivered to the Registrar of Companies of Bermuda for registration.

3.6. **Effective date of the Scheme**

It is expected that, if the Scheme is sanctioned by the Bermuda Court and delivered for registration, and the other conditions precedent to the Scheme are satisfied, the Scheme will become effective in July 2011.

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

COMMERCIAL COURT

NO. 51 OF 2011

IN THE MATTER OF HIGHLAND CRUSADER FUND II, LTD.

And

IN THE MATTER OF THE COMPANIES ACT 1981

SCHEME OF ARRANGEMENT

(under Section 99 of the

Companies Act 1981)

Between

HIGHLAND CRUSADER FUND II, LTD.

and its

SCHEME CREDITORS

(as defined in the Scheme)

TABLE OF CONTENTS

1 – INTRODUCTION

1.1 Definitions and Interpretation

In the Scheme, unless the context otherwise requires or as otherwise expressly provided for, the following expressions shall have the meanings set out below and where a capitalized term is not defined it shall have the same meaning as in the Plan.

Barclays	Barclays Bank PLC and its affiliates.
Barclays Claims	Any and all amounts claimed by Barclays against any Crusader Fund in respect of its investment in the Crusader Funds, including its Redemption Amount, other compensatory and punitive damages, interest, legal fees, and costs of litigation, and including all claims asserted in the proceeding styled HYMF, Inc., and Barclays Bank PLC, v. Highland Capital Management, L.P., et al., Index No. 601027/09, pending in the Supreme Court of the State of New York, County of New York – Civil Term – Part 54.
Barclays Excess Payment	"Barclays Excess Payment" shall have the meaning given in clause 1.5.2
Bermuda Court	The Supreme Court of Bermuda
Board	The Board of Directors of the Company appointed or elected pursuant to the Governing Documents.

Cause	"Cause" shall mean (a) the failure by the Crusader Funds to distribute assets that equal or exceed the amounts stated in the Realisation Schedule for two consecutive quarters without the approval of the Redeemer Committee (provided that amounts in excess of scheduled distributions for prior quarters will be carried over), (b) the engagement by the Crusader Funds in a transaction or other action for which the Redeemer Committee's approval is required and is not obtained or which transaction or other action is not subsequently ratified by the Redeemer Committee or (c) HCMLP is adjudged by a court of competent jurisdiction to have engaged in fraud or wilful misconduct relating to its management of the Crusader Funds.
Claim	"Claim" shall have the meaning given in clause 6.3.1 of the Scheme.
Companies Act	The Bermuda Companies Act 1981
Company	Highland Crusader Fund II, Ltd.
Company Compulsory Redeemers	Investors of the Company who did not timely submit redemption requests for redemption dates on or before 30 June 2008.
Company Prior Redeemers	Investors of the Company who timely submitted redemption requests for redemption dates that fell on or before 30 June 2008, and who have not received full payment of their Redemption Amount.
Company Redeemers	Company Compulsory Redeemers and Company Prior Redeemers. Any Company Redeemer who is both a Company Prior Redeemer and a Company Compulsory Redeemer shall be referred to as a Company Prior Redeemer with respect to its investment that was included in its timely submitted redemption requests(s) for redemption dates on or before 30 June 2008, and a Company Compulsory Redeemer with respect to the remainder of its investment.
Consent	The written instruments executed by Consenting Crusader Fund Redeemers consenting to the Plan and entitled "Consent to Joint Plan of Distribution of the Crusader Funds."

Consenting Crusader Fund Redeemers	Crusader Fund Redeemers who execute a Consent shall be referred to herein as "Consenting Crusader Fund Redeemer;" or, as applicable, "Consenting Crusader Fund Prior Redeemers" or "Consenting Crusader Fund Compulsory Redeemers"; provided that all Company Redeemers are deemed to be Consenting Crusader Fund Redeemers for the purposes of the Scheme.
Crusader Funds	Collectively, the Master Fund, the Company, Offshore Fund I and the Onshore Fund.
Crusader Fund Compulsory Redeemers	Investors of the Company, Offshore Fund I and the Onshore Fund who did not timely submit withdrawal/redemption requests for withdrawal/redemption dates on or before 30 June 2008.
Crusader Fund Compulsory Redeemers' Distribution	"Crusader Fund Compulsory Redeemers' Distribution" shall have the meaning given in clause 2.2.2 of the Scheme.
Crusader Fund Redeemers	Crusader Fund Compulsory Redeemers and Crusader Fund Prior Redeemers. Any Crusader Fund Redeemer who is both a Crusader Fund Prior Redeemer and a Crusader Fund Compulsory Redeemer shall be referred to as a Crusader Fund Prior Redeemer with respect to its investment that was included in its timely submitted withdrawal/redemption request(s) for withdrawal/redemption date(s) on or before 30 June 2008, and a Crusader Fund Compulsory Redeemer with respect to the remainder of its investment.
Crusader Fund Prior Redeemers	Investors of the Company, Offshore Fund I and the Onshore Fund who timely submitted withdrawal/redemption requests for withdrawal/redemption dates that fell on or before 30 June 2008, and who have not received full payment of their Redemption Amount.
Crusader Fund Prior Redeemers' Distribution	"Crusader Fund Prior Redeemers' Distribution" shall have the meaning given in clause 2.2.1 of the Scheme.

Data Room	The Crusader Funds' dedicated online Intralinks data room to which all Crusader Fund Redeemers have access at https://services.intralinks.com.
Deferred Fee Account	The account established and funded in accordance with clause 5.2 of the Scheme and Section 6.02 of the Plan.
Deferred Fee Contribution	HCMLP's right to receive payment in respect of Deferred Fees equal to $10 million (as of 30 April 2011).
Deferred Fees	The liability associated with annual performance fees payable by the Company to HCMLP, which is recorded as a liability of $42,450,226 on the Company's books as of 30 April 2011. For the avoidance of doubt, Deferred Fees are not, and shall not be deemed to be, shares of the Company and HCMLP shall not be deemed to be a Company Redeemer in respect of such Deferred Fees.
Disputed Scheme Claim Notice	"Disputed Scheme Claim Notice" shall have the meaning given to such term in clause 3.2.1 of the Scheme.
Distribution Fee	"Distribution Fee" shall have the meaning given to such term in clause 4.4 of the Scheme.
Distributions	Amounts to be paid to Crusader Fund Redeemers under the Plan, including amounts to be paid to Company Redeemers under the Scheme (other than out of the Redeemer Trust Account or the Deferred Fee Account).
Distribution Percentage	"Distribution Percentage" shall have the meaning given to such term in clause 1.5.2 of the Scheme.
Effective Date	The first business day on which all conditions to the effectiveness of the Scheme have been satisfied or waived.
Excess Cash	Cash and cash equivalents minus current liabilities (excluding Scheme Claims) and other appropriate accruals or reserves, each as determined in accordance with GAAP and minus any other liabilities, escrows, or reserves expressly provided for by the Plan or the Scheme; provided, however, that for purposes of determining "Excess Cash," except with respect to reserves required by clause 1.5.3 below, the Crusader Funds shall only retain cash to the extent such liabilities are reasonably anticipated to be due and payable within 180 days and HCMLP

	(or a replacement investment manager) does not reasonably believe that the Crusader Funds would be able to realize cash proceeds necessary to satisfy such liabilities prior to the date by which such liabilities are due and payable.
Feeder Funds	The Company, Offshore Fund I and the Onshore Fund.
Final Distribution Date	"Final Distribution Date" shall have the meaning given to such term in clause 5.1.2 of the Scheme.
GAAP	Generally accepted accounting principles in the United States.
General Partner	Highland General Partner, L.P., as general partner of the Master Fund and the Onshore Fund.
Governing Documents	This term refers to one or more of the following: the Amended and Restated Bye-Laws of Highland Crusader Fund II, Ltd. and the Third Amended and Restated Investment Management Agreement between the Company and HCMLP dated as of 1 September 2006, as amended.
HCMLP	Highland Capital Management, L.P., a Delaware limited partnership.
HCM-Related Parties	The Crusader Funds, the General Partner and HCMLP, as well as each of their present, future, and former respective officers, directors, employees, affiliates, agents and representatives.
Larceny Claims	"Larceny Claims" shall have the meaning given to such term in clause 6.3.1 of the Scheme.
Master Fund	Highland Crusader Offshore Partners, L.P.
Management Shares	"Management Shares" shall have the meaning given to such term in clause 1.4.3 of the Scheme.
NexBank	NexBank, SSB

Non-Consenting Redeemers	Crusader Fund Redeemers of Offshore Fund I and the Onshore Fund who did not execute a Consent are referred to collectively as "Non-Consenting Redeemers" or, where applicable, "Non-Consenting Prior Redeemers" or "Non-Consenting Compulsory Redeemers." (All Company Redeemers are deemed to be Consenting Crusader Fund Redeemers under the Scheme.)
Offshore Fund I	Highland Crusader Fund, Ltd.
Onshore Fund	Highland Crusader Fund, L.P.
Participating Shares	"Participating Shares" shall have the meaning given to such term in clause 1.4.3 of the Scheme.
Plan	The agreement entitled "The Joint Plan of Distribution of the Crusader Funds," a copy of which is attached as Appendix A to the Scheme.
Proxy Form	"Proxy Form" shall have the meaning given in clause 3.1.1 of the Scheme.
Realisation Schedule	The schedule attached as Appendix B hereto, as it may be amended with the consent of HCMLP and the Redeemer Committee.
Redeemer Claims	"Redeemer Claims" shall have the meaning given in clause 5.1.1 of the Scheme.
Redeemer Committee	The committee constituted in accordance with clause 4.5 of the Scheme, which will represent all Consenting Crusader Fund Redeemers with respect to those matters specified in clauses 4.6 and 4.7 of the Scheme.
Redeemer Trust Account	The account established and funded in accordance with clause 5.1 of the Scheme.

Redemption Amount	With respect to each Crusader Fund Redeemer, the amount set forth on the Consent and/or Proxy Form (for Company Redeemers), which is calculated as the net asset value or capital account balance (as applicable) of a Crusader Fund Redeemer's investment as of the date on which the redemption related to such investment became effective (which, for the sake of clarity, for Company Compulsory Redeemers shall be 15 November 2008), calculated in accordance with the Governing Documents, adjusted by deducting the payment(s), if any, made to such Crusader Fund Redeemer through 15 November 2008. For Crusader Fund Redeemers that may be subject to redemption/withdrawal fees, the Crusader Fund shall waive any such redemption/withdrawal fees and the Redemption Amount for such Crusader Fund Redeemers shall not be reduced by any such redemption fees.
Scheme Arbitrators	Any arbitrators appointed in an arbitration under clause 6.10 of the Scheme.
Scheme Claim	The claim of a Scheme Creditor to payment of, or based upon, the Redemption Amount relating to the redemption of their shares in the Company as detailed in clause 2.2 of the Scheme.
Scheme Creditors	Company Redeemers
Scheme Mediator	Layn Philips
U.S. or United States	United States of America

1.2 Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.

1.3 In the Scheme, unless the context otherwise requires

1.3.1 references to parts and clauses are to be construed as references to the parts and clauses of the Scheme and references to Appendices are to be construed as references to the Appendices to the Scheme unless otherwise stated;

1.3.2 references to (and to any provision of) the Scheme shall be construed as references to the Scheme or that provision as in force for the time being and as amended in accordance with its terms;

1.3.3 words importing the plural shall include the singular and vice versa and the masculine, feminine or neuter gender shall each include the other genders;

1.3.4 references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency thereof;

1.3.5 references to any enactment or statutory instrument shall be to such enactment or statutory instrument as amended and in force on the date of this document; and

1.3.6 references to monetary units, such as "dollars" or "$," are to U.S. currency, unless otherwise expressed herein.

1.4 **The Company**

1.4.1 The Company was incorporated on 17 January 2002 as an exempted company in Bermuda pursuant to the provisions of the Companies Act.

1.4.2 The registered office of the Company is at c/o MQ Services, Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda.

1.4.3 The authorised share capital of the Company is US$10.001 divided into 100 Management Shares of par value US$0.01 each (the "Management Shares") and 10,000,000 non-voting redeemable Participating Shares of par value US$0.001 each (the "Participating Shares"). All of the Participating Shares that have been issued are fully paid.

1.4.4 The Company has carried on business since its incorporation as a mutual fund.

1.5 **Parties other than the Company and Scheme Creditors**

1.5.1 HCMLP is the holder of all of the Management Shares of the Company and is the investment manager of the Crusader Funds.

1.5.2 HCMLP shall continue to be entitled to receive payment in respect of the Deferred Fees pursuant to the Third Amended and Restated Investment Management Agreement between the Company and HCMLP dated as of September 1, 2006, as amended; provided, however, that (a) HCMLP shall not be entitled to receive payment in respect of such Deferred Fees until the complete liquidation of the Company's assets (except for that portion of the Company's assets equal to the amount payable immediately prior to complete liquidation with respect to such Deferred Fees) (b) the amount payable with respect to the Deferred Fees will be equal to (i) $42,450,226 multiplied by (ii) a fraction, which is expressed as a percentage (the "Distribution Percentage"), the numerator of which is (A) the amount of assets (in U.S. dollars) that are Distributed to Crusader Fund Redeemers prior to the dissolution of the Crusader Funds and the denominator of which is (B) $1,634,991,092 (the net distributable assets reflected on the books and records of the Master Fund as of 30 April 2011); and (c) to the extent Barclays does not execute a Consent to the Plan and in respect of the Barclays Claims either (x) enters into a settlement agreement or (y) obtains a final, binding non-appealable judgment against any or all of the Crusader Funds, in either case for an amount that is in excess of the amount that Barclays would receive as a Consenting Compulsory Redeemer (the "Barclays Excess Payment"), HCMLP shall assign to the Onshore Fund the right to receive an amount of Deferred Fees

that are then equal to the amount of the Barclays Excess Payment (provided that HCM-Related Parties shall not be entitled to receive any such amounts). If the amount of the Barclays Excess Payment exceeds the amount of the Deferred Fees held by HCMLP, HCMLP shall indemnify and hold harmless the Crusader Funds with respect to such excess amount~~have no further liability or obligations with respect to the Barclays Excess Payment~~.

1.5.3 Until the Deferred Fees have been forfeited or paid under the Scheme, the Company shall fully reserve for such fees in cash in an amount equal to the Distribution Percentage calculated as of the date of each Distribution multiplied by the aggregate amount of such fees. Cash held by the Company in reserve for such Deferred Fees shall be maintained in an interest bearing account, with all interest accruing thereon being retained by the Company for the benefit of Company Redeemers.

1.5.4 Layn Phillips has given and not withdrawn his consent to act as the Scheme Mediator from the Effective Date.

1.5.5 James Dondero, Nicholas Hoskins and Roderick Forrest have each given and not withdrawn their consent to continue to act as a director of the Company.

1.6 The Plan and the Scheme

1.6.1 To facilitate the winding down of the investments of the Master Fund and the distribution of its assets, the Crusader Funds, after taking advice from their professional advisers, decided that the best course of action is to promote the adoption of the Plan.

1.6.2 The Company, having taken advice from its professional advisers, has decided that the best course of action in Bermuda to implement the Plan in order that it shall be binding on all Company Redeemers, is to promote a scheme of arrangement under Section 99 of the Companies Act in respect of the Company. Accordingly, the Company's adoption of the Plan is conditional on the implementation of the Scheme.

1.6.3 Coordination between the Scheme and the Plan is essential to minimise any discrepancies between them. The terms of the Plan, insofar as they are relevant to the Company, are hereby incorporated mutatis mutandis into the Scheme unless contradicted by the express terms of the Scheme, and upon the Scheme becoming effective, all Scheme Creditors will be bound by the provisions of the Plan. The Governing Documents of the Company shall be deemed amended to conform to the Scheme.

1.6.4 In the event of an express conflict between the terms of the Scheme and the terms of the Plan, the terms of the Scheme shall prevail as to Scheme Creditors.

1.6.5 The Scheme is conditional on the sanction by the Bermuda Court and satisfaction of the other conditions precedent.

2. THE SCHEME

2.1 Classes of Claims

2.1.1 There shall be two classes of claims under the Scheme:

2.1.1.1 Company Prior Redeemers; and

2.1.1.2 Company Compulsory Redeemers.

2.2 Treatment of Claims

2.2.1 Crusader Fund Prior Redeemers shall be entitled to 60% in aggregate of the total distributions made by the Master Fund constituting Excess Cash (the "Crusader Fund Prior Redeemers' Distribution"). Each Company Prior Redeemer shall be entitled to a Scheme Claim equivalent to that Company Prior Redeemer's pro rata share of the Crusader Fund Prior Redeemers' Distribution, based on that Company Prior Redeemer's Redemption Amount relative to the total of all Crusader Fund Prior Redeemers' Redemption Amounts.

2.2.2 Crusader Fund Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions made by the Master Fund constituting Excess Cash (the "Crusader Fund Compulsory Redeemers' Distribution"). Each Company Compulsory Redeemer shall be entitled to a Scheme Claim equivalent to that Company Compulsory Redeemer's pro rata share of the Crusader Fund Compulsory Redeemer's Distribution, based on that Company Compulsory Redeemer's Redemption Amount relative to the total of all Crusader Fund Compulsory Redeemers' Redemption Amounts.

2.3 Application of the Scheme

The Scheme applies to the Scheme Claims of the Scheme Creditors.

2.4 **Assets for Distribution**

2.4.1 Assets of the Company will be distributed in accordance with this clause 2.4.1. As investments in the Master Fund are realized and assets are distributed to the Company in accordance with the Plan and are available for Distribution or if any other asset of the Company resulting from an "in kind" distribution from the Master Fund to the Company is liquidated (subject to clause 4.7 of the Scheme), 100% of the Excess Cash of the Company, will be distributed to Company Redeemers in accordance with the treatment set forth in clause 2.2 of this Scheme (provided, however, that amounts in, and rights to, the Redeemer Trust Account and the Deferred Fee Account shall not be considered assets of the Crusader Funds for this purpose).

2.4.2 There shall be no accrual of interest on Redemption Amounts. Distributions of Excess Cash will be made monthly. The Company may withhold any Distribution if a Company Redeemer has failed to provide:

2.4.2.1 Any requested tax identification documentation;

2.4.2.2 A written acknowledgment that the Company Redeemer has received a copy of the Scheme and the order sanctioning the Scheme and is bound thereby; and

2.4.2.3 Confirmation of wire or other payment instructions.

2.5 **Mechanism for Distributions**

2.5.1 Distributions to Company Redeemers shall be made by cheque or wire at the addresses or pursuant to the instructions set forth on:

2.5.1.1 Proxy Forms or Consents executed and delivered by Company Redeemers;

2.5.1.2 any written notices of address changes delivered to the Company after the date of any Proxy Form or Consent; or

2.5.1.3 the address of the Company Redeemer in the Company's books and records or any written notice of address delivered by a Company Redeemer who does not submit a Consent or Proxy Form.

2.5.2 If a Distribution is returned as undeliverable, no further distributions to such Company Redeemer shall be made unless and until the Company is notified of such Company Redeemer's current address, at which time all missed Distributions shall be made without interest. Amounts in respect of undeliverable Distributions shall be returned to the Company until claimed. All claims for undeliverable Distributions must be made on or before 360 days after the relevant Distribution date, after which date, unless otherwise approved by the Company, all unclaimed property shall revert to the Company free of any restrictions thereon, and the claim of any Company Redeemer or successor to such Company Redeemer with respect to an undeliverable Distribution shall be discharged and forever barred, notwithstanding any Bermudian, U.S. federal or state escheat or other laws to the contrary. Nothing in this Scheme shall require the Company to attempt to locate any Company Redeemer.

2.5.3 In connection with this Scheme and all Distributions to be made hereunder, the Company shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any Bermudian, U.S. federal, state or local taxing authority, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Company is hereby

authorized to take any and all actions that may be necessary or appropriate to comply with any such requirements.

2.5.4 Distributions made pursuant to this Scheme shall be in U.S. funds by check or wire transfer, or such other commercially reasonable manner as the Company shall determine. If the amount of any Distribution payable to a Company Redeemer is less than $1,000, the Company shall withhold such payment until the amount equals or exceeds $1,000, except with respect to final Distributions.

2.6 Effect of the Scheme

2.6.1 Moratorium

Upon the Effective Date no Scheme Creditor shall be entitled to take or continue any action, step or proceedings against the Company, the Crusader Funds or any HCM-Related Party for any claims (whether by way of demand, legal proceedings, execution of judgment or otherwise howsoever without limitation) in any jurisdiction whatsoever; provided, however, that a Scheme Creditor may bring an action or other proceeding in the Bermuda Court solely for the purpose of enforcing payment of a Distribution which the Company has failed to pay in breach of the Scheme or otherwise as permitted by the Bermuda Court. To the extent that any Scheme Creditor threatens or asserts a Claim in contravention of the Scheme including, without limitation, a Claim released pursuant to clause 6 of the Scheme, the Company shall withhold any Distribution to such Scheme Creditor pending a final determination of such Claim or any claim for or right to indemnification under clause 6.5 of the Scheme.

2.6.2 Discharge

In addition to and without limiting in any way the releases in clause 6.3 of the Scheme, the entitlement of a Scheme Creditor to a Distribution shall discharge the corresponding Scheme Claim in full and thereupon the Company shall have no further liability in respect thereof.

2.7 **Conditions to Effective Date for the Scheme**

2.7.1 The Scheme shall become effective as soon as:

2.7.1.1 a copy of the Order of the Bermuda Court sanctioning the Scheme shall have been delivered for registration to the Registrar of Companies in Bermuda as required by Section 99(3) of the Companies Act; and

2.7.1.2 the following conditions precedent to the Effective Date have been satisfied:

2.7.1.2.1 the $6,030,000 million in cash referenced in clause 5.1.1 of the Scheme has been deposited in the Redeemer Trust Account; and

2.7.1.2.2 the Plan has been adopted by each other Crusader Fund.

2.7.2 Not more than 5 days after the Effective Date, the Company shall post to the Data Room a notice to Scheme Creditors that the Scheme has become effective.

2.8 **Modifications to the Scheme**

2.8.1 Subject to the provisions of the Plan and the Scheme, the Company acting by the Board may, at any hearing of the Bermuda Court to sanction its Scheme, consent on behalf of all of the Scheme Creditors to any modification of the Scheme or any terms or conditions which

the Bermuda Court may think fit to approve or impose, in either case which does not materially alter the effect of such Scheme and in the reasonable judgment of the Company is in the best interests of Scheme Creditors.

2.8.2 Subject to the terms of the Plan, if the Company considers it is expedient to do so and it is in the best interests of the Scheme Creditors, the Company may at any time prior to the Effective Date and without reference to the Scheme Creditors, apply to the Bermuda Court for the purpose of modifying the provisions of the Scheme (provided such modifications do not materially alter the effect of such Scheme) or obtaining directions on how to deal with any matters or disputes arising in respect of such Scheme. If such modifications are approved or such directions are given by the Bermuda Court, they shall be binding on the Scheme Creditors and the Scheme shall be modified accordingly.

3. ESTABLISHMENT OF CLAIMS

3.1 Scheme Claims

3.1.1 Each Scheme Creditor will be entitled to pro rata Distributions in accordance with clause 2.4.1 in respect of its Scheme Claim, which shall be the Redemption Amount stated by the Company on the Consent and the proxy form issued for the purpose of voting on the Scheme ("Proxy Form"). Scheme Creditors are not required to submit a claim in order to receive their pro rata Distributions.

3.1.2 Any dispute raised by the timely service of a Disputed Scheme Claim Notice (defined below) shall be limited to whether the Redemption Amount is calculated in accordance with the terms of this Scheme.

3.2 Procedure for Resolving Disputed Claims

3.2.1 If a Scheme Creditor disputes its Redemption Amount as determined by the Company and stated on its Consent and Proxy Form, it shall give notice to the Company in writing (a "Disputed Scheme Claim Notice") within 14 days of the notice of the Effective Date of the Scheme. A Scheme Creditor that has executed and delivered a Consent or Proxy Form may not dispute its Redemption Amount unless the Scheme Creditor properly amends the amount inserted on the Consent and/or Proxy Form. The Company and the Scheme Creditor shall confer in good faith in an attempt to resolve the dispute within 10 days of the submission of the Disputed Scheme Claim Notice. If they cannot reach a resolution through such good faith effort, either side may engage the Scheme Mediator at the expense of the Company or, if he is unavailable, another mutually agreeable third party to mediate the

dispute. If the dispute cannot be resolved by mediation it will be referred to arbitration in accordance with clause 6.10.

4. MANAGEMENT

The Board

4.1 The members of the Board of the Company are James Dondero, Nicholas Hoskins and Roderick Forrest.

4.2 The powers of the Board shall remain, save as provided below, as before the Effective Date of the Scheme and the Board shall exercise all their statutory and managerial powers, rights, duties and functions in relation to the Company, subject to the powers, rights, duties and functions of the Redeemer Committee, as set forth herein. Subject to the powers, rights, duties and functions of the Redeemer Committee, the Board shall also have the duty and responsibility of carrying out all of the functions of the Company in relation to the Scheme.

4.3 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any member of the Board in relation to acts done pursuant or in relation to the adoption of the Scheme, and no member of the Board shall be liable for any loss suffered as a result of such action, if he or she acted honestly and in good faith with a view to the best interests of the Company.

The Investment Manager

4.4 Subject to clauses 4.6 and 4.7, HCMLP will continue to manage the investments of the Company pursuant to the Third Amended and Restated Investment Management Agreement, which will continue to apply save to the extent that its terms are inconsistent with the Plan and the Scheme, including that HCMLP's services as investment manager may be terminated by the

Redeemer Committee under clause 4.6.8. For so long as HCMLP serves as investment manager of the Crusader Funds, HCMLP will receive fees in cash in the amount of (a) 25 basis points (per annum) calculated based on the net distributable assets of the Company at the beginning of each calendar month, to be paid monthly in arrears out of the assets of the Company and (b) provided that assets equal to or in excess of the amount scheduled in the Realisation Schedule have been distributed to Redeemers during such quarter (with amounts distributed to Redeemers in excess of scheduled distributions for prior quarters being carried over), 125 basis points calculated based on all amounts actually Distributed to Redeemers during each quarter following the Effective Date (which shall be paid on a Company Redeemer by Company Redeemer basis by deduction from amounts distributed to such Company Redeemers during the quarter) (the "Distribution Fee"). In the event that HCMLP is removed as investment manager by the Redeemer Committee pursuant to clauses (b) or (c) of the definition of "Cause," HCMLP shall not be entitled to receive any fees described in this clause 4.4 of the Scheme that are accrued as of the termination date, and shall not, be entitled to any such future fees. For the avoidance of doubt, HCMLP shall not be entitled to any future fees described in this clause 4.4 after it has been removed as investment manager by the Redeemer Committee. Except as set forth above, the Crusader Funds shall retain liability to pay out-of-pocket costs of the administration of the Crusader Funds, including accounting and audit expenses, legal fees, and costs associated with reporting. During its service as investment manager, HCMLP (and any successor investment manager) will cause the Crusader Funds to maintain reserves for future liabilities in accordance with GAAP and such other reserves as may be expressly contemplated by the Plan and the Scheme.

The Redeemer Committee

4.5 The Redeemer Committee shall be a ten-member committee, which will be composed of five representatives of Consenting Crusader Fund Prior Redeemers (to be selected in accordance with the voting provisions in clause 4.12) and five representatives of Consenting Crusader Fund Compulsory Redeemers (to be selected in accordance with the voting provisions in clause 4.12), which will represent all Consenting Crusader Fund Redeemers with respect to those matters specified in clauses 4.6 and 4.7 of the Scheme. Redeemer Committee members may be individuals or entities (acting through designated representatives).

4.6 The Redeemer Committee will have, subject to the execution and delivery of customary and reasonable confidentiality agreements:

4.6.1 reasonable access to all books, records and other information related to the current and past performance, management, asset valuation and liquidation (including costs and expenses) of the Crusader Funds including, but not limited to, any such information in the possession, custody or control of the Crusader Funds or HCMLP;

4.6.2 the right to obtain monthly reports from HCMLP on the Crusader Funds' performance and management and Realisation Schedule progress and notification of any action that is proposed to be taken by the Board prior to such action;

4.6.3 the right to approve or disapprove any cost or expense of the Crusader Funds, including any amounts to be paid in settlement of litigation (other than as described in clause 4.6.7 of the Scheme), in excess of $100,000 (other than with respect to for amounts payable in accordance with clauses 1.5.2, 4.4 and 5.2 of the Scheme, Sections 2.01, 2.02, 2.03 and 6.02 of the Plan and, with respect to amounts payable arising prior to the Effective Date, clause 6.3.3 of the Scheme and Section 7.02 of the Plan) in excess of $100,000; provided that any such

incurrence shall be deemed to be approved if not affirmatively objected to within 30 days of submission to the Redeemer Committee;

4.6.4 the right to engage, at the expense of the Crusader Funds, third party professionals to assist the Redeemer Committee with discharging its oversight responsibilities (each member of the Redeemer Committee may also engage separate third-party professionals to advise them in respect of such member's responsibilities, provided that, absent approval of the Redeemer Committee, such member shall be solely responsible for any fees and expenses of any such third-party professionals such member engages);

4.6.5 the authority to approve or disapprove the engagement of professional advisers to the Crusader Funds as described below; provided that the Crusader Funds shall continue to have administration and auditing services performed by JP Morgan Hedge Fund Services and PricewaterhouseCoopers, respectively, unless any change of such service providers shall be required or approved by the Redeemer Committee; provided, further, that any such engagement shall be deemed to be approved if not affirmatively objected to within 30 days of submission to the Redeemer Committee;

4.6.6 the authority to approve or disapprove the assignment or transfer of interests in the Crusader Funds or Scheme Claims; provided that such proposed assignment or transfer shall be deemed to be rejected if not approved within 30 days of submission to the Redeemer Committee;

4.6.7 the authority to approve or disapprove any settlement by the Crusader Funds with Barclays that would be in excess of what Barclays would receive as a Consenting Crusader Funds Redeemer(provided, however, that with respect to this matter, the approval of a majority of any

members of the Redeemer Committee that are Redeemers of the Onshore Fund shall also be required);

4.6.8 the authority to remove HCMLP as investment manager upon 30 days' written notice with or without Cause and upon such removal, to request that HCMLP transfer the Management Shares as directed by the Redeemer Committee; and the authority to remove any member of the Redeemer Committee for any reason with the approval of at least 7 members of the Redeemer Committee and the authority to fill any vacancy on the Redeemer Committee (provided that any vacancy in a position appointed by Consenting Crusader Fund Prior Redeemers will be filled by the remaining appointees of Consenting Crusader Fund Prior Redeemers and any vacancy in a position appointed by Consenting Crusader Fund Compulsory Redeemers will be filled by the remaining appointees of Consenting Crusader Fund Compulsory Redeemers); and

4.6.9 the right to be consulted regarding any proposed sale of Crusader Funds' assets (or transaction involving) (in a single transaction or series of related transactions) in an amount equal to or greater than $10 million reasonably in advance of any such proposed sale.

4.7 Unless otherwise approved in advance by the Redeemer Committee,

4.7.1 all transactions (other than those contemplated by this Scheme and the Plan) between the Crusader Funds and affiliates of HCMLP, while it serves as investment manager of the Crusader Funds, including any "cross trade" between the Crusader Funds and any other account managed or advised by the HCMLP, are prohibited;

4.7.2 all proceeds received in respect of the realization of Crusader Funds' investments (including all interest and dividends related to such

investments prior to their realization) shall be held in cash and short-term instruments pending Distribution and, except for those investments, the Crusader Funds shall not be permitted to make any future investments; and

4.7.3 Distributions (and distributions from the Master Fund) shall only be made in cash.

4.8 The approval of the Redeemer Committee with respect to any matter submitted for approval under clauses 4.6 or 4.7 shall not be unreasonably withheld.

4.9 In the event of a dispute between the Crusader Funds or the Redeemer Committee and HCMLP, any HCM-Related Party, the General Partner or the Board, including relating to the matters in clauses 4.6 or 4.7, the applicable parties' representatives shall confer in good faith in an attempt to resolve the dispute within 48 hours of a request by either side. If they cannot reach a resolution through such good-faith effort, either side may engage the Scheme Mediator (with the expense to be shared 50% by the Crusader Funds and 50% by HCMLP) or, if he is unavailable, another mutually agreeable third party to mediate the dispute. If the dispute cannot be resolved by mediation it will be referred to arbitration in accordance with clause 6.10.

4.10 Each member of the Redeemer Committee (and any designated representative thereof) shall be held harmless by the Consenting Crusader Fund Redeemers and the HCM-Related Parties and indemnified out of the funds of the Crusader Funds against all (a) civil liabilities, loss, damage or expense incurred or suffered by such member or its representative for any acts or omissions in the performance of their duties on the Redeemer Committee if such member acted honestly and in good faith and (b) liabilities incurred by such member or its representative in defending any proceedings, whether civil or criminal, for

any acts or omissions in the performance of their duties if they acted honestly and in good faith and, in the case of criminal proceedings, that such member or its representative had no cause to believe that their conduct was criminal.

4.11 Meetings of the Redeemer Committee may be held at such places and times (including by telephone or other electronic media) as a majority of the members shall determine. Except as otherwise specified in the Scheme, any decisions made or actions taken by a majority of members present at any meeting of the Redeemer Committee shall be deemed to be the decision or action of the Redeemer Committee. Any action required or permitted to be taken at any meeting of the Redeemer Committee may be taken without a meeting if a majority of the members of the Redeemer Committee entitled to vote on the matter consent to the action in writing. Such consents shall be treated for all purposes as a vote at a meeting.

4.12 **Voting**

4.12.1 Within 7 days after the Effective Date, the Crusader Funds shall solicit nominations in relation to the election of members of the Redeemer Committee. In accordance with the Plan, only Consenting Crusader Fund Redeemers are entitled to vote in the elections. By virtue of the Scheme, all Scheme Creditors are Consenting Crusader Fund Redeemers for purpose of voting.

4.12.2 The Crusader Funds shall solicit nominations from the Consenting Crusader Fund Prior Redeemers and Consenting Crusader Fund Compulsory Redeemers, respectively. Nomination forms and the timetable for the elections will be delivered to Company Redeemers and will be available in the Data Room. A Company Redeemer may self-nominate. Nominations must be submitted to the Crusader Funds. The list of nominees will be published in the Data Room. No

more than two candidates per Consenting Crusader Fund Redeemer or group of Consenting Crusader Fund Redeemers, which shall include Consenting Crusader Fund Redeemers that are affiliated or that share a common investment manager, may be nominated, as either Crusader Fund Prior Redeemer representatives on the Redeemer Committee or Crusader Fund Compulsory Redeemer representatives on the Redeemer Committee.

4.12.3 Ballots will be available on the Data Room or by request by email to HighlandCrusaderFunds@hcmlp.com. Each ballot shall list the names of each candidate together with the Redemption Amount associated with such candidate in order from top to bottom (largest to smallest).

4.12.4 The ballot may also be accompanied by an information sheet that presents background information provided by the candidate. Elections to the Redeemer Committee shall be held no later than 30 days after the Effective Date.

4.12.5 Company Redeemers may cast a number of votes equal to the number of committee slots to be filled as follows:

4.12.5.1 Consenting Crusader Fund Prior Redeemers will have five votes in relation to the election of the five Consenting Crusader Fund Prior Redeemer representatives on the Redeemer Committee.

4.12.5.2 Consenting Crusader Fund Compulsory Redeemers will have five votes in relation to the election of the five Consenting Crusader Fund Compulsory Redeemer representatives on the Redeemer Committee.

4.12.6 The value of each vote will be the Company Redeemer's Redemption Amount divided by the number of votes cast by the Company Redeemer. A Company Redeemer may cast all or any number of its votes for up to five candidates. (Casting multiple votes for a candidate increases the aggregate Redemption Amount voting in favour of that candidate.) If more votes are cast than are permitted, the first votes cast from the beginning to end of the ballot list will be counted.

4.12.7 Company Redeemers who have claims as both Consenting Prior Redeemers and Consenting Compulsory Redeemers may vote in the election to the extent of the Redemption Amount in respect of each class, but otherwise Company Redeemers may only vote in elections to select representatives from their class of claims.

4.12.8 Candidates will be appointed to the Redeemer Committee based on total value of votes received. The candidate receiving the highest aggregated Redemption Amounts based on the votes cast will be appointed to the first seat, the candidate receiving the second highest amount will be appointed to the second seat and so on until all of the respective seats are filled.

4.12.9 HCMLP and its affiliates shall not be eligible to participate in the vote for Redeemer Committee members or to serve on the Redeemer Committee.

4.12.10 The result of the voting in respect of the Redeemer Committee will be published in the Data Room.

4.12.11 All disputes related to the nomination or election of candidates to the Redeemer Committee will be finally determined by the Scheme Mediator.

5. TRUST ACCOUNTS

5.1 Redeemer Trust Account

5.1.1 In partial consideration for the releases provided in clause 6 of the Scheme, on the Effective Date HCMLP shall establish, administer and fund in accordance with the Plan the Redeemer Trust Account with $6,030,000 million in cash. Upon the Effective Date, HCMLP will immediately distribute from the Redeemer Trust Account to (a) each Consenting Crusader Fund Compulsory Redeemer (excluding any HCM-Related Party Consenting Compulsory Redeemer) its pro rata portion of $5 million (which shall be determined based upon each Consenting Crusader Fund Compulsory Redeemer's Redemption Amount as compared to the Redemption Amount of all Crusader Fund Compulsory Redeemers) and (b) each Consenting Crusader Fund Prior Redeemer (excluding any HCM-Related Party Consenting Compulsory Redeemer) its pro rata portion of $1,030,000 (which shall be determined based upon each Consenting Crusader Fund Prior Redeemer's Redemption Amount as compared to the Redemption Amount of all Consenting Crusader Fund Prior Redeemers). Pursuant to the Plan, the portion of such amounts in excess of the Redemption Amounts otherwise attributable to Non-Consenting Compulsory Redeemers shall be contributed to the Redeemer Trust Account and shall not be distributed to Non-Consenting Compulsory Redeemers. Amounts in the Redeemer Trust Account after the distribution of the amounts referred to above and Section 6.01 of the Plan, will be reserved and used to pay all costs of HCMLP-Related Parties and the Redeemer Committee to defend, respond to, settle and satisfy any Claims by Crusader Fund Redeemers, other than for their Scheme Claim ("Redeemer Claims") and shall be used to defend, respond to,

settle and satisfy any such Redeemer Claims in advance of any amounts otherwise properly available for such purposes out of the assets of the Crusader Funds; provided, however, that to the extent in respect of the Barclays Claims Barclays (x) enters into a settlement agreement or (y) obtains a final, binding non-appealable judgment against any or all of the Crusader Funds, in either case, in satisfaction of the Barclays Claims and for an amount less than the amount that Barclays would receive as a Consenting Compulsory Redeemer, HCMLP shall be entitled to an amount from the Redeemer Trust Account equal to such difference less amounts that have been paid in defense of such claim, payable from amounts otherwise distributable to Consenting Compulsory Redeemers of the Onshore Fund.

5.1.2 Within 30 days after (i) all Redeemer Claims have been resolved or dismissed with prejudice, or (ii) the sixth anniversary of the Effective Date, provided that no suits asserting Redeemer Claims are then pending, whichever is earlier (the "Final Distribution Date"), HCMLP will cause any amounts remaining in the Redeemer Trust Account to be distributed 100% to Consenting Crusader Fund Compulsory Redeemers (pro rata based on their relative Redemption Amounts).

5.2 **Deferred Fee Account**

5.2.1 In partial consideration for the releases provided in clause 6 of the Scheme, pursuant to the Plan, HCMLP shall establish and administer the "Deferred Fee Account" on the Effective Date by allocating the right to potentially receive Deferred Fees in an amount equal to the Deferred Fee Contribution to such Deferred Fee Account. Amounts payable in respect of the Deferred Fee Account will be distributed as follows:

5.2.1.1 In the event that the Crusader Funds make aggregate Distributions of at least $1.7 billion prior to the forty-third (43rd) month following the Effective Date, HCMLP shall be entitled to receive payment in respect of the Deferred Fee Account in accordance with clause 1.5.2 of the Scheme.

5.2.1.2 Subject to clause 5.2.1.3 of the Scheme, if prior to the forty third (43rd) month following the Effective Date, the Crusader Funds have not made aggregate Distributions equal to or in excess of $1.7 billion, then HCMLP will cause the Feeder Funds to distribute the right to receive payment in respect of the assets in the Deferred Fee Account in accordance with clause 1.5.2 of the Scheme (except that with respect to the assets in the Deferred Fee Account, amounts will be payable, rather than reserved, in accordance with clause 1.5.3 of the Scheme), 100% to Consenting Crusader Fund Compulsory Redeemers (pro rata based on their relative Redemption Amounts).

5.2.1.3 Notwithstanding clause 5.2.1.2 of the Scheme, if HCMLP's services as investment manager of the Crusader Funds have been terminated by the Redeemer Committee other than for Cause prior to the third anniversary of the Effective Date, HCMLP shall be entitled to receive payments in respect of the Deferred Fee Account in accordance with clause 1.5.2 of the Scheme.

6. MISCELLANEOUS

6.1 Assignments

6.1.1 The rights of the Scheme Creditors under the Scheme shall be assignable, but (i) the assignment shall be subject to any existing rights of set-off, and (ii) the Company shall not be bound by any assignment unless and until notice in writing is given to the Company.

6.1.2 No assignment or transfer of a Scheme Claim after the Effective Date shall be recognised by the Company for the purpose of determining entitlements under the Scheme, provided that the Company may, in its sole discretion and subject to the production of such evidence in relation to such transfer or assignment as the Company may require and to any other terms and conditions which the Company may consider necessary or desirable, agree to recognise such assignment or transfer for the purposes of determining entitlements under the Scheme.

6.1.3 No assignment or transfer of a Scheme Claim after the Effective Date may be purchased by HCMLP or its affiliates without such Scheme Claim first being offered to, and rejected by, the Crusader Funds.

6.2 **Releases**

6.2.1 The Crusader Funds, their successors, predecessors, control persons, members, agents, employees, officers and directors serving as of the date hereof and thereafter, and their attorneys, financial advisors, investment bankers, accountants, and other professionals retained by the Crusader Funds shall neither have nor incur any liability to any person or entity (including any holder of a Claim) for any act taken or omitted to be taken in connection with or related to or in contemplation of:

6.2.1.1 the negotiation, formulation and preparation of the Scheme, or any related agreements, instruments or other documents;

6.2.1.2 the formulation, negotiation, preparation, dissemination, implementation, administration or sanction of the Scheme by the Bermuda Court or other associated documents or the occurrence of the Effective Date; or

6.2.1.3 any contract, instrument, release or other agreement or document created or entered into in connection with the Scheme;

provided that the foregoing exculpations shall not extend to any damages, losses or claims arising from acts which were not honest and in good faith; and, provided, further, that such release shall not be applicable in determining whether Cause exists.

6.3 **Mutual Releases**

6.3.1 Upon the Effective Date, each of the Company Redeemers, for themselves and on behalf of any of their respective officers, directors, shareholders, partners, members, employees, affiliates, investors, agents and representatives and any other person or entity entitled to assert a Claim (defined below) by, through, under, or on behalf of any Company Redeemer, hereby releases each of the HCM-Related Parties and each of the other Consenting Crusader Fund Redeemers, from any and all accounts, actions, agreements, causes of action, claims, contracts, covenants, controversies, damages, debts, demands, executions, expenses, judgments, liabilities, obligations, omissions, promises, representations, and rights to payment, and all other liabilities of every kind, nature and description whatsoever, liquidated and unliquidated, fixed and contingent, matured and unmatured, disputed and undisputed, legal and equitable, state and federal, secured and unsecured, accrued and unaccrued, known and unknown, choate and inchoate (each, a "Claim"), which each Company Redeemer has,

may have or ever had against any or all of the HCM-Related Parties and the other Consenting Crusader Fund Redeemers from the beginning of the world to the Effective Date related to the Crusader Funds, including without limitation its administration and wind-down; provided, however, that such release of the HCM-Related Parties shall not operate to release any claims based on larceny within the meaning of Section 155.05 of the New York Penal Code ("Larceny Claims"), provided that such claims are not within the scope of knowledge of the releasing party as of the Effective Date.

6.3.2 The benefit of the release in clause 6.3.1, as it relates to the HCM-Related Parties, is held in trust by the Company for the HCM-Related Parties, and the Company hereby assigns the benefit of the release in clause 6.3.1 in their favour.

6.3.3 Upon the Effective Date, the HCM-Related Parties, for themselves and on behalf of any successors and assigns and any other person or entity entitled to assert a Claim by, through, under, or on behalf of such HCM-Related Party, hereby release each other HCM-Related Party (except for intra HCM-Related Party fees or accounts that are not subject to indemnification by any Crusader Fund), each of the Crusader Funds (except for intra-Crusader Funds Claims) and each of the Company Redeemers from any and all Claims, which each HCM-Related Party has, may have or ever had against any or all of them from the beginning of the world to the Effective Date related to each of the Crusader Funds and its administration and wind-down; provided, however, that nothing in this clause shall operate to release or in any way limit any claims that any HCM-Related Party may have:

6.3.3.1 for defence or indemnification arising from claims asserted against any of them pursuant to the Governing Documents or Sections 2.03 and 7.04 of the Plan;

6.3.3.2 for reimbursement of out of pocket expenses actually incurred to third-parties in connection with administration of the Crusader Funds;

6.3.3.3 with respect to NexBank, in its capacity as agent in respect of investments by the Crusader Funds;

6.3.3.4 as a Crusader Fund Redeemer under the Scheme and the Plan; and

6.3.3.5 for fees payable in accordance with clauses 1.5.2, 4.4, and 5.2 of the Scheme and Sections 2.01, 2.02, 2.03 and 6.02 of the Plan.

6.4 Upon the Effective Date, the Company, for itself and on behalf of its respective officers, directors, shareholders, partners, members, employees, affiliates, investors, agents and representatives, hereby releases each of the other HCM-Related Parties and the Company Redeemers from any and all Claims, which each of them has, may have or ever had against any or all of the HCM-Related Parties and the Company Redeemers from the beginning of the world to the Effective Date related to the Crusader Funds and its administration and wind-down; provided, however, that such release shall not be effective as to any such Consenting Crusader Fund Redeemer that takes any action in contravention of the Plan.

6.5 No Company Redeemer or HCM-Related Party providing a release pursuant to this clause 6 shall assert any claim released pursuant to this clause 6 or otherwise in contravention of the Scheme. Each such Company Redeemer or HCM-Related Party providing a release pursuant to this clause 6, shall

indemnify and hold harmless each party intended to receive the benefit of such release from and against any liability, expense, including reasonable attorneys' fees and costs, or other damages arising from the assertion by such releasing party, or any assignee or successor of such releasing party, of any claim released by that party pursuant to this clause 6 or otherwise in contravention of the Scheme. Additionally, the Company shall have all Indemnification Obligations as defined and provided for in Section 2.03 of the Plan.

6.6 **Completion of the Scheme**

The Scheme will be completed when the Board and HCMLP (or the Redeemer Committee in the event that HCMLP is no longer the investment manager of the Crusader Funds) resolve that all Scheme Claims have been determined and paid (or deemed to have been satisfied) in accordance with the Scheme.

6.7 **Severability**

If any provision of this Scheme is held to be invalid or unenforceable, then such provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in the Scheme but without invalidating any of the remaining provisions of the Scheme; except that if the provision of the Scheme which is found to be invalid or unenforceable is material to the performance of the obligations or the receipt of rights or remedies under the Scheme, then the consent of the Company, the Redeemer Committee, any affected HCM-Related Party and any affected Company Redeemer must be obtained for this clause to have effect.

6.8 **Notices**

All notices and other communications provided for in the Scheme shall be in writing and posted, faxed, emailed or delivered to the applicable party at its address as described herein, or if so directed by the Bermuda Court, by advertisement.

6.9 **Fund Expenses**

Except as set forth above, the Crusader Funds retain all obligations to pay out-of-pocket costs of the administration of the Crusader Funds, including accounting and audit expenses, legal fees, and costs associated with reporting.

6.10 **Arbitration**

Any dispute referred to in clauses 3.2.1, 4.9 or 5.2 above (other than a dispute regarding the existence of "Cause"), which cannot be resolved through mediation referred to in clauses 3.2.1, 4.9 or 5.2 above, respectively, shall be subject to and decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law. Arbitration shall be conducted in New York, New York.

6.11 **Governing Law and Jurisdiction**

Except as otherwise provided herein, the Scheme shall be governed by and construed in accordance with the laws of Bermuda and, subject to clauses 3.2.1, 4.9, 5.2 and 6.10, the Bermuda Court shall have exclusive jurisdiction to hear and determine any suit, action, or proceeding and to settle any dispute which may arise out of any provision of any Scheme or any related documents, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme. And for such

purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Bermuda Court.

Dated: 10 June 2011

APPENDIX A

JOINT PLAN OF DISTRIBUTION OF THE CRUSADER FUNDS

Upon occurrence of the Effective Date and subject to the terms and conditions herein, with the consent of the Consenting Redeemers (defined below) and the HCM-Related Parties (defined below), Highland Crusader Offshore Partners, L.P. ("Master Fund"), Highland Crusader Fund, L.P. ("Onshore Fund"), Highland Crusader Fund, Ltd. ("Offshore Fund I"), and Highland Crusader Fund II, Ltd. ("Offshore Fund II" and, together with the Master Fund, the Onshore Fund, and Offshore Fund I, the "Crusader Funds") hereby adopt this Joint Plan of Distribution of the Crusader Funds (the "Plan") providing for the settlement and satisfaction of the claims of Consenting Redeemers.

Recitals

A. On October 15, 2008, the Onshore Fund, Offshore Fund I and Offshore Fund II gave notice of their intent to liquidate and the compulsory redemption of all limited partnership interests and shares pursuant to the respective Governing Documents (defined below).

B. Disputes have arisen among Prior Redeemers and Compulsory Redeemers (both, as defined below).

C. After mediation and negotiation, the Crusader Funds have proposed this Plan as a compromise to maximize the recovery for all Consenting Redeemers and avoid the expense and uncertainty of litigation.

Article 1: Defined Terms and Plan Interpretation

Section 1.01. The following expressions shall have the meanings set out below:

Alternative Transaction	"Alternative Transaction" shall have the meaning given in Section 8.02.
Barclays	Barclays Bank PLC and its affiliates.

Barclays Claims	Any and all amounts claimed by Barclays against any Crusader Fund in respect of its investment in the Crusader Funds, including its Redemption Amount, other compensatory and punitive damages, interest, legal fees, and costs of litigation, and including all claims asserted in the proceeding styled HYMF, Inc., and Barclays Bank PLC, v. Highland Capital Management, L.P., et al., Index No. 601027/09, pending in the Supreme Court of the State of New York, County of New York – Civil Term – Part 54.
Barclays Excess Payment	"Barclays Excess Payment" shall have the meaning given in Section 2.02.
Bermuda Court	The Supreme Court of Bermuda
Boards	The Boards of Directors of Offshore Fund I and Offshore Fund II.
Cause	"Cause" shall mean (a) the failure by the Crusader Funds to distribute assets that equal or exceed the amounts stated in the Realisation Schedule for two consecutive quarters without the approval of the Redeemer Committee (provided that amounts in excess of scheduled distributions for prior quarters will be carried over), (b) the engagement by the Crusader Funds in a transaction or other action for which the Redeemer Committee's approval is required and is not obtained or which transaction or other action is not subsequently ratified by the Redeemer Committee or (c) HCMLP is adjudged by a court of competent jurisdiction to have engaged in fraud or wilful misconduct relating to its management of the Crusader Funds.
Claim	"Claim" shall have the meaning given in Section 7.01.
Compulsory Redeemers	Investors of the Crusader Funds who did not timely submit redemption/withdrawal requests for redemption/withdrawal dates that fell on or before 30 June 2008.
Compulsory Redeemers' Distribution	"Compulsory Redeemers' Distribution" shall have the meaning given to such term in Section 4.01(b).
Consent	The written instruments executed by Consenting Redeemers consenting to the Plan and entitled "Consent to Joint Plan of Distribution of the Crusader Funds."

Consenting Redeemers	Redeemers who execute a Consent shall be referred to herein as "Consenting Redeemers" or, as applicable, "Consenting Prior Redeemers" or "Consenting Compulsory Redeemers"; provided that all Offshore Fund II Redeemers are deemed to be Consenting Redeemers for the purposes of the Scheme.
Covered Claims	"Covered Claims" shall have the meaning given to such term in Section 2.03.
Crusader Funds	Collectively, the Master Fund, Onshore Fund, Offshore Fund I and Offshore Fund II.
Data Room	The Crusader Funds' dedicated online Intralinks data room to which all Redeemers have access at https://services.intralinks.com.
Deferred Fee Account	The account established and funded in accordance with Section 6.02.
Deferred Fee Contribution	HCMLP's right to receive payment in respect of Deferred Fees equal to $10 million (as of 30 April 2011).
Deferred Fees	The liability associated with annual performance fees payable by (a) Offshore Fund II to HCMLP, which is recorded as a liability of $42,450,226 on Offshore Fund II's books as of 30 April 2011 (the "Offshore Fund II Deferred Fees"), and (b) Offshore Fund I to HCMLP, which is recorded as a liability of $5,007,818 on Offshore Fund I's books as of 30 April 2011 (the "Offshore Fund I Deferred Fees"). For the avoidance of doubt, Deferred Fees are not, and shall not be deemed to be, shares of Offshore Fund I or Offshore Fund II and HCMLP shall not be deemed to be a Redeemer in respect of such Deferred Fees.
Disputed Plan Claim Notice	"Disputed Plan Claim Notice" shall have the meaning given to such term in Section 5.03.
Distribution Fee	"Distribution Fee" shall have the meaning given to such term in Section 2.01.
Distributions	Amounts to be paid to Redeemers under the Plan, including amounts to be paid to Redeemers under the Scheme (other than out of the Redeemer Trust Account or the Deferred Fee Account).
Effective Date	The first business day on which all conditions to the effectiveness of the Plan and the Scheme have been satisfied or waived.

Excess Cash	Cash and cash equivalents minus current liabilities (excluding Plan Claims) and other appropriate accruals or reserves, each as determined in accordance with GAAP, and minus any other liabilities, escrows, or reserves expressly provided for by the Plan or the Scheme; provided, however, that for the purposes of determining "Excess Cash," except with respect to reserves required by Section 2.02, the Crusader Funds shall only retain cash to the extent such liabilities are reasonably anticipated to be due and payable within 180 days and HCMLP (or a replacement investment manager) does not reasonably believe that the Crusader Funds would be able to realize cash proceeds necessary to satisfy such liabilities prior to the date by which such liabilities are due and payable.
Feeder Funds	The Onshore Fund, Offshore Fund I and Offshore Fund II.
Final Distribution Date	"Final Distribution Date" shall have the meaning given to such term in Section 6.01.
GAAP	Generally accepted accounting principles in the United States.
General Partner	Highland General Partner, L.P., as general partner of the Master Fund and the Onshore Fund.

Governing Documents	With respect to the Master Fund, this term refers to one or more of the following: (i) the Amended and Restated Limited Partnership Agreement of the Master Fund dated as of 10 July 2000, as amended by Amendment No. 1 dated as of 31 December 2007 (collectively, the "Master Fund Partnership Agreement") and (ii) the Amended and Restated Investment Management Agreement between the Master Fund and HCMLP dated as of 1 June 2006. With respect to the Offshore Fund I, this term refers to one or more of the following: (i) the Bye-Laws of Offshore Fund I adopted effective as of 1 May 2005 and (ii) the Amended and Restated Investment Management Agreement between Offshore Fund I and HCMLP dated as of 1 September 2006. With respect to the Offshore Fund II, this term refers to one or more of the following: (i) the Amended and Restated Bye-Laws of Offshore Fund II and (ii) the Third Amended and Restated Investment Management Agreement between Offshore Fund II and HCMLP dated as of 1 September 2006, as amended. With respect to the Onshore Fund, this term refers to one or more of the following: (i) the Fifth Amended and Restated Limited Partnership Agreement of the Onshore Fund dated as of 1 September 2006, as amended by Amendment No. 1 dated as of 31 December 2007 (collectively, the "Onshore Partnership Agreement") and (ii) the Amended and Restated Investment Management Agreement between Onshore Fund and HCMLP dated as of 1 June 2006.
HCMLP	Highland Capital Management, L.P., a Delaware limited partnership.
HCM-Related Parties	The Crusader Funds, the General Partner, and HCMLP, as well as each of their present, future, and former respective officers, directors, employees, affiliates, agents and representatives.
Indemnification Obligations	"Indemnification Obligations" shall have the meaning given to such term in Section 2.03
Larceny Claims	"Larceny Claims" shall have the meaning given to such term in Section 7.01.
Master Fund	Highland Crusader Offshore Partners, L.P.
Mediator	Layn Philips
NexBank	NexBank, SSB

Non-Consenting Redeemers	Redeemers of Offshore Fund I and the Onshore Fund who did not execute a Consent are referred to collectively as "Non-Consenting Redeemers" or, where applicable, "Non-Consenting Prior Redeemers" or "Non-Consenting Compulsory Redeemers."
Offshore Fund I	Highland Crusader Fund, Ltd.
Offshore Fund II	Highland Crusader Fund II, Ltd.
Onshore Fund	Highland Crusader Fund, L.P.
Plan Claim	The claim of a Redeemer to payment of, or based upon, the Redemption Amount relating to the redemption of its shares or withdrawal of its capital account balance, as the case may be, in the Crusader Funds as detailed in Section 4.01.
Prior Redeemers	Investors of the Crusader Funds who timely submitted withdrawal/redemption requests for withdrawal/redemption dates that fell on or before 30 June 2008, and who have not received full payment of their Redemption Amount.
Prior Redeemers' Distribution	"Prior Redeemers' Distribution" shall have the meaning given to such term in Section 4.01(a).
Proxy Form	"Proxy Form" shall have the meaning given to such term in the Scheme.
Realisation Schedule	The schedule attached as Appendix A hereto, as it may be amended with the consent of HCMLP and the Redeemer Committee.
Redeemer Claims	"Redeemer Claims" shall have the meaning given in Section 6.01.
Redeemer Committee	The committee constituted in accordance with Section 2.04, which will represent all Consenting Redeemers with respect to those matters specified in Sections 2.05 and 2.06.
Redeemer Trust Account	The account established and funded in accordance with Section 6.01.

Redeemers	Compulsory Redeemers and Prior Redeemers. Any Redeemer who is both a Prior Redeemer and a Compulsory Redeemer shall be referred to as a Prior Redeemer with respect to its investment that was included in its timely submitted withdrawal/redemption request(s) for withdrawal/redemption date(s) on or before 30 June 2008, and a Compulsory Redeemer with respect to the remainder of its investment.
Redemption Amount	With respect to each Redeemer, the amount set forth on the Consent and/or Proxy Form (for Offshore Fund II Redeemers), which is calculated as the net asset value or capital account balance (as applicable) of a Redeemer's investment as of the date on which the withdrawal/redemption related to such investment became effective (which, for the sake of clarity, for Compulsory Redeemers shall be 15 November 2008), calculated in accordance with the Governing Documents, adjusted by deducting the payment(s), if any, made to such Redeemer through 15 November 2008. For Redeemers that may be subject to redemption/withdrawal fees, the Crusader Funds shall waive any such redemption/withdrawal fees and the Redemption Amount for such Redeemers shall not be reduced by any such redemption/withdrawal fees.
Scheme	The Scheme of Arrangement between Offshore Fund II and its Scheme Creditors filed with the Bermuda Court.
U.S. or United States	United States of America

Section 1.02. Clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of the Plan.

Section 1.03. In the Plan, unless the context otherwise requires,

(a) references to parts and clauses are to be construed as references to the parts and clauses of the Plan and references to Appendices are to be construed as references to the Appendices to the Plan unless otherwise stated;

(b) references to (and to any provision of) the Plan shall be construed as references to the Plan or that provision as in force for the time being and as amended in accordance with its terms;

(c) words importing the plural shall include the singular and vice versa and the masculine, feminine or neuter gender shall each include the other genders;

(d) references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency thereof;

(e) references to any enactment or statutory instrument shall be to such enactment or statutory instrument as amended and in force on the date of this document; and

(f) references to monetary units, such as "dollars" or "$," are to U.S. currency, unless otherwise expressed herein.

Article 2: Management of Crusader Funds

Section 2.01. Subject to Sections 2.05 and 2.06, HCMLP will continue to manage the investments of the Crusader Funds pursuant to the existing investment management agreements with the Crusader Funds, which will continue to apply except to the extent that their terms are inconsistent with the Plan or the Scheme, including that HCMLP's services as investment manager may be terminated by the Redeemer Committee under Section 2.05(h). For so long as HCMLP serves as investment manager of the Crusader Funds, HCMLP will receive fees in cash in the amount of (a) 25 basis points (per annum) calculated based on the net distributable assets of each of the Onshore Fund, Offshore Fund I and Offshore Fund II (in accordance with the Scheme) at the beginning of each calendar month, to be paid monthly in arrears out of the assets, respectively, of the Onshore Fund, Offshore Fund I and Offshore Fund II and (b) provided that assets equal to or in excess of the amount scheduled in the Realisation Schedule have been distributed to Redeemers during such quarter (with amounts distributed to Redeemers in excess of scheduled distributions for prior quarters being carried over), 125 basis points calculated based on all amounts actually Distributed to Redeemers during each quarter following the Effective Date (which shall be paid on a Redeemer by Redeemer basis by deduction from amounts distributed to such Redeemers during the quarter (the "Distribution Fee"). In the event that HCMLP is removed as investment manager by the Redeemer Committee pursuant to clauses (b) or (c) of the definition of "Cause," HCMLP shall not be entitled to receive any fees described in this Section 2.01 that are accrued as of the termination date, and shall not be entitled to any such future fees. For the avoidance of doubt, HCMLP shall not be entitled to any future fees described in Section 2.01 after it has been removed as investment manager by the Redeemer Committee.

Section 2.02. HCMLP shall continue to be entitled to receive payment in respect of the

Deferred Fees from the applicable Feeder Fund; provided, however, that (a) with respect to the Offshore Fund I Deferred Fees, (i) HCMLP shall not be entitled to receive payment for such fees until the complete liquidation of the Crusader Funds' assets (except for that portion of the Crusader Funds' assets equal to the amount payable immediately prior to complete liquidation with respect to the Deferred Fees) and (ii) the amount payable with respect to such fees will be equal to (A) $5,007,818 multiplied by (B) a fraction (the "Distribution Percentage") equal to (I) the amount of assets (in U.S. dollars) that are Distributed to Redeemers prior to the dissolution of the Crusader Funds divided by (II) $1,634,991,092, (b) with respect to the Offshore Fund II Deferred Fees, HCMLP's entitlement to such Deferred Fees shall be governed by the Scheme and (c) to the extent Barclays does not execute a Consent to the Plan and in respect of the Barclays Claims either (x) enters into a settlement agreement or (y) obtains a final, binding non-appealable judgment against any or all of the Crusader Funds, in either case for an amount that is in excess of the amount that Barclays would receive as a Consenting Compulsory Redeemer (the "Barclays Excess Payment"), HCMLP shall assign to the Onshore Fund the right to receive an amount of Deferred Fees that are then equal to the amount of the Barclays Excess Payment (provided that HCM-Related Parties shall not be entitled to receive any such amounts). If the amount of the Barclays Excess Payment exceeds the amount of the Deferred Fees held by HCMLP, HCMLP shall indemnify and hold harmless the Crusader Funds with respect to such excess amount~~have no further liability or obligations with respect to the Barclays Excess Payment~~. Until the Deferred Fees have been forfeited or paid, the Master Fund shall distribute to each applicable Feeder Fund amounts, and such Feeder Fund shall fully reserve for such fees in cash in an amount, equal to the Distribution Percentage calculated as of the date of each Distribution multiplied by the aggregate amount of its applicable portion of such fees. Cash held in reserve for such Deferred Fees shall be maintained in an interest bearing account, with all interest accruing thereon being retained by the applicable Feeder Fund for the benefit of its Redeemers.

Section 2.03. Except as set forth above in Section 2.01, the Crusader Funds shall retain liability to pay out-of-pocket costs of the administration of the Crusader Funds, including accounting and audit expenses, legal fees, and costs associated with reporting. Notwithstanding the foregoing, the costs of responding to, defending, settling or satisfying any claims asserted by Non-Consenting Redeemers of a Crusader Fund or an HCM-Related Party shall be paid exclusively by the Crusader Fund of which the claimant is a Redeemer or, in respect of a claim asserted by an HCM-Related Party, the Crusader Fund to which the claim relates and, for the avoidance of doubt, to the extent that one Feeder Fund is adjudged to be liable for a claim asserted by a Non-Consenting Redeemer of another Feeder Fund, such second Feeder Fund shall indemnify and hold harmless the first Feeder Fund for such liability. During its service as investment manager, HCMLP (and any successor investment manager) will cause the Crusader Funds to maintain reserves for future liabilities in accordance with GAAP and such other reserves as may be expressly contemplated by the Plan and the Scheme. Each Crusader Fund shall, to the fullest extent permitted by applicable law, indemnify and hold harmless ("Indemnification Obligations") each other HCM-Related Party against any losses, claims, damages, liabilities, costs or expenses to which such HCM-Related Party may become subject in connection with any claim, investigation or suit threatened or asserted

based on such HCM-Related Party's position with respect to or role in connection with the Crusader Funds or HCMLP in respect to its role in connection with the Crusader Funds ("Covered Claims"), unless a court of competent jurisdiction, in a judgment that has become final and that is no longer subject to appeal or review, determines that any such loss, claim, damage, liability, cost or expense is primarily attributable to such HCM-Related Party's willful misconduct or gross negligence. The Indemnification Obligations shall inure to the benefit of the heirs, executors, successors and assigns of each HCM-Related Party. If any HCM-Related Party becomes involved in any capacity in any Covered Claim, the responsible Crusader Fund(s) shall pay (as they are incurred) the HCM-Related Party's legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided that such HCM-Related Party must promptly repay to the applicable Crusader Fund the amount of any such expenses paid if it is ultimately determined by a court of competent jurisdiction, in a judgment that has become final and that is no longer subject to appeal or review, that any loss, claim, damage, liability, cost or expense with respect to the underlying claims was primarily attributable to such HCM-Related Party's willful misconduct or gross negligence. In any suit brought to enforce an Indemnification Obligation or to recover an advancement of expenses, the burden of proving that the HCM-Related Party or other person claiming a right to indemnification is not entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Crusader Fund (or any person or entity acting derivatively or otherwise on behalf of the Crusader Fund) from which indemnification is sought. Each HCM-Related Party is the intended third party beneficiary of this Section 2.03 with standing to enforce such provision.

Section 2.04. The Redeemer Committee shall be a ten-member committee which will be composed of five representatives of the Consenting Prior Redeemers (to be selected in accordance with the voting provisions of Section 2.11) and five representatives of the Consenting Compulsory Redeemers (to be selected in accordance with the voting provisions of Section 2.11), which will represent all Consenting Redeemers with respect to those matters specified in Sections 2.05 and 2.06. Redeemer Committee members may be individuals or entities (acting through designated representatives).

Section 2.05. The Redeemer Committee will have, subject to the execution and delivery of customary and reasonable confidentiality agreements:

a) reasonable access to all books, records and other information related to the current and past performance, management, asset valuation and liquidation (including costs and expenses) of the Crusader Funds including, but not limited to, any such information in the possession, custody or control of the Crusader Funds or HCMLP;

b) the right to obtain monthly reports from HCMLP on the Crusader Funds' performance and management and Realisation Schedule progress and notification of any action that is proposed to be taken by either of the Boards or the general partner of the Onshore Fund prior to such action;

c) the right to approve or disapprove any cost or expense of the Crusader Funds, including any amounts to be paid in settlement of litigation (other than as

described in clause (g) below), in excess of $100,000 (other than with respect to or for amounts payable in accordance with clauses 1.5.2, 4.4 and 5.2 of the Scheme, Sections 2.01, 2.02, 2.03 and 6.02 of the Plan and, with respect to amounts payable arising prior to the Effective Date, clause 6.3.3 of the Scheme and Section 7.02 of the Plan);

d) the right to engage, at the expense of the Crusader Funds, third party professionals to assist the Redeemer Committee with discharging its oversight responsibilities (each member of the Redeemer Committee may also engage separate third-party professionals to advise them in respect of such member's responsibilities, provided that, absent approval of the Redeemer Committee, such member shall be solely responsible for any fees and expenses of any such third-party professionals such member engages);

e) the authority to approve or disapprove the engagement of professional advisers to the Crusader Funds as described below; provided that the Crusader Funds shall continue to have administration and auditing services performed by JP Morgan Hedge Fund Services and PricewaterhouseCoopers, respectively, unless any change in such service providers shall be required or approved by the Redeemer Committee; provided, further, that any such engagement shall be deemed to be approved if not objected to in writing within 30 days of submission to the Redeemer Committee;

f) the authority to approve or disapprove the assignment or transfer of interests in the Feeder Funds or Plan Claims; provided that such proposed assignment or transfer shall be deemed to be rejected if not affirmatively approved in writing within 30 days of submission to the Redeemer Committee;

g) the authority to approve or disapprove any settlement by the Crusader Funds with Barclays that would be in excess of what Barclays would receive as a Consenting Compulsory Redeemer (provided, however, that with respect to this matter, the approval of a majority of the members of the Redeemer Committee that are Redeemers of the Onshore Fund shall be required);

h) the authority to remove HCMLP as investment manager upon 30 days' written notice with or without Cause and upon such removal, to require that HCMLP transfer any general partnership interest or any other voting control or delegate its general partnership responsibilities, or take such other actions as are necessary to transfer control, in each case as directed by the Redeemer Committee;

i) the authority to remove any member of the Redeemer Committee for any reason with the approval of at least 7 members of the Redeemer Committee and the authority to fill any vacancy on the Redeemer Committee (provided that any vacancy in a position appointed by Consenting Prior Redeemers will be filled by the remaining appointees of Consenting Prior Redeemers and any vacancy in a position appointed by Consenting Compulsory Redeemers will be filled by the remaining appointees of Consenting Compulsory Redeemers); and

j) the right to be consulted regarding any proposed sale of Crusader Funds' assets (or transaction involving) (in a single transaction or series of related transactions) in an amount equal to or greater than $10 million reasonably in advance of any such proposed sale.

Section 2.06. Unless otherwise approved in advance by the Redeemer Committee, (a) all transactions between the Crusader Funds and any other HCM-Related Party, while it serves as investment manager of the Crusader Funds, including any "cross trade" between the Crusader Funds and any other account managed or advised by HCMLP, are prohibited, (b) all proceeds received in respect of the realization of the Crusader Funds' investments (including all interest and dividends related to such investments prior to their realization) shall be held in cash and short-term instruments pending Distribution and, except for those investments, the Crusader Funds shall not be permitted to make any future investments and (c) Distributions (and distributions from the Master Fund) shall only be made in cash.

Section 2.07. The approval of the Redeemer Committee with respect to any matter submitted for approval under Sections 2.05 or 2.06 shall not be unreasonably withheld.

Section 2.08. Meetings of the Redeemer Committee may be held at such places and times (including by telephone or other electronic media) as a majority of the members shall determine. Except as otherwise specified herein, any decisions made or actions taken by a majority of members present at any meeting of the Redeemer Committee shall be deemed to be the decision or action of the Redeemer Committee. Any action required or permitted to be taken at any meeting of the Redeemer Committee may be taken without a meeting if a majority of the members of the Redeemer Committee entitled to vote on the matter consent to the action in writing. Such consents shall be treated for all purposes as a vote at a meeting.

Section 2.09. In the event of a dispute between the Crusader Funds or the Redeemer Committee and HCMLP, any HCM-Related Party, the General Partner or the Boards, including relating to the matters in Sections 2.05 or 2.06, the applicable parties' representatives shall confer in good faith in an attempt to resolve the dispute within 48 hours of a request by either side. If they cannot reach a resolution through such good-faith effort, either side may engage the Mediator (with the expense to be shared 50% by the Crusader Funds and 50% by HCMLP) or, if he is unavailable, another mutually agreeable third party to mediate the dispute. If the dispute cannot be resolved by mediation it will be referred to arbitration in accordance with Section 9.03.

Section 2.10. Each member of the Redeemer Committee (and any designated representative thereof) shall be held harmless by the Consenting Redeemers and the HCM-Related Parties and indemnified out of the funds of the Crusader Funds against all (a) civil liabilities, loss, damage or expense incurred or suffered by such member or its representative for any acts or omissions in the performance of their duties on the Redeemer Committee if such member acted honestly and in good faith and (b) liabilities incurred by such member or its representative in defending any proceedings, whether

civil or criminal, for any acts or omissions in the performance of their duties if they acted honestly and in good faith and, in the case of criminal proceedings, that such member or its representative had no cause to believe that their conduct was criminal.

Section 2.11. Within 7 days after the Effective Date, the Crusader Funds shall solicit nominations in relation to the election of members of the Redeemer Committee. Only Consenting Redeemers are entitled to vote in the elections. The Crusader Funds shall solicit nominations from the Consenting Prior Redeemers and Consenting Compulsory Redeemers, respectively. Nomination forms and the timetable for the elections will be delivered to Redeemers and will be available in the Data Room. Elections to the Redeemer Committee shall be held no later than 30 days after the Effective Date. A Redeemer may self-nominate. Nominations must be submitted to the Crusader Funds. The list of nominees will be published in the Data Room. No more than two candidates per Consenting Redeemer or group of Consenting Redeemers, which shall include Consenting Redeemers that are affiliated or that share a common investment manager, may be nominated as either Consenting Prior Redeemer representatives on the Redeemer Committee or Consenting Compulsory Redeemer representatives on the Redeemer Committee. Ballots will be available on the Data Room or by request by email to HighlandCrusaderFund@hcmlp.com. Each ballot shall list the names of each candidate together with the Redemption Amount associated with such candidate in order from top to bottom (largest to smallest). The ballot may also be accompanied by an information sheet that presents background information provided by the candidate. Redeemers may cast a number of votes equal to the number of committee slots to be filled as follows:

a) Consenting Prior Redeemers will have five votes in relation to the election of the five Consenting Prior Redeemer representatives on the Redeemer Committee; and

b) Consenting Compulsory Redeemers will have five votes in relation to the election of the five Consenting Compulsory Redeemer representatives on the Redeemer Committee.

The value of each vote will be the Redeemer's Redemption Amount divided by the number of votes cast by the Redeemer. A Redeemer may cast all or any number of its votes for up to five candidates. (Casting multiple votes for a candidate increases the aggregate Redemption Amount voting in favor of that candidate.) If more votes are cast than are permitted, the first votes cast from the beginning to end of the ballot list will be counted. Redeemers who have claims as both Consenting Prior Redeemers and Consenting Compulsory Redeemers may vote in the election to the extent of the Redemption Amount in respect of each class, but otherwise Redeemers may only vote in elections to select representatives from their class of claims. Candidates will be appointed to the Redeemer Committee based on total value of votes received. The candidate receiving the highest aggregated Redemption Amounts based on the votes cast will be appointed to the first seat, the candidate receiving the second highest amount will be appointed to the second seat and so on until all of the respective seats are filled. HCMLP and its affiliates shall not be eligible to participate in the vote for Redeemer Committee members or to serve on the Redeemer Committee. The result of the voting in respect of the Redeemer Committee will be published in the Data Room. All disputes

related to the nomination or election of candidates to the Redeemer Committee will be finally determined by the Mediator.

Article 3: Distribution to Feeder Funds

Section 3.01. As investments in the Crusader Funds are realized (including all interest and dividends related to such investments prior to their realization) and money is available for Distribution or if any other asset of the Crusader Funds is distributed "in kind" from the Master Fund to the Feeder Funds, subject to Section 2.06, 100% of the Excess Cash and any such assets shall be distributed by the Master Fund to the Feeder Funds in accordance with Section 4.01 (provided, however, that amounts in, and rights to, the Redeemer Trust Account and the Deferred Fee Account shall not be considered assets of the Crusader Funds for this purpose).

Article 4: Distribution by Feeder Funds

Section 4.01. Following distributions by the Master Fund, 100% of Excess Cash will be Distributed by each Feeder Fund as follows:

a) Prior Redeemers shall be entitled to 60% in aggregate of the total distributions to be made by the Master Fund (the "Prior Redeemers' Distribution"). Each such Prior Redeemer shall be entitled to a Plan Claim equivalent to that Prior Redeemer's pro rata share of the Prior Redeemers' Distribution, based on that Prior Redeemer's Redemption Amount relative to the total of the Redemption Amounts of all Prior Redeemers.

b) The Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions to be made by the Master Fund (the "Compulsory Redeemers' Distribution"). Each such Compulsory Redeemer shall be entitled to a Plan Claim equivalent to that Compulsory Redeemer's pro rata share of the Compulsory Redeemers' Distribution, based on that Compulsory Redeemer's Redemption Amount relative to the total of the Redemption Amounts of all Compulsory Redeemers; provided, however, that the portion of such amounts in excess of the Redemption Amounts otherwise attributable to Non-Consenting Compulsory Redeemers shall be contributed to the Redeemer Trust Account and shall not be distributed to Non-Consenting Compulsory Redeemers.

Section 4.02. There shall be no accrual of interest on Redemption Amounts. Distributions of Excess Cash will be made monthly. The Crusader Funds may withhold any Distribution if a Redeemer has failed to provide (a) any requested tax identification documentation or (b) confirmation of wire or other payment instructions.

Section 4.03. Distributions to Consenting Redeemers shall be made by check or wire at the addresses or pursuant to the instructions set forth on (a) the Consents/Proxies executed and delivered by Consenting Redeemers, (b) any written notices of address changes delivered to the Crusader Funds after the date of any Consent/Proxy Form or (c) the address of the Redeemer in the Crusader Funds' books and records or any written notice of address delivered by a Redeemer who does not submit a Consent or Proxy

Form. If a Distribution is returned as undeliverable, no further Distributions to such Consenting Redeemer shall be made unless and until the Crusader Funds are notified of such Redeemer's current address, at which time all missed Distributions shall be made without interest. Amounts in respect of undeliverable Distributions shall be returned to the applicable Feeder Fund until claimed. All claims for undeliverable distributions must be made on or before 360 days after the relevant Distribution date, after which date, unless otherwise approved by the applicable Feeder Fund, all unclaimed property shall revert to the applicable Feeder Fund, free of any restrictions thereon, and the claim of any Consenting Redeemer or successor to such Consenting Redeemer with respect to an undeliverable Distribution shall be discharged and forever barred, notwithstanding any Bermudian, U.S. federal, state escheat or other laws to the contrary. Nothing in this Plan shall require the Crusader Funds to attempt to locate any Consenting Redeemer. In connection with this Plan and all Distributions to be made hereunder, the Crusader Funds shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any Bermudian, U.S. federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Crusader Funds are hereby authorized to take any and all actions that may be necessary or appropriate to comply with any such requirements. Distributions made pursuant to this Plan shall be in U.S. funds by check or wire transfer, or such other commercially reasonable manner as the applicable Feeder Fund shall determine. If the amount of any Distribution to a Redeemer is less than $1,000, the applicable Feeder Fund shall withhold such payment until the amount equals or exceeds $1,000, except with respect to final Distributions.

Section 4.04. To the extent that any Redeemer threatens or asserts a Claim in contravention of the Plan including, without limitation, a Claim released pursuant to Article 7 of the Plan, the Crusader Funds shall withhold any Distribution to such Redeemer pending a final determination of such Claim or any claim for or right to indemnification under Article 7 of the Plan. In addition to and without limiting in any way the releases in Article 7 of the Plan, the entitlement of a Redeemer to a Distribution shall discharge the corresponding Claim in full and thereupon the Crusader Funds shall have no further liability in respect thereof.

Section 4.05. The Plan shall become effective as soon as:

a) the conditions for effectiveness of the Scheme have been met; and

b) the Plan has been adopted by each of the Master Fund, Offshore Fund I and Onshore Fund pursuant to receipt of Consents deemed sufficient by each such fund to constitute adoption of the Plan.

Not more than 5 days after the Effective Date, the Crusader Funds shall post to the Data Room a notice that the Plan has become effective.

Article 5: Plan Claims

Section 5.01. Each Consenting Redeemer will be entitled to pro rata Distributions in accordance with Section 4.01 in respect of its Plan Claim, which shall be the Redemption Amount stated by the Crusader Funds on its Consent. Consenting Redeemers are not required to submit a claim in order to receive their pro rata Distribution.

Section 5.02. Any dispute raised by the timely service of a Disputed Plan Claim Notice (defined below) shall be limited to whether the Redemption Amount is calculated in accordance with the terms of this Plan.

Section 5.03. If a Redeemer disputes the calculation of its Redemption Amount made in accordance with the terms of this Plan as determined by the Crusader Funds and stated on its Consent, it shall give notice to the Crusader Funds in writing (a "Disputed Plan Claim Notice") within 14 days of the notice of the Effective Date of the Plan. A Redeemer that has executed and delivered a Consent may not dispute its Redemption Amount. The Crusader Funds may agree to amend amounts stated on Consent Form if such forms were incorrect when issued. The Crusader Funds and the Redeemer shall confer in good faith in an attempt to resolve the dispute within 10 days of the submission of the Disputed Plan Claim Notice. If they cannot reach a resolution through such good faith effort, either side may engage the Mediator at the expense of the Crusader Funds or, if he is unavailable, another mutually agreeable third party to mediate the dispute. If the dispute cannot be resolved by mediation it will be referred to arbitration in accordance with Section 9.03.

Section 5.04. The rights of Redeemers under the Plan shall be assignable, but (i) the assignment shall be subject to any existing rights of set-off, and (ii) the Crusader Funds shall not be bound by any assignment unless and until notice in writing of the assignment is given to the Crusader Funds. No assignment or transfer of a Plan Claim after the Effective Date shall be recognized by the Crusader Funds for the purpose of determining entitlements under the Plan, provided that the Crusader Funds may, in their sole discretion and subject to the production of such evidence in relation to such transfer or assignment as the Crusader Funds may require and to any other terms and conditions which the Crusader Funds may consider necessary or desirable, agree to recognise such assignment or transfer for the purposes of determining entitlements under the Plan. No assignment or transfer of a Plan Claim after the Effective Date may be purchased by HCMLP or its affiliates without such Plan Claim first being offered to, and rejected by, the Crusader Funds.

Article 6: Trust Accounts

Section 6.01. In partial consideration for the releases described in Article 7, on the Effective Date HCMLP shall contribute $6,030,000 in cash to the Master Fund, which in turn will contribute such amount (collectively) to the Feeder Funds to establish and fund the Redeemer Trust Account, which will be administered by HCMLP. Upon the Effective Date, HCMLP will immediately distribute from the Redeemer Trust Account to (a) each Consenting Compulsory Redeemer (excluding any HCM-Related Party Consenting Compulsory Redeemer) its pro rata portion of $5 million (which shall be determined based upon each Consenting Compulsory Redeemer's Redemption Amount as compared to the Redemption Amount of all Compulsory Redeemers) and (b) each Consenting Prior Redeemer (excluding any HCM-Related Party Consenting Compulsory Redeemer) its pro rata portion of $1,030,000 (which shall be determined based upon each Consenting Prior Redeemer's Redemption Amount as compared to the Redemption Amount of all Consenting Prior Redeemers). Amounts (x) contributed to the Redeemer Trust Account as provided in Section 4.02 and (y) in the Redeemer Trust Account after the distribution of the amounts referred to in (a) and (b) above, shall be reserved and used to pay all costs of HCM-Related Parties and the Redeemer Committee to defend, respond to, settle and satisfy any Claims by Crusader Fund Redeemers excluding Plan Claims ("Redeemer Claims") and shall be used to defend, respond to, settle and satisfy any such Redeemer Claims in advance of any amounts otherwise properly available for such purposes out of the assets of the Crusader Funds; provided, however, that to the extent in respect of the Barclays Claims Barclays (x) enters into a settlement agreement or (y) obtains a final, binding non-appealable judgment against any or all of the Crusader Funds, in either case, in satisfaction of the Barclays Claims and for an amount less than the amount that Barclays would receive as a Consenting Compulsory Redeemer, HCMLP shall be entitled to an amount from the Redeemer Trust Account equal to such difference less amounts that have been paid in defense of such claim, payable from amounts otherwise distributable to Consenting Compulsory Redeemers of the Onshore Fund. Within 30 days after (i) all Redeemer Claims have been resolved or dismissed with prejudice, or (ii) the sixth anniversary of the Effective Date, provided that no suits asserting Redeemer Claims are then pending, whichever is earlier (the "Final Distribution Date"), any amounts remaining in the Redeemer Trust Account from amounts funded pursuant to this Section 6.01 and Section 4.01(b)(1) shall be distributed 100% to Consenting Compulsory Redeemers (pro rata based on their relative Redemption Amounts).

Section 6.02. In partial consideration for the releases described in Article 7, HCMLP shall establish and administer the "Deferred Fee Account" on the Effective Date by allocating the right to potentially receive Deferred Fees in an amount equal to the Deferred Fee Contribution to such Deferred Fee Account. Amounts payable in respect of the Deferred Fee Trust Account will be distributed as follows:

a) In the event that the Feeder Funds make aggregate Distributions of at least $1.7 billion prior to the forty-third (43rd) month following the Effective Date, HCMLP shall receive payment in respect of the Deferred Fee Account in accordance with Section 2.02.

b) Subject to Section 6.02(c), if prior to the forty-third (43rd) month following the Effective Date, the Feeder Funds have not made aggregate Distributions equal to or in excess of $1.7 billion, then HCMLP will cause the Feeder Funds to distribute the right to receive payment in respect of the assets in the Deferred Fee Account in accordance with Section 2.02 of the Plan (except that with respect to the assets in the Deferred Fee Account, amounts will be payable, rather than reserved, in accordance with Section 2.02 of the Plan), 100% to Consenting Compulsory Redeemers (pro rata based on their relative Redemption Amounts).

c) Notwithstanding Section 6.02(b), if HCMLP's services as investment manager of the Crusader Funds have been terminated by the Redeemer Committee other than for Cause prior to the third anniversary of the Effective Date, HCMLP shall receive payment in respect of the Deferred Fee Account in accordance with Section 2.02.

Article 7: Mutual Releases and Indemnification

Section 7.01. Upon the Effective Date, each of the Consenting Redeemers, for themselves and on behalf of any of their respective officers, directors, shareholders, partners, members, employees, affiliates, investors, agents and representatives and any other person or entity entitled to assert a Claim (defined below) by, through, under, or on behalf of any Consenting Redeemer, hereby releases each of the HCM-Related Parties and each of the other Consenting Redeemers, from any and all accounts, actions, agreements, causes of action, claims, contracts, covenants, controversies, damages, debts, demands, executions, expenses, judgments, liabilities, obligations, omissions, promises, representations, and rights to payment, and all other liabilities of every kind, nature and description whatsoever, liquidated and unliquidated, fixed and contingent, matured and unmatured, disputed and undisputed, legal and equitable, state and federal, secured and unsecured, accrued and unaccrued, known and unknown, choate and inchoate (each, a "Claim"), which each Consenting Redeemer has, may have or ever had against any or all of the HCM-Related Parties and the other Consenting Redeemers from the beginning of the world to the Effective Date related to each of the Crusader Funds, including without limitation its administration and wind-down; provided, however, that such release shall not operate to release any claims arising from this Plan or based on larceny within the meaning of Section 155.05 of the New York Penal Code ("Larceny Claims"), provided that such exception shall not apply to Larceny Claims within the scope of knowledge of the releasing party as of the Effective Date. The benefit of the release in this Section 7.01, as it related to the HCM-Related Parties, is held in trust by the Crusader Funds for the HCM-Related Parties, and the Crusader Funds hereby assign the benefit of the release in this Section 7.01 in their favor.

Section 7.02. Upon the Effective Date, the HCM-Related Parties, for themselves and on behalf of any successors and assigns and any other person or entity entitled to assert a Claim by, through, under, or on behalf of such HCM-Related Party, hereby release each other ~~of the~~ HCM-Related Party (except for intra-HCM-Related Party fees or accounts that are not subject to indemnification by any Crusader Fund, each of the Crusader Funds (except for intra-Crusader Funds claims) and each of the Consenting Redeemers

from any and all Claims, which each HCM-Related Party has, may have or ever had against any or all of them from the beginning of the world to the Effective Date related to each of the Crusader Funds and its administration and wind-down; provided, however, that nothing in this clause shall operate to release or in any way limit any claims that any HCM-Related Party may have:

a) for defense or indemnification arising from claims asserted against any of them pursuant to the Governing Documents or Sections 2.03 and 7.04;

b) for reimbursement of out of pocket expenses actually incurred to third-parties in connection with administration of the Crusader Funds;

c) with respect to NexBank, in its capacity as agent in respect of investments by the Crusader Funds;

d) as a Crusader Fund Redeemer (as that term is defined in the Scheme) and Redeemer under the Scheme and the Plan, respectively, (as applicable); and

e) for fees payable in accordance with clauses 1.5.2, 4.4 and 5.2 of the Scheme and Sections 2.01, 2.02 and 6.02 of the Plan.

Section 7.03. Upon the Effective Date, the Master Fund, the Onshore Fund, Offshore Fund I, and Offshore Fund II, for themselves and on behalf of their respective officers, directors, shareholders, partners, members, employees, affiliates, investors, agents and representatives, hereby release each of the other HCM-Related Parties and the Consenting Redeemers from any and all Claims, which each of them has, may have or ever had against any or all of the HCM-Related Parties and the Consenting Redeemers from the beginning of the world to the Effective Date related the each of the Crusader Funds and their administration and wind-down; provided, however, that such release shall not be effective as to any such Consenting Redeemer that takes any action in contravention of the Plan.

Section 7.04. No party providing a release pursuant to this Article 7 shall assert any claim released pursuant to this Article 7 or otherwise in contravention of the Plan. Each party providing a release pursuant to this Article 7, shall indemnify and hold harmless each party intended to receive the benefit of such release from and against any liability, expense, including reasonable attorneys' fees and costs, or other damages arising from the assertion by such releasing party, or any assignee or successor of such releasing party, of any claim released by that party pursuant to this Article 7 or otherwise in contravention of the Plan.

Article 8: Representations and Consents

Section 8.01. Each Consenting Redeemer acknowledges, represents and warrants that (a) it has received, read carefully, and understands this Plan, (b) it has had an opportunity to consult with its own attorneys, accountants, investment advisors, and other professionals regarding this Plan, (c) it has all requisite power, authority and capacity to

execute and deliver its Consent to this Plan, (d) it has had received and reviewed all information that it deems necessary to make an informed decision regarding this Plan, (e) it has had sufficient opportunity to review documents maintained by, ask questions of, and receive answers from the HCM-Related Parties concerning the Crusader Funds, the assets of the Crusader Funds, the Governing Documents, the claims of Consenting Redeemers and Non-Consenting Redeemers, and all other matters related in any way to this Plan, (f) it has not been induced to consent to this Plan by any of HCM-Related Parties, and (g) its recovery under this Plan is inherently uncertain, and no representations have been made to such Consenting Redeemer whatsoever regarding the likelihood of any recovery with respect thereto.

Section 8.02. Each Consenting Redeemer agrees to support and (to the extent necessary) vote in favor of any future sale, merger, consolidation, plan of liquidation, plan of reorganization, distribution of assets, scheme of arrangement under Bermuda law, or other similar proceeding or transaction proposed by the HCM-Related Parties with respect to the Master Fund, the Onshore Fund or the Offshore Fund I ("Alternative Transaction"); provided that the Alternative Transaction will result in the Consenting Redeemer receiving materially the same benefit as it would under this Plan.

Section 8.03. Each Consenting Redeemer agrees to promptly execute and deliver any agreements, assurances, consents, waivers, proxies, votes or instruments necessary to effectuate the terms of this Plan or an Alternative Transaction that provides materially the same benefit to such Consenting Redeemer as it would under this Plan.

Article 9: Miscellaneous

Section 9.01. If the transactions contemplated herein are not consummated, nothing shall be construed herein as a waiver by any party of any or all of such party's rights and the parties expressly reserve any and all of their respective rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Plan and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms. Nothing herein shall be deemed to create a joint venture or partnership or similar relationship among the parties.

Section 9.02. Except as set forth above, each of the Crusader Funds retains obligations it has to pay out-of-pocket costs of the administration of the respective Crusader Fund, including accounting and audit expenses, legal fees, and costs associated with reporting.

Section 9.03. Any dispute referred to in Sections 2.09, 5.03 or 6.02 above (other than a dispute regarding the existence of "Cause" or the payment or repayment in respect of Indemnification Obligations), which cannot be resolved through mediation referenced in Sections 2.09 or 5.03 or 6.02 above, respectively, shall be subject to and decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law. Arbitration shall be conducted in New York, New York.

Section 9.04. This Plan and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of law rules thereof.

Section 9.05. This Plan constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof. Except as otherwise provided herein, this Plan supersedes all prior written and oral agreements, and no representations, warranties, statements, promises, or conditions not contained in this Plan shall be binding or have any force or effect whatsoever. In the event of a conflict between this Plan and any of the Governing Documents, the provisions of this Plan shall control. In the event of a conflict between this Plan and the Scheme, the Scheme shall control as to Redeemers of Offshore Fund II. The Governing Documents shall be deemed amended to conform to the provisions of the Plan and to authorize each respective HCM-Related Party to adopt this Plan notwithstanding any potential conflict of interest posed thereby, including without limitation by Sections 2.01 and Article 6 and each Consenting Redeemer hereby consents to the actions and transactions contemplated by the Plan (including, without limitation, those contemplated by Section 2.01 and Article 6), the General Partner's execution of the Plan on behalf of the Onshore Fund and the Master Fund, and the amendment of the Onshore Partnership Agreement and the Master Fund Partnership Agreement to add, respectively, Section 4.9 and 4.6, as follows:

> "**4.9 Plan of Distribution**
>
> Notwithstanding anything to the contrary contained herein, the General Partner is authorized to execute on behalf of the Partnership that certain Joint Plan of Distribution of the Crusader Funds and the transactions entered into, and the actions to be taken by, the Partnership contained therein are hereby approved."
>
> "**4.6 Plan of Distribution**
>
> Notwithstanding anything to the contrary contained herein, the General Partner is authorized to execute on behalf of the Partnership that certain Joint Plan of Distribution of the Crusader Funds and the transactions to be entered into, and the actions to be taken by, the Partnership contained therein are hereby approved."

For the avoidance of doubt, each Consent shall constitute consent to and approval of the foregoing actions and amendment of the Governing Documents.

Section 9.06. If any provision of this Plan is held to be invalid or unenforceable, then such provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in the Plan but without invalidating any of the remaining provisions of the Plan; except that if the provision of the Plan which is found to be invalid or unenforceable is material to the performance of the obligations or the receipt of rights or remedies under the Plan, then the consent of the Crusader Funds, the

Redeemer Committee and any affected HCM-Related Party must be obtained in order for this clause to have effect.

Section 9.07. All notices and other communications provided for in the Plan shall be in writing and posted, faxed, emailed or delivered to the applicable party at its address as described herein.

APPENDIX A

Realisation Schedule

Months 1-3	$300,000,000
Months 4-6	$100,000,000
Months 7-9	$100,000,000
Months 10-12	$200,000,000
Months 13-15	$100,000,000
Months 16-18	$100,000,000
Months 19-21	$100,000,000
Months 22-24	$200,000,000
Months 25-27	$230,000,000
Months 28-30	$260,000,000
Months 31-36	$151,808,000

EXHIBIT B

Realisation Schedule

Months 1-3	$300,000,000
Months 4-6	$100,000,000
Months 6-9	$100,000,000
Months 9-12	$200,000,000
Months 12-15	$100,000,000
Months 15-18	$100,000,000
Months 18-21	$100,000,000
Months 21-24	$200,000,000
Months 24-27	$230,000,000
Months 27-30	$260,000,000
Months 30-36	$151,808,000

APPENDIX C

Notice of Scheme Meetings

IN THE SUPREME COURT OF BERMUDA

CIVL JURISDICTION
COMMERCIAL COURT
2011: No. 51

HIGHLAND CRUSADER FUND II, LTD.

(THE "COMPANY")

NOTICE OF MEETINGS ORDERED BY THE SUPREME COURT OF BERMUDA UNDER SECTION 99 OF THE COMPANIES ACT 1981

NOTICE IS HEREBY GIVEN that on an application by the Company, an order was made on 9 June 2011 that separate meetings of the two classes of Scheme Creditors (as defined in the scheme of arrangement referred to in this Notice) of the Company, could be convened for the purpose of considering and if thought fit, approving (with or without modification) a scheme of arrangement (the "Scheme") proposed to be made between the Company and its Scheme Creditors pursuant to section 99 of the Companies Act 1981. Terms defined in the Scheme shall have the same meaning in this notice.

The meetings are to be held on 7 July 2011 at Wakefield Quin, Victoria Place, 31 Victoria Street, Hamilton, Bermuda at the following times:

Company Prior Redeemers – at 9:00 a.m. (Bermuda time)

Company Compulsory Redeemers – at 9:30 a.m. (Bermuda time)

Scheme Creditors may attend and vote in person at the meeting for their class or they may appoint another person, whether or not such person is a Scheme Creditor, as their proxy to attend and vote in their place. Scheme Creditors which are corporations may attend and vote by a duly authorized representative or by proxy. Scheme Creditors are requested to complete the Proxy Form, which will be mailed and emailed to Scheme Creditors with this notice, and return it to the Company by email (as a scanned copy) to HighlandCrusaderFunds@hcmlp.com or by mail to c/o Wakefield Quin Limited, Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda), in each case marked for the attention of "Highland Crusader Funds Balloting." Provided that if the Proxy Form is submitted by email, it must be legible and an original executed copy or copies must be received by the Company within 3 business days of the date of electronic submission. Each Proxy Form should be received by 5:00 p.m. (Bermuda time) on 30 June 2011,

although, if not so returned, the Chairman of the meeting has discretion to accept a Proxy Form if handed in between 8:30 a.m. and 8:45 a.m. on the day of the meeting at the place fixed for the meeting.

Each Scheme Creditor or his proxy will be required to register his attendance at the meeting prior to its commencement. Registration will commence at 8:45 a.m.

A copy of the Scheme, the Explanatory Statement to the Scheme required by section 100 of the Companies Act 1981 of Bermuda, a Proxy Form for use at this meeting and all other documents in relation or ancillary thereto have been sent to all Scheme Creditors by mail and can be downloaded from the Data Room at https://services.intralinks.com using your existing login name and password. A new login name and/or password may be obtained by emailing HighlandCrusaderFunds@hcmlp.com. If you are unable to access these documents from the Data Room, please contact the Company by email at HighlandCrusaderFunds@hcmlp.com and a copy of these documents will be sent to you at the address you specify (or if no address is specified, your last known address as shown in the Company's records).

The Bermuda Court has directed that Roderick Forrest, a director of the Company, or failing him, Nicholas Hoskins, also a director, act as chairman of the meeting and directed the chairman to report the result of the meeting to the Court.

If approved by the scheme creditors' meeting, the Scheme will not come into force unless it is sanctioned by order of the Bermuda Court at a hearing which is expected to take place in July 2011, and a copy of the order is delivered for registration to the Registrar of Companies in Bermuda after other conditions precedent to the Scheme are satisfied.

All Scheme Creditors are entitled to attend the sanction hearing in person or by counsel to support or oppose the approval and sanction of the Scheme.

Dated 13 June 2011

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM11
Bermuda
Attorneys to the Company

APPENDIX D
PROXY FORM

Highland Crusader Fund II, Ltd. (the "Company")

Proxy Form

General notes for the completion of the Proxy Form

If you are a Scheme Creditor, you will be entitled to attend and vote at the meeting of your class of Scheme Creditors summoned to consider the proposed Scheme.
Enclosed with this document is the Proxy Form.

You are requested to complete and return the Proxy Form as soon as possible and, in any event, so that it is received by 5:00 p.m. (Bermuda time) on 30 June 2011 by the Company. The completed signed Proxy Form, should be to be sent by email (as a scanned copy) to HighlandCrusaderFunds@hcmlp.com or by mail to c/o MQ Services Ltd, Victoria Place, 31 Victoria House, Hamilton HM 10, Bermuda, in each case marked for the attention of "Highland Crusader Funds Balloting." Provided that, if the Proxy Form is submitted by email, it must be legible and an original executed copy or copies must be received by the Company within 3 business days of the date of electronic submission. If a Proxy Form is not returned by 5:00 p.m. (Bermuda time) on 30 June 2011, the Chairman of the meeting has discretion to accept a Proxy Form if handed in between 8:30 a.m. and 8:45 a.m. on the day of the meeting at the place fixed for the meeting.

If you are a Scheme Creditor in both classes, you should complete a separate Proxy Form for each class meeting.

If you are a duly authorised agent and/or attorney of a number of Scheme Creditors, you should complete separate Proxy Forms in respect of each Scheme Creditor for whom you act.

Any alteration to the Forms must be initialled by the person who signs it.

The value attributed to each Scheme Creditor's Scheme Claim for voting purposes shall be the Redemption Amount stated on the Proxy Form sent to each Redeemer

In the event that a Scheme Creditor objects to the valuation of its claim as set out in the Proxy Form for the purpose of voting at the meeting, the value of that Scheme Claim shall be determined by the Chairman of the meeting at his discretion, provided that the minimum value of such Scheme Claim determined by the Chairman shall be the Redemption Amount stated on the Scheme Creditor's Proxy Form. In the event of a dispute, the Chairman's decision will be final and binding and will be notified to the relevant Scheme Creditor before the Scheme Meeting where possible, and in any event, afterwards.

PROXY FORM FOR COMPANY PRIOR REDEEMERS
IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION (COMMERCIAL COURT): No. 51 of 2011
IN THE MATTER OF HIGHLAND CRUSADER FUND II, LTD.
AND IN THE MATTER OF THE COMPANIES ACT 1981

To be used at the Meeting of Scheme Creditors who are Company Prior Redeemers (as defined in the Scheme of Arrangement mentioned below) of HIGHLAND CRUSADER FUND II, LTD. to be held on 7 July 2011 at 9:00 a.m. (Bermuda time) at Victoria Place, 31 Victoria Street, Hamilton, HM10, Bermuda.

I/We (1)..... (Enter the name of the Scheme Creditor)

of..... (Enter the address of the Scheme Creditor)

being a Scheme Creditor with a claim as a Company Prior Redeemer of HIGHLAND CRUSADER FUND II, LTD. in the sum of [*Redemption Amount s to be inserted by Company*] HEREBY APPOINT(3) the Chairman of the Scheme Meeting for Company Prior Redeemers or .....as my/our proxy to act for me/us at the Scheme Meeting for Company Prior Redeemers the purpose of considering and, if thought fit, approving (with or without modification) the Scheme referred to in the notice summoning such Scheme Meeting, and at such Scheme Meeting, or any adjournment thereof, to vote for me/us and in my/our name(s) for the Scheme or against the Scheme (either with or without modification as my/our proxy may approve) as hereinafter indicated.

If you wish to vote for the Scheme, sign in the box marked "FOR". If you wish to vote against the Scheme, sign in the box marked "AGAINST". **If you wish your proxy to have discretion to vote for or against the Scheme, sign in the box marked "AT DISCRETION". Note that if you have appointed the Chairman of the Scheme Meeting as your proxy, you must sign either the box marked "FOR" or the box marked "AGAINST", not the box marked "AT DISCRETION". If you sign the box marked "AT DISCRETION", this Proxy Form will not operate as a valid appointment of the Chairman as your proxy and the Chairman will abstain from voting on your behalf. If you do not sign in any of the boxes, this Proxy Form will not operate as a valid appointment of your proxy.**

FOR the Scheme	AGAINST the Scheme	AT DISCRETION(4)
Signature	Signature	Signature .....

Name.....

Position/Capacity (5)..... Date .....

Contact email address 1 .....

Contact email address 2.....

PLEASE SEE PAGE 3 FOR DETAILED INSTRUCTIONS ON COMPLETING THE PROXY FORM

PROXY FORM FOR COMPANY COMPULSORY REDEEMERS
IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION (COMMERCIAL COURT): No. 51 of 2011
IN THE MATTER OF HIGHLAND CRUSADER FUND II, LTD
AND IN THE MATTER OF THE COMPANIES ACT 1981

To be used at the Meeting of Scheme Creditors who are Company Compulsory Redeemers (as defined in the Scheme of Arrangement mentioned below) of HIGHLAND CRUSADER FUND II, LTD. to be held on 7 July 2011 at 9:30 a.m. (Bermuda time) at Victoria Place, 31 Victoria Street, Hamilton, HM10, Bermuda.

I/We (1)..... (Enter the name of the Scheme Creditor)

of..... (Enter the address of the Scheme Creditor)

being a Scheme Creditor with a claim as a Company Compulsory Redeemer of HIGHLAND CRUSADER FUND II, LTD. in the sum of [*Redemption Amount to be inserted by Company*]

HEREBY APPOINT(3) the Chairman of the Scheme Meeting for Company Compulsory Redeemers or

.....

as my/our proxy to act for me/us at the Scheme Meeting for Company Compulsory Redeemers the purpose of considering and, if thought fit, approving (with or without modification) the Scheme referred to in the notice summoning such Scheme Meeting, and at such Scheme Meeting, or any adjournment thereof, to vote for me/us and in my/our name(s) for the Scheme or against the Scheme (either with or without modification as my/our proxy may approve) as hereinafter indicated.

If you wish to vote for the Scheme, sign in the box marked "FOR". If you wish to vote against the Scheme, sign in the box marked "AGAINST". **If you wish your proxy to have discretion to vote for or against the Scheme, sign in the box marked "AT DISCRETION". Note that if you have appointed the Chairman of the Scheme Meeting as your proxy, you must sign either the box marked "FOR" or the box marked "AGAINST", not the box marked "AT DISCRETION". If you sign the box marked "AT DISCRETION", this Proxy Form will not operate as a valid appointment of the Chairman as your proxy and the Chairman will abstain from voting on your behalf. If you do not sign in any of the boxes, this Proxy Form will not operate as a valid appointment of your proxy.**

FOR the Scheme	AGAINST the Scheme	AT DISCRETION(4)
Signature	Signature	Signature .....

Name.....

Position/Capacity (5)..... Date .....

Contact email address 1 ..... Contact email address 2

PLEASE SEE PAGE 3 FOR DETAILED INSTRUCTIONS ON COMPLETING THE PROXY FORM

Instructions for completion of the Proxy Form

Please note that the terms contained within these instructions and the Proxy Form bear the same meanings as given to them in the Scheme. The numbers below refer to the numbers on the Proxy Form.

1. Complete the Proxy Form that is applicable to your class of claim.
2. Enter the name and address of the Scheme Creditor in block capitals. If you are the duly authorised agent and/or attorney of a Scheme Creditor or a number of Scheme Creditors, complete a form in respect of each Scheme Creditor, and provide evidence (which must be satisfactory to the Chairman of the Scheme Meeting) of your authority to execute the form on each Scheme Creditor's behalf. Please note that each Scheme Creditor which is a company within a group of companies must complete a separate Proxy Form, as a group submission is not permissible.
3. If you wish to appoint a person other than the Chairman of the Scheme Meeting as your proxy, delete the words "the Chairman of the Scheme Meeting" and enter the name of the person to be appointed. The person to be appointed as your proxy need not be a Scheme Creditor. If you appoint a person other than the Chairman of the Scheme Meeting as your proxy, that person must attend the meeting in person in order to vote on your behalf.
4. If you wish to instruct your proxy to vote for the Scheme please sign the box marked "FOR". If you wish to instruct your proxy to vote against the Scheme please sign the box marked "AGAINST". If you wish to leave your vote to the discretion of your proxy, please sign the box marked "AT DISCRETION" in which event you must appoint a person other than the Chairman of the Scheme meeting to be your proxy, otherwise the form will not operate as a valid appointment of a proxy at the Scheme Meeting.
5. If you are the duly authorised representative of a corporation or a partnership or other unincorporated body of persons, or the duly authorised agent and/or attorney of a Scheme Creditor or a number of Scheme Creditors, enter the capacity in which you have signed the Proxy Form (for example, director, partner or agent and/or attorney). If you are the duly authorised representative of a number of companies, a separate Proxy Form should be completed in respect of each company. You must provide evidence (which must be satisfactory to the Chairman of the Scheme Meeting) of your authority to execute the form on each Scheme Creditor's behalf.

Exhibit C

Partial Final Arbitration Award

FILED UNDER SEAL

Exhibit D

Final Arbitration Award (Redeemer Committee)

FILED UNDER SEAL

Exhibit E

Final Arbitration Award (Joshua Terry)

JAMS

TERRY, JOSHUA N.	§	
	§	
Claimant,	§	
	§	
v.	§	**JAMS ARBITRATION NO. 1310022713**
	§	
HIGHLAND CAPITAL MANAGEMENT, LP, ACIS CAPITAL MANAGEMENT, LP, ACIS CAPITAL MANAGEMENT GP, LLC, DONDERO JAMES D. as TRUSTEE/THE DUGABOY INVESTMENT TRUST and OKADA, MARK K.	§	
	§	
Respondents.	§	

FINAL AWARD

Parties and Counsel: The parties are identified in the caption and are represented as follows:

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Arbitrator:

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HEARING

In accordance with the Parties' agreement to arbitrate and Court Order, disputes between Claimant, Joshua N. Terry ("Terry") and Highland Capital Management, LP, ("Highland"), ACIS

Capital Management, LP ("ACIS"), ACIS Capital Management GP, LLC ("ACIS GP"), James Dondero, as Trustee of the Dugaboy Investment Trust ("Trust"), and Mark K. Okada ("Okada"), all Respondents were submitted to binding arbitration before JAMS. The Arbitration Panel members are the Hon. Glen M. Ashworth (Ret.), the Hon. Mark Whittington (Ret.) and the Hon. Harlan Martin (Former), serving as Chairman of the Panel.

The arbitration hearing was conducted in Dallas, Texas on the dates of September 2, 3, 6, 7, 8, 11, 12, 13, 14 and 15, 2017, with additional briefing submitted thereafter. The briefing was closed and the hearing was complete on September 28, 2017.

PROCEDURAL BACKGROUND

In Cause No. DC-16-11396, styled Highland Capital Management, LP vs. Joshua N. Terry, the 162nd Judicial District Court stayed the litigation and Ordered the parties to arbitration.

The Panel has previously dismissed all claims stated by Terry against Jams Dondero, individually. James Dondero is not an appropriate party to this proceeding and did not obligate himself to the Parties' arbitration agreement.

The Panel has previously dismissed Terry's claims for Declaratory Judgment relief.

The Panel has previously dismissed Terry's claims for Exemplary Damages, as same are an excluded remedy by the terms of the Parties' arbitration agreement.

The Panel has previously denied Respondents' Motion to Disqualify Clouse Dunn and ruled that the firm is not disqualified to represent Terry.

The Panel has declined to entertain any request for injunctive relief.

REMAINING CLAIMS STATED BY PARTIES

Terry states claims against Highland for Sabine Pilot wrongful termination and seeks damages for deferred compensation, unpaid wages, future wages and reimbursement of benefits not paid. Terry states claims against ACIS, ACIS GP and Highland for reputational damages, resulting from statements published in the pending District Court litigation and a press release to Law 360.

Terry states claims against ACIS, ACIS GP, Trust and Okada for breach of contract and seeks damages for amounts due under the terms of the ACIS LPA and damages resulting from overcharging expenses and withholding of retirement assets.

Terry states claims against ACIS and ACIS GP for fraud.

Terry states claims against ACIS GP for breach of fiduciary duty.

Terry states claims against ACIS, ACIS GP and Highland for conversion of assets, fraudulent transfer of ACIS assets, recovery of his attorney's fees and costs, together with pre and post award interest.

Highland states claims against Terry, "subject to, and without waiver of its contention that Highland is not a party to a valid arbitration agreement with Terry and its claims against him are not arbitrable or within the scope of any applicable arbitration agreement, which contentions remain fully reserved." With this reservation, Highland states claims against Terry for breach of employment agreement, theft/theft of trade secrets, breach of fiduciary duty/self-dealing and recovery of its attorneys' fees and costs together with pre and post award interest.

BACKGROUND FACTS

Terry began his employment with Highland in 2005. During the ensuing years he achieved remarkable success and ultimately became Highland's most productive portfolio manager and had direct responsibility for more than ten billion dollars of assets under his management.

In 2011, Terry, James Dondero and Okada formed ACIS as a registered investment advisor to raise money from third-party investors to invest in collateralized loan obligations, (CLOs). ACIS earns a fee for managing the loans.

As the general partner of ACIS, ACIS GP owned .1%. As limited partners of ACIS, Trust owned 59.9%; Okada owned 15% and Terry owned 25%.

James Dondero owned 100% of Trust and was an officer of ACIS GP, and in fact made or approved the financial strategies and decisions of ACIS. While Okada was less active, Terry was responsible for the day-to-day management of ACIS. Terry managed well, attracted significant investors and grew ACIS assets under his management from nothing to three billion seven hundred million dollars in less than six years.

Prior to 2016, Terry enjoyed a good relationship with Dondero. Terry had never been criticized, written up or disciplined during his eleven years of employment with Highland. Terry had been paid millions of dollars in Highland salary, bonuses and ACIS profit distributions, as he had produced many more millions for Highland and his ACIS partners.

Thereafter, tensions arose between Terry and Dondero which were centered in Dondero's plans to have Trussway Holdings, Inc. acquire Targa, a Brazilian latex manufacturer, out of bankruptcy. Trussway is a Highland affiliated company controlled by Dondero. The plan was to have Highland managed CLOs loan Trussway approximately seventeen million dollars so

Trussway could loan a Highland affiliated Brazilian entity the money to acquire Targa and have Trussway use its cash to acquire its own equity to effectively increase Highland's ownership in Trussway.

At this time, Trussway's only lenders were the Highland CLOs and it owed the Highland CLOs approximately fifty six million dollars in Trussway notes coming due on May 31, 2016. Trussway did not have the money to pay the notes. Trussway did have more than twenty three million dollars still available on its revolver note (credit line), with the Highland CLOs. Dondero's plan was to extend the notes then due within days and finance Trussway's acquisition of Targa by drawing down the revolver funds. Dondero's plan was to not pay any of the CLOSs' notes until such time as Trussway could be refinanced or sold.

All of the Highland CLOs lending to Trussway were "pre-crisis" 2009, CLOs. One of the CLOs, Pamco-Cayman, had matured years before and its notes were in technical default. Another, Vahalla was maturing within four months.

Terry was opposed to Dondero's plan and saw a need to vigorously oppose the plan. Terry was the portfolio manager of these Highland CLOs and was convinced it would be a breach of his fiduciary duty to allow the Pamco-Cayman and Vahalla notes to be extended, as they were past or near maturity. Terry's opposition escalated at the May 2016 Conflicts Committee meeting and having been told that outside counsel had approved the transaction, Terry was sure they could not know all of the facts. Terry then informed outside counsel of "the facts" and his opposition to Dondero's plan. Outside counsel was in agreement with Terry and thereafter, on June 9, 2016, the Conflicts Committee approved the Trussway/Targa Transaction, but with the Pamco-Cayman and Vahalla notes being paid off and not extended. Thus, less cash was available to Dondero to fund his plan.

On June 9, 2016, following the Conflicts Committee meeting, Dondero told Terry that "he had lost all trust in him"; that "he could not go through another conflicts process with him"; and "it was best that Terry work with Surgent, Highland's Chief Compliance Officer (CCO), on an exit or transition out of Highland." The next day, Dondero emailed Terry and told him to focus on a "clean break scenario" and not come back to the office. On June 13, 2106, Terry received an email from Highland's Human Resources (H/R) director advising that he had been terminated for cause, but that Highland was "willing to consider the separation package previously offered", presumably referring to CCO Surgent's email of June 10, 2106, wherein he acknowledges that, "We are in agreement that we would like the termination of this relationship to be amicable." On June 13, 2016, Terry communicates with Dondero protesting his termination and demanding he be paid by Highland and ACIS. Thereafter, Highland's outside counsel sent a letter to Terry's counsel, demanding the return of all Highland related documents in the possession of Terry. Terry's counsel responds and reminds Highland's counsel of Terry's prior offer to return appropriate documents to Highland, and suggests a protocol for managing the electronically stored documents and electronic devices in possession of ESI, a third party forensics vendor, and demands redemption of Terry's and his wife's retirement account investments in ACIS CLO Value Fund II (CLOVF). Terry first requested redemption of these retirement account investments on June 20, 2016.

Thereafter, on June 27, 2016, Terry returns documents to Highland and continues to await an agreement on ESI return protocols. However, on July 27, 2016, Highland's counsel rejects the proposed ESI return protocols and does not suggest alternate protocols. In the same e-mail string, Highland's counsel responds to Terry's request for redemption of the retirement investments in CLOVF, advising that; "we do not contest that Mr. Terry has submitted a request

for redemption in full of all of his accounts. However, please note that those accounts do not have any value." On September 1, 2016, the CCO, for the first time, memos Terry's "compliance file" with allegations of Terry's breach of fiduciary duty, self-dealing and material compliance violations regarding the CLOVF. This memo alleges an investor loss in the CLOVF attributed solely to Terry's actions and that Highland in part offset such loss against "Mr. Terry's" remaining interest in the CLOVF, "in accordance with Section 3.5(c) of the Agreement of Limited Partnership." Thus, Terry's and his wife's retirement investment in the CLOVF was swept by Highland or others and "those accounts have no value," as stated in Highland's counsel's email of July 27, 2016.

On September 7, 2016, the Parties mediated their dispute, but did not settle. The next day Highland filed suit against Terry alleging the same facts which the CCO alleged in his September 1, 2016 memo, and alleging Terry had a sexual relationship with a number of his subordinates, and alleging that Terry made disparaging/disrespectful remarks about Dondero. Highland's suit stated claims for breach of employment agreement, breach of fiduciary duty/self-dealing, violation of the Texas Uniform Trade Secrets Act and sought declaratory relief that Terry was terminated for cause.

On September 12, 2106, Highland files its Application for Temporary Restraining Order and Motion to Disqualify Terry's attorneys, and Terry files his Motion to Compel Arbitration. On September 28, 2106, the Court issued its Order compelling the Parties to arbitration and Ordered the litigation (Cause No. DC-16-11396, 162nd Judicial District Court) stayed pending a Final Award in Arbitration.

ANALYSIS OF FACTS AND CLAIMS

The Panel first addresses Terry's claims for breach of contract stated against ACIS and ACIS GP and breach of fiduciary duty stated against ACIS GP.

The evidence establishes that Highland terminated Terry's employment on June 9, 2016. The ACIS Limited Partnership Agreement (LPA), Section 4.04 requires that, "upon the resignation, death, disability or termination of employment with the Partnership or any Affiliate Employer (for any reason whatsoever) (as such event, a 'Removal Event') of any Limited Partner, the Partnership Interest of such Limited Partner shall automatically be forfeited to the Partnership and such Limited Partner shall be entitled to receive in consideration of such interest an amount equal to (i) 100% of such Limited Partners Percentage Interest of all Net Available Cash through the first year end following the Removal Event, (ii) 66 2/3% of such Limited Partner's Percentage Interest of all Net Available Cash through the second year end following such Removal Event, (iii) 33 1/3% of such limited Partner's Percentage Interest of Net Available Cash through the third year end following such Removal Event…; provided, that if the basis of such Removal Event was termination of employment with the Partnership or any Affiliate Employer for cause…such partner shall automatically forfeit its right to any further compensation or consideration for its Partnership Interest."

Because Highland stated that Terry was terminated for cause, ACIS and ACIS GP invoked the provided clause and deemed all of Terry's limited partnership interest and entitlement to payout as forfeit. Thus, ACIS and ACIS GP claim to owe Terry nothing for his 25% limited partnership interest in ACIS, as Terry claims he is contractually owed twelve million nine hundred and eight two thousand dollars for his 25% limited partnership interest in ACIS.

The evidence establishes that ACIS and ACIS GP did not just simply rely on Highland's statement of terminating Terry for cause. ACIS and ACIS GP became part of Highland's and

Dondero's efforts to construct a pretext of "for cause" termination so Terry could be denied the value of his limited partnership interest in ACIS. ACIS and ACIS GP knowingly and willingly pretextually characterized Terry's termination from Highland as a "for cause" termination to deny Terry the value of his limited partnership interest, all in contractual breach of the ACIS LPA and in breach of fiduciary duty to Terry as its limited partner. ACIS and ACIS GP have no employees. All who act for ACIS and ACIS GP are officers or employees of Highland and perform multiple roles.

The evidence establishes that Highland's termination of Terry was, in fact, pre-textual, without basis of cause and only because Dondero wanted him gone. Terry's opposition to Dondero's Trussway/Targa plan was not self-dealing and not a breach of fiduciary duty. Terry's opposition to Dondero's plan to not pay investors and extend past due and near due notes was appropriate and was ultimately accepted by all to be the correct approach to complete the Trussway/Targa acquisition. Dondero was simply angry and realized Terry was not a "yes man" willing to let Dondero have his wrongheaded way, so Dondero fired Terry on the spot and later sought to characterize Terry's termination of employment as "for cause."

Respondents' offer to prove that Terry's termination was "for cause" is not persuasive. The contrasts between the true facts and their temporal relationship to Terry's termination, as those "facts" are characterized by Respondents as a predicate for his "for cause" termination, are not credible. The CCO's memo to Terry's file of September 1, 2016 was the first documentation of his alleged breach of fiduciary duty or self-dealing as a justification for his "for cause" termination.

There is no credible evidence that anyone ever discussed any prior sexual relationship between Terry and a co-worker, other than Terry in a "father/son" talk with Dondero in January 2015. That admitted relationship had ended months earlier, was not significant to Dondero and he told Terry there was no need to report the relationship to Human Resources. Respondents alleged

other sexual relationships between Terry and co-workers which are denied by Terry. One is alleged to have occurred in 2011, but there is no credible evidence that it even occurred. It is simply not credible that a rumored relationship four years prior was any motivation for or could be any justification for Terry's "for cause" termination. Respondents' allegation that Terry had a sexual relationship with a Highland junior attorney is most offensive, as the relationship did not occur and was denied by both Terry and the junior attorney. This allegation was based solely on someone's fantasy related to costumes they wore at an office Halloween party and their common attendance at a business conference. It is not credible that a sophisticated CCO and H/R director would reasonably rely on such as a basis for Terry's "for cause" termination and resulting forfeiture of the value of his limited partnership interest in ACIS. The evidence establishes that Terry did not have a sexual relationship with the junior attorney, and the Respondents or others, in good faith, could not have reasonably believed he did.

The Panel is persuaded that the Respondents, feeling need to find motive for the junior attorney's assistance of Terry and her involvement in the CLOVF restructure, sponsored these allegations to support their claims that Terry was seeking the restructure of the CLOVF out of self-interest and in breach of his fiduciary duties, and establish the motives of the junior attorney in "knowingly" facilitating Terry's alleged breach of duty. This is a pretextual construct of the CCO and is simply not credible.

The proposed restructure of the CLOVF began in early 2015 and was always known by Dondero, Highland's legal department and CCO. The CLOVF was small, only had a few investors, was subject to investor redemption requests, had been co-opted to be supported by Highland employee's investment of their retirement accounts and not structured in a way to attract a target

group of investors. The proposal was to restructure the CLOVF to make it more "hedge fund like", and grow the CLOVF with new investors.

The CLOVF routinely paid profit distributions to its investors. This is not "hedge fund like" because profits were distributed rather than retained to be reinvested for growth. The two primary investors, referred to as Rampart and Kyser did not require routine distributions and sought growth. Highland employees had access to investing in the CLOVF by investing in its ITA retirement accounts, which were basically IRAs. Employee investors who wished to invest more in their ITA retirement accounts were required to invest in the CLOVF's interest bearing notes at a ratio of 80% notes to support 20% investment in their ITA retirement accounts. If the CLOVF was to no longer distribute profits to accomplish "hedge fund like" reinvestment for growth, no distributions would be available to pay interest on the employee investment notes and the notes would need to be paid off. If there was no longer a vehicle to support aggressive employee investment in the CLOVF (the four to one ratio), the ITA did not need to continue to exist. The employee's retirement accounts could simply be redeemed or transferred to other IRAs.

Terry was the portfolio manager of the CLOVF and its third largest investor. Like other investors, Terry had rights to redeem his investment, but he did not seek to redeem and continued to invest in CLOVF notes and he and his wife continued to invest their retirement funds in the ITA. Nonetheless, Respondents allege that a dichotomy of interest led Terry to lie and scheme to have his investment in the CLOVF paid while others were encouraged to invest. This is the substance of Respondents' allegations of Terry's self-dealing and breach of fiduciary duty, supporting both their allegations of "for cause" termination and Highland's claims for damages and offset in the District Court suit. As noted, these claims were never documented or disclosed to Terry prior to the CCO's memo of September 1, 2016, and Highland's District Court suit.

As noted, the proposed restructure of CLOVF began in early 2015 and continued for a year thereafter. The business purpose of the restructure was well known to Dondero and the CCO. As early as the fall of 2015, Dondero and Terry were discussing the appropriateness of continuing the CLOVF without new investors. Dondero did not want to close the CLOVF and suggested that the DAF would become a major investor. The DAF (Donor Advised Fund), CLO Hold Co is the Parties' reference to a group of charitable foundations which were invested in Highland managed CLOs. The DAF's trustee is a Highland employee and Dondero's former college roommate. Apparently, Dondero knew he could direct the DAF's investment in the CLOVF and support its continuation. Dondero and the Highland CCO were aware of the planned restructure and its consequential effect on the ITA and the employee investor notes supporting the employee's retirement investments in the ITA. By December 2015, Dondero approves the restructure plan, payment of employee investor notes and the windup of the ITA. The Highland CCO expresses concern that Rampart's and Kyser's written approval is necessary for the CLOVF to stop paying profit distributions. Later the necessary approval is documented, apparently to the CCO's satisfaction, and the restructure plan proceeds. The DAF contributes sixteen million six hundred thousand dollars of Highland managed assets to the CLOVF, employee investor notes are paid and the ITA is wound up by the end of April 2016.

Following Terry's termination and later notice of "for cause" termination, Terry requested redemption of his and his wife's remaining investments in the CLOVF. Five weeks later, on July 27, 2016, he is advised that his investment has no value. Apparently, when the ITA was wound up in late April, Terry's and his wife's retirement investments were somehow re-characterized as Terry's capital account in the ACIS CLO Value Master Fund II, L.P. or his capital account in the CLOVF.

On or about July 19, 2106, Highland rescinded the DAF contributions to the CLOVF and returned the contributed assets to the DAF. Respondents state this rescission was necessary because they had "recently discovered (a) conflict of interest regarding an ex-employee." However, the Rescission Agreement itself recites that, "the Parties have each determined that it is in their respective best interests of each of the Parties to rescind and cancel the Contribution."

Incident to the rescission, the CLOVF returned all of the contributed assets to the DAF and paid in cash or transfer of additional assets the total value of seven hundred and eight thousand dollars, "to make the DAF whole", and economically in the same position as before its contribution to the CLOVF.

The "recently discovered conflict of interest" is the CCO's recent epiphany that Terry must have lied when he advised that the CLOVF investors Rampart and Kyser "requested" that distributions be terminated to accommodate reinvestment growth. The CCO's testimony that he called these investors and confirmed this lie is not persuasive and begs credibility. The only documented evidence are the investors written approvals which the CCO required.

The July 27, 2016 advice that Terry's and his wife's retirement accounts had no value is only accurate because the value was taken and used to pay the DAF following the rescission. In the District Court suit, Highland states a claim for damages and offset for the additional value paid to the DAF. Respondents' witness testified that the retirement fund's value was in Terry's capital account and it was swept pursuant to Section 3.5(c) of the ACIS CLO Value Master Fund II, L.P.'s limited partnership agreement.

Terry is a limited partner in the CLOVF and the CLOVF is a limited partner in the ACIS CLO Value Master Fund II (CLOVMF) but the evidence does not show Terry to be a partner in the CLOVMF. Assuming that Terry is a partner, as referenced in Section 3.5(c), Respondents' claimed

authority to sweep the accounts in satisfaction of or offset of damage or loss is directly dependent upon a nexus in causation between the alleged damage or loss and the conduct of Terry.

The evidence establishes that the CCO's claims of "recently discovered conflict of interest" is yet another construct and pretext to support Respondents' denial of limited partnership value based on a "for cause" termination and was not in fact the reason for the DAF rescission. It would make little difference to Highland which of its CLOs managed the DAF investments. Dondero simply reconsidered his decision to support the continuation of the CLOVF with Highland managed funds and realized, that in fact, as Terry had advised, the fund would be too small to manage without significant investors. The CLOVF was ultimately closed out because Dondero did not see benefit to its continuation. The evidence establishes that no conduct of Terry was a cause of damage or loss to the CLOVMF or the CLOVF.

Section 3.10(a) of the ACIS LPA limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner to an amount not to exceed 20% of Revenues without the consent of all members of the Founding Partner Group. There is no dispute that Terry is a member of the Founding Partner Group. There is no evidence that Terry offered written consent to any expenses paid by ACIS in excess of 20% of Revenues. It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA. Highland is owned 75% by Dondero and 25% by Okada and Terry is not a partner in Highland. Terry had no reason to consent to excess expenses being paid to Highland. Additionally, the ACIS LPA has an express waiver clause at Section 6.09 which states,

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

The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS' and ACIS GP's breach of contract and breach of fiduciary duty. Clearly ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

The Panel next addresses Terry's claim for conversion of the ITA retirement accounts stated against Highland, ACIS and ACIS GP.

Without again reciting the convoluted structure and history of the ITA retirement accounts in issue, it is established that there is no remaining value to the accounts because its value was swept and used by Highland or CLOVF to pay the DAF incident to the DAF rescission. It is noted that Respondents argue and offer to prove that Terry has no standing to state a claim for conversion of three of the five accounts because his wife is the trustee and owner of those three accounts. She is the trustee and owner of those accounts. Yet those accounts too were swept to pay the DAF and construct a pretextual damage and offset claim for having paid the DAF. While this establishes conversion of the accounts to the damage of Terry and his wife, the converters (CLOVF, CLOVMF, ACIS CLO VF GP), are not parties to this arbitration. The claims for breach of contract and conversion and damages should be stated against those parties or others, elsewhere.

The Panel next addresses Terry's claims for reputational damages and fraudulent transfer stated against Highland, ACIS and ACIS GP.

The evidence establishes that Highland and not ACIS or ACIS GP was the publisher of any false or defamatory statements. Whether those statements in pleadings or press release to Law360 are actionable against Highland is a matter deferred for the District Court suit. Terry's claims for reputational damages stated against ACIS or ACIS GP are not proved.

Terry states a claim against Highland, ACIS and ACIS GP for the fraudulent transfer or conveyance of assets under the Texas Fraudulent Transfer Act. In October 2016, ACIS sold to Highland a participation interest in ACIS's Service Fees (management fees) which ACIS would receive between November 2016 and through August 2019. This sale of a participation interest represents near one-half of ACIS revenues during the covered period. Highland is to pay, in cash and promissory note with interest at 3%, ACIS a total of thirteen million three hundred and thirty three thousand dollars, plus interest for the participation interest. Highland's payment is scheduled as follows:

- October 7, 2016 - $666,655.00 – cash at closing
- May 31, 2017 - $3,370,694.00 – principal and interest
- May 31, 2018 - $5,286,243.00 – principal and interest
- May 31, 2019 - $4,677,690.00 – principal and interest

The transactional documents recite business purpose and reasonable consideration for the sale. Terry offers no evidence that ACIS did not receive reasonable equivalent value in the transaction or that ACIS made the transfer with "actual intent to hinder, delay or defraud." Terry has not proved a claim for fraudulent transfer or conveyance.

The Panel next addresses Terry's claims for wrongful termination and resulting damages stated against Highland.

Terry's employment with Highland was "At Will" and he could have been terminated for any reason other than an unlawful reason. Terry did not prove that the sole reason for his termination was his refusal to commit an illegal act, as is required under Sabine Pilot. The evidence establishes that Dondero terminated Terry because he was angry with Terry's opposition to his Trussway/Targa acquisition plan and he wanted Terry gone. "At Will" employment contemplates that if the boss wishes, one's employment is terminated and the termination is not actionably wrongful. Even as an "At Will" employee, Terry may have claims for damages against Highland for his unpaid severance, unused vacation, deferred compensation and unreimbursed expenses, but these claims are a matter deferred for the District Court suit. Terry's claims stated against Highland for Sabine Pilot wrongful termination are not proved.

Although Trust and Okada are limited partners in ACIS and are named as Respondents in this arbitration, Terry has failed to offer any evidence of actionable claims against Trust or Okada. All claims stated by Terry in this arbitration against Trust or Okada are not proved.

The Panel next addresses Highland's claims for breach of employment agreement, theft/theft of trade secrets and breach of fiduciary duty stated against Terry.

Although Highland is a party to the District Court suit Ordered to arbitration, Highland is not a party to an arbitration agreement and has stated claims against Terry with the above noted reservation, "subject to and without waiver." To the extent these claims are stated in this Arbitration in affirmative avoidance of Terry's claims stated against ACIS and ACIS GP they are addressed in this Award.

The evidence does not establish that Terry breached his employment agreement or any fiduciary duty to Highland, ACIS or ACIS GP or that Terry self-dealt in anyway. On the contrary, Terry's actions in opposing Dondero's Trussway/Targa acquisition plan and his efforts to restructure

the CLOVF were reasonable and appropriate and as his portfolio manager duties required. These claims are not proved and are not an affirmative defense or avoidance available to ACIS or ACIS GP.

The evidence does not establish that Terry is guilty of theft or theft of trade secrets. Respondents offered no evidence of a trade secret or a protectable trade secret interest in the documents in issue. Although Highland's claim for turnover is overreaching, it was heard in this Arbitration at Respondents' insistence and the record and all evidence admitted in that preliminary hearing was offered and admitted in the final hearing. This claim is not proved and is not an affirmative defense or avoidance available to ACIS or ACIS GP. Otherwise, the Panel issues its turnover decision in this Award.

The evidence does not establish that any disparaging remarks of Terry were ever communicated to Dondero prior to Terry's termination or that the alleged remarks could have been a reason for Terry's "for cause" termination. All of Respondents' alleged bases of "for cause" termination of Terry's employment are not proved and none are an affirmative defense or avoidance available to ACIS or ACIS GP.

ANALYSIS OF TERRY'S DAMAGES

The Panel only addresses proved claims stated against appropriate Parties to this Arbitration.

Terry has proved his claims stated against ACIS and ACIS GP for breach of contract and claims stated against ACIS GP for breach of fiduciary duty incident to their payment of excess expenses to Highland and their wrongful forfeiture of Terry's contractual right to be paid for his ACIS limited partnership interest.

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

The best evidence of the value of the Section 4.04 limited partnership payout is Terry's June 13, 2016 calculations, which he communicated to Dondero within days of his termination. Terry was the portfolio manager of ACIS and as such was most aware of ACIS's financial performance and expected performance within the payout period. The calculations do not include an assumed growth rate of ACIS revenues and are not burdened by Highland's after termination manipulations of ACIS managed assets or ACIS revenues.

The evidence establishes that Terry's ACIS limited partnership payout upon termination had a total value of $5,688,351.00.

Because ACIS and ACIS GP breached the ACIS LPA and ACIS GP breached its fiduciary duty in June 2016 when they repudiated their obligations to their limited partner, Terry's contractual entitlement to payout under the ACIS LPA is liquidated, accelerated and is now fully due.

Additionally, Terry is entitled to pre-award interest at the rate of five percent (5%) per annum from the date of commencement of this Arbitration, September 20, 2016, until entry of Final Award in the amount of $372,192.00.00.

FINDINGS AND CONCLUSIONS

Based upon the Parties' offers of proof, evidence submitted and argument of counsel, the following facts and conclusions are found by these Arbitrators to be established by the evidence to be true and necessary to this Award. To the extent these findings and conclusions differ from any Parties' position that is the result of these Arbitrators determinations as to credibility, relevance, burden of proof considerations, and the weighing of the evidence, both oral and written.

The Arbitration Panel finds and concludes as follows:

1. This dispute is arbitrable pursuant to the Parties' agreement to arbitrate and prior Court Order in Cause No. DC-16-11396, 162nd Judicial District Court, Dallas County, Texas.
2. The Arbitration panel has jurisdiction to resolve all disputes presented and not deferred to the 162nd District Court.
3. JAMS Comprehensive Arbitration Rules and Procedures govern the resolution of this dispute with the law of the States of Texas and Delaware.
4. Prior to his termination on June 9, 2016, Terry was an at will employee of Highland and a 25% limited partner in ACIS.
5. Highland's termination of Terry's employment was not, in fact, "for cause." Highland's stated "for cause" termination of Terry's employment was, in fact, pretextual and for purpose of denying Terry benefits of employment payable at his termination and as a basis for the forfeiture of the value of Terry's limited partnership interest in ACIS.

6. ACIS and ACIS GP knowingly and willingly invoked Highland's false pretext of "for cause" termination to deny Terry the value of his 25% limited partnership in ACIS.
7. ACIS and ACIS GP paid Highland expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA.
8. ACIS and ACIS GP wrongfully denied Terry his contractual rights to payment for his limited partnership interest in ACIS and are liable for and owe Terry for same.
9. In breach of contract and fiduciary duties, ACIS and ACIS GP are liable to and owe Terry his ACIS profits distributions which were payable but for the wrongful payment of excess expenses to Highland.
10. ACIS GP's actions were willful and wanton breaches of their fiduciary duties to Terry as their limited partner.
11. All claims stated by Highland, "subject to and without waiver" against Terry are not proved and as such none are an affirmative defense or avoidance of Terry's claims stated against ACIS and ACIS GP.
12. All claims stated by Terry against Trust and Okada are not proved and are denied.
13. All claims stated by Terry against ACIS and ACIS GP for fraudulent transfer or conveyance are not proved and are denied.
14. Terry's fraud claims stated against ACIS and ACIS GP are not proved and are denied.
15. All claims, not denied or awarded, are deferred to the 162nd District Court, Dallas County, Texas or other appropriate venue.

16. ACIS's and ACIS GP's breaches of contract and ACIS GP's breach of fiduciary duties have injured Terry and resulted in damages, together with pre-award interest in the total amount of Seven Million Eight Hundred Sixteen Thousand Twenty-Four Dollars and No/100 ($7,816,024.00).
17. The Parties' agreement to arbitrate does not allow the award of prevailing party attorneys' fees. All claims for attorneys' fees are denied.
18. The Parties' agreement to arbitrate allows the Panel discretion to award the prevailing party costs of arbitration. Terry is entitled to recover his JAMS arbitration cots.
19. Terry is awarded One Hundred Thirty Three Thousand, Seven Hundred Twenty Five and 15/100 Dollars ($133,725.15) for his JAMS arbitration costs.
20. Terry is entitled to recover post-award interest on all amounts awarded herein.

AWARD

TURNOVER:

Claimant, Joshua N. Terry may retain: all recordings of conversations to which he is a party; all agreements to which he is a signatory; all "track record" documents regarding his performance; all documents in the public domain; all documents relating to his investment in or ownership of any Highland affiliated entity; all personal notes or memoranda derived from conversations to which he is a party; all notes or memoranda prepared for and offered to his attorneys.

Except for attorney work product, claimant's attorneys Clouse Dunn LLP may retain copies of all documents which were admitted into evidence in this Arbitration until five business days following the latter of, issuance of this Final Award or final confirmation of this Final Award, no longer subject to appeal. At such time, Clouse Dunn LLP shall turnover these documents to Respondents' attorneys and verify the destruction of electronically formatted documents turned over.

Otherwise, Claimant, Terry, shall turnover all documents, not subject to his awarded right of retention, related to Highland affiliated entities within five business days of entry of this Final Award.

MONETARY AWARD:

Claimant, Joshua N. Terry is Awarded and shall have and recover jointly and severally against Respondents, ACIS Capital Management, LP and ACIS Capital Management GP, LLC, the total sum of Seven Million, Nine Hundred Forty Nine Thousand, Seven Hundred Forty Nine and 15/100 Dollars ($7,949,749.15).

All sums payable by the terms of this Final Award shall accrue post-award interest at the legal rate until fully paid.

All claims for relief, not awarded herein or deferred to the Court, are denied.

Hon. Harlan Martin
Panel Chair

Dated: October 20, 2017

Hon. Glen M. Ashworth (Ret.)
Arbitrator

Dated: October 20, 2017

Hon. Mark Whittington (Ret.)
Arbitrator

Dated: October 20, 2017

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Terry, Joshua N. vs. Highland Capital Management, LP., et al.
Reference No. 1310022713

I, Judy Stephenson, not a party to the within action, hereby declare that on October 20, 2017, I served the attached Cover Letter, Final Award and Proof of Service on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Dallas, TEXAS, addressed as follows:

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ACIS Capital Management, LP
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ACIS Capital Management, LP
Highland Capital Management, LP
James D. Dondero as trustee/The Dugaboy Inve
Mark K. Okada

I declare under penalty of perjury the foregoing to be true and correct. Executed at Dallas, TEXAS on October 20, 2017.

Judy Stephenson

Judy Stephenson
jstephenson@jamsadr.com